

Welcome to tonight's City Council meeting!

The elected officials of the City of Bonners Ferry are appreciative of an involved constituency. Testimony from the public is encouraged concerning issues when addressed under the Public Hearing portion of the agenda. Any individual who wishes may address the council on any issue, whether on the agenda or not, during the Public Comments period. Normal business will preclude public participation during the business portion of the meeting with the discretion left to the Mayor and Council. Special accommodations to see, hear, or participate in the public meeting should be made at City Hall within two days of the public meeting.

Vision Statement

Bonners Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life. We are an inclusive city that welcomes all people, regardless of race, religion, color, national origin, sex, age, disability, sexual orientation, or gender identity and encourages their participation in city government and city programs.

AGENDA CITY COUNCIL MEETING Bonners Ferry City Hall 7232 Main Street 267-3105 June 16, 2020 6:00 pm

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

Each speaker will be allowed a maximum of three minutes, unless repeat testimony is requested by the Mayor/Council

GUESTS Michael Keith and Laura McAloon - Presentation Regarding the Hydroelectric Bond Schedule

1. Electric – Consider Authorizing Drafting of the Bond Parameter Ordinance (attachment) {action item}

REPORTS

Police/Fire/City Administrator/City Engineer/Economic Development Coordinator/Urban Renewal District/SPOT

CONSENT AGENDA – {action item}

2. Call to Order/Roll Call
3. Approval of Bills and Payroll
4. Approval of the May 28, 2020 Special Council meeting minutes, June 2, 2020 Council meeting minutes
5. Treasurer's Report

OLD BUSINESS

6. Discuss 4th of July Parade {action item}

NEW BUSINESS

7. Electric/Water/Sewer – Discuss Consumer Price Index Regarding Rate Increases (attachment) {action item}
8. Street – Consider Authorizing the Purchase of a Zero Turn Lawn Mower (attachment) {action item}
9. Electric – Consider Accepting the Bid from General Pacific for the Electric Vehicle Charging Station and Authorize the Mayor to Sign the Contract with General Pacific Purchase (attachment) {action item}
10. City – Consider Authorizing the Mayor to Sign the Master Service Agreement with Exbabylon for IT Assistance (attachment) {action item}
11. Electric – Consider Authorizing the Mayor to Sign the Contract with Three Amigos Underground for Electric Line Work (attachment) {action item}

ADJOURNMENT



MEMO

CITY OF BONNERS FERRY
CITY ENGINEER

Date: June 11, 2020
To: City Council
From: Mike Klaus, City Engineer
Subject: Engineer's Report

Below is a brief summary of two City construction projects that are currently in progress:

Well House:

The Water Department and the City electrician are working on the well house building which is now dried-in. Over the next two weeks the crews will be involved in following construction:

- Installing drywells for pump-to-waste discharge basin.
- Carpentry on the gable ends, soffit, and trim work.
- Installing electrical panels and conduit.

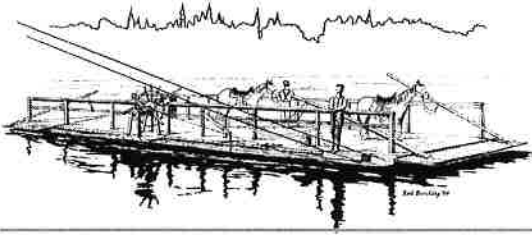
Wilson-Solomon Utility Corridor Project

Wink Inc has most of the project complete, with the last of the rock being installed this week. I anticipate that the project will be fully complete by the end of June. Next week Century West, Wink, and the City will perform a walk-through of the project to develop a final punch list of items to be completed to finalize the project.

Please call me with questions about any City projects.

Thank you,

Mike



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: Lisa Ailport, City Administrator *LMA*

DATE: June 11, 2020

RE: **Admin Update**

City Pool

The pool opened on June 8th and we are seeing great results with use, even considering the weather. Feedback on the pool has been great from the folks who have used it this week. The Sherriff's office will use the pool on June 11, 2020 for in-service training for their dive team.

Splash Pad

The splash pad is making good progress. The Street department has been placing the foundations for each of the water features. We are very hopeful that the facility will be open within the next month.

FLAP-Riverside Scoping Meeting

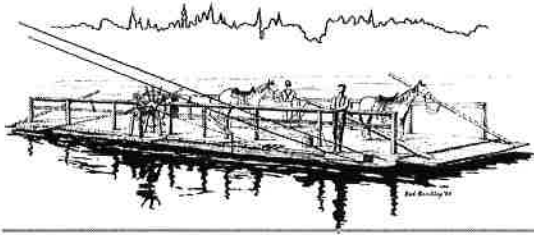
The Riverside scoping meeting happened on June 11, with the design team from Western Federal Lands. This project was the selected to be funded through the Federal Lands Access Program monies. The project will tie into the County project that begins at city limits and runs to the wildlife refuge. The design group walked the project together and noted that it will be a challenging but rewarding project.

The project is anticipated to start construction in 2024.

On a side-note, at the time of the walk through with the design team the county was installing a bicycle warning system at the city limit, just east of Ambush Rock area that will warn motorists of cyclists that are traveling through ambush rock area. The warning sign was developed by Montana State University and will run for a year as a pilot study to see how the system will work and ultimately be integrated into the project.

Bond Election

As you probably all heard by now, the Moyie Hydro bond passed with 506 votes in favor and 52 votes against. That represented a 90% approval rating. Our bond counsel and bond financial advisor were very impressed with our approval rating. Given that the primary election resulted in such high turnout, should represent to council that we do have wide spread support for the project at the dam.



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: Lisa Ailport, City Administrator *LMA*

DATE: June 10, 2020

RE: **Bond Procurement Process**

Michael Keith and Laura McAloon will join us on Tuesday via the Zoom platform to discuss the next steps in the bond procurement process. This includes passing a bond ordinance or a bond parameter ordinance, which will be covered by Laura and Michael at the meeting. Additionally, Michael will go through the calendar that is attached to this memo and discuss bond terms that will be reflected in the future bond ordinance.

A decision regarding the type of bond council is comfortable with and terms will likely be covered at the meeting.

Please let me know if you have any questions.

**CITY OF BONNERS FERRY
BOUNDARY COUNTY, IDAHO
HYDROELECTRIC REVENUE BONDS, SERIES 2020
SOLD VIA PRIVATE PLACEMENT
Preliminary Schedule of Events
(As of June 11, 2020)**

Financing Team		
CITY	City of Bonners Ferry	Issuer
BC	McAloon Law PLLC	Bond Counsel
PSC	Piper Sandler & Co.	Placement Agent
BANK	TBD	Purchaser

June 2020	July 2020	August 2020
S M T W T F S	S M T W T F S	S M T W T F S
1 2 3 4 5 6	1 2 3 4	1
7 8 9 10 11 12 13	5 6 7 8 9 10 11	2 3 4 5 6 7 8
14 15 16 17 18 19 20	12 13 14 15 16 17 18	9 10 11 12 13 14 15
21 22 23 24 25 26 27	19 20 21 22 23 24 25	16 17 18 19 20 21 22
28 29 30	26 27 28 29 30 31	23 24 25 26 27 28 29
		30 31

DATE	EVENT	ACTING PARTY
6/16	Regular City Council Meeting – Review Schedule & Parameters	CITY, PSC, BC
6/17	Circulate 1 st Draft RFP for Direct Purchase	PSC
6/22	Comments due on Draft RFP	CITY, PSC, BC
6/24	Circulate Final Draft RFP	CITY, PSC, BC
6/26	Comments due on Final Draft RFP	CITY, PSC, BC
Week of 6/29	Special Council Meeting – Approve Bond [Parameters] Ordinance	CITY, BC, PSC
Week of 6/29	Circulate RFP for Direct Purchase	PSC
7/16	Response to RFP due	BANK(s)
7/17	Review Responses <i>Identify and Select Bank</i> <i>Discuss Terms and Schedule with Bank</i>	CITY, PSC BANK
7/20	Finalize Numbers and Circulate	CITY, PSC
7/23	Circulate Draft Closing Memo Circulate 1 st Draft Legal Documents	PSC
7/31	Comments due on 1 st Draft Legal Documents & Closing Memo	PSC
8/4	Circulate 2 nd Draft Legal Documents & Closing Memo	BC
8/7	Final Comments due on Draft Legal Documents	CITY, PSC, BANK
8/10	Send Documents for Signature	BC
8/18	Close Series 2020 Bonds – BANK delivers funds to City	ALL

City Council meets 1st and 3rd Tuesdays of the month.

Holidays: July 4, Independence Day

McAloonLaw

PLLC

421 W. Riverside Avenue, Ste 515 • Spokane, WA 99201

MEMORANDUM

To: Christine McNair, City Clerk/Treasurer
Lisa Ailport, City Administrator
City of Bonners Ferry

From: Laura McAloon
McAloon Law, PLLC

Date: June 10, 2020

Below is an example from the City's 2017 bond ordinance that demonstrates how the City Council established parameters for that financing and delegated authority to a designated representative to accept the terms of the financing and proceed to closing. For purposes of the 2020 Hydroelectric Revenue Bonds, the Council would need to provide us with direction on the following parameters:

1. Identify who should be appointed as Designated Representatives for the City. Normally it is the Mayor and a senior staff person.
2. Establish the maximum interest rate that the Council would accept. The estimated rate from the ballot was 3.25%.
3. Establish the maximum repayment term (years) that the Council would accept.

Michael Keith will be able to provide you with suggestions as to the maximum interest rate and repayment term

Section 3. Authorization and Description of Bond; Delegation of Authority.

(a) *Authorization and Description of the Bond.* The City shall now issue and sell to the Authority its Hydroelectric Revenue Refunding Bond, Series 2017 in the aggregate principal amount of not to exceed \$855,000 (the "Bond") for the purpose of refunding the 2005 Electric Revenue Bonds and paying the costs of issuance of the Bond. Said Bond shall be substantially in the form set forth in Section 15 of this Bond Ordinance, shall be issued to the Authority as Registered Owner; shall be in the principal amount of not to exceed \$855,000, shall be dated as of the date of delivery, shall bear interest as set forth in the Loan Agreement, shall mature no later than September 1, 2024 and shall be subject to prepayment as set forth in the Loan Agreement. Installments of principal and interest shall be payable at such times and in such amounts as set forth in the Loan Agreement. Interest on the Bond shall be calculated based on a 360-day year of twelve 30-day months, all as approved by the Designated Representative.

(b) *Delegation of Authority.* The City has determined that it would be in the best interest of the City to delegate to the Designated Representative the authority to approve the final principal amount and price of the Bond, date of the Bond, interest rate, payment date, redemption provisions, and maturity date of the Bond, and other terms and conditions of the Bond in the manner provided herein and in the Loan Agreement, so long as:

- (1) the aggregate principal amount of the Bond does not exceed \$855,000;
- (2) the true interest cost of the Bond does not exceed 5%; and
- (3) the debt service savings to the City's ratepayers is at least 2.5%.

In determining the final principal amount of the Bond, date of the Bond, interest rate, payment dates, redemption provisions, and maturity date of the Bond, the Designated Representative, in consultation with City staff and the City's financial advisor, shall take into account those factors that, in the Designated Representative's judgment, will result in the lowest true interest cost on the Bond to its maturity, including, but not limited to current financial market conditions and current interest rates for obligations comparable in tenor and quality to the Bond.

The Bond is payable solely from the Bond Fund and is payable and secured as provided herein. The Bond is not a general obligation of the City.

(Excerpted from Ordinance No. 561, adopted Jan 17, 2017)

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Vision Statement

Bonnors Ferry, "The Friendliest City", strives to achieve balanced growth, builds on community strengths, respects natural resources, promotes excellence in Government, and values quality of life.

AGENDA
SPECIAL CITY COUNCIL MEETING
Bonnors Ferry City Hall
7232 Main Street
267-3105
May 28, 2020
5:30 pm

NEW BUSINESS

1. City – General Fund Budget Workshop {action item}

The preliminary budget was discussed. The health insurance was increased by 15% due to the recommendation from Darrell, cost of living increase was not included. John Youngwirth requested an additional \$25,000 for chip sealing. Mayor Staples asked how many years that will last. John said at least one. Lisa said AIC has recommended 10% - 20% budget cuts for FY20. Council requested Christine look into different insurance companies for quotes. Valerie said it is a good idea to ask other cities what insurance companies they use. Christine said if the insurance rates increase 15% the firefighters training wages will not cover that cost. Rick said it may need to change to: if they show up for the training then their insurance is covered. Valerie asked if there are any open positions. Mayor Staples said there are not. Adam asked what the recommended amount is for contingency. Lisa said it is 90 – 120 days. Ron asked where we can cut. Christine said supplies and purchased services. Council asked Christine to make adjustments and provide a revised budget at the next meeting.

ADJOURNMENT

The meeting adjourned at 6:59 pm

"Pursuant to the Governor's Emergency Declaration regarding COVID-19 and accompanying Proclamation suspending the "in-person" attendance requirement of the Idaho Public Meetings laws, the City will be providing an electronic telecommunications method to allow the public to view the workshop remotely. Public attendance in person at the workshop will not be allowed in order to help prevent the potential spread of COVID-19. More details about this electronic viewing method is forthcoming."

**MINUTES
CITY COUNCIL MEETING
Bonners Ferry City Hall
7232 Main Street
267-3105
June 2, 2020
6:00 pm**

Mayor Dick Staples called the Council meeting of June 2, 2020 to order at 6:00 pm. Present for the meeting were: Council President Rick Alonzo, Council Members Adam Arthur, Valerie Thompson and Ron Smith. Also present were: City Clerk/Treasurer Christine McNair, City Administrator Lisa Ailport, City Engineer Mike Klaus, Economic Development Coordinator Dennis Weed, City Police Chief Brian Zimmerman and City Attorney Andrakay Pluid. Members of the public present were: Jerry Higgs, Marciavee Cossette, Steve Tanner, Denise Crichton, Darrell Kerby,

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

Jerry Higgs said he is supportive of the Governor's order and said it will be interesting to see how things play out with the civil unrest that is happening in the country.

Steve Tanner said he disagrees with the second sentence of the vision statement. He feels it is a political statement not a vision statement. He said you need to include all genders not just a few. He is requesting a return to a proper vision statement and remove the last sentence.

REPORTS

Economic Development Coordinator Dennis Weed said Edward Jones is moving half of their staff to a building on the corner of Main Street and Kootenai Street. Coldwell Banker has a satellite office on Main Street. Most businesses are coming back to full strength.

Mayor Staples asked Lisa about the sunscreen dispensers for the pool. Lisa said Panhandle Health is providing the sunscreen, hands-free dispensers and sun shades to help reduce the risk of skin cancer. Rick asked Lisa if the Sandpoint guards received training here. Lisa said yes. Adam asked if only financial issues will be brought to Council from the Golf Committee. Lisa said most requests will be brought forward. Valerie is appreciative for looking for creative ways to fill vacancies.

Mayor Staples asked when the well house will be complete. Mike said by the end of July. There is also a waterline project that will connect the new well to the distribution line. Adam asked if we will use the old river line. Mike said we will be using an old abandon line. Mayor Staples asked when the Wilson Street – Solomon Street project will be complete. Mike said by the end of June. Mike said the splash pad will hopefully be complete by the end of July.

CONSENT AGENDA – {action item}

1. Call to Order/Roll Call
2. Approval of Bills and Payroll
3. Approval of the May 19, 2020 Council meeting minutes

Valerie Thompson moved to approve the consent agenda. Rick Alonzo seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

OLD BUSINESS

NEW BUSINESS

4. City – Discuss Health Insurance with Darrell Kerby.

Mayor Staples asked Darrell what his role is in the insurance policy. Darrell said he and his staff are advocates for the City employees. Darrell encourages people insured with him to contact him whenever there is a conflict. Mayor Staples said if an employee asks, the employee should be referred to Darrell's office. Darrell said yes. Rick asked if the insurance company says no to something, is there anything Darrell can do to help. Darrell said definitely. Ron asked if there are times when the final number for the possible rate increase is not received until after the budget has been set. Darrell said

with a November renewal it is difficult to have the new rates before the end of July or August. Ron said it is impossible to set a budget with a large range for the increase. Mayor Staples asked if there is a way to move the renewal date. Darrell said it is possible. Valerie said she is most concerned with advocating for the employees. Darrell said that is his concern also.

5. Golf – Consider Appointing John Youngwirth to the Golf Committee {action item}

Mayor Staples said the golf committee recommended John Youngwirth. Lisa said John feels confident with the role. Mayor Staples feels it is good mix since John does play golf and he understands the City's role in the golf course. Adam Arthur moved to appoint John Youngwirth to the Golf Committee. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes.

6. City – Consider Pay Application #2 from Wink Inc for the Wilson – Solomon Corridor Project (attachment) {action item}

Mike said the water line has been installed and has passed the tests and legal for us to use. Adam asked what is left to complete. Mike said the crushed aggregate for the base and the magnesium chlorite. Rick Alonzo moved to approve pay application #2 from Wink Inc. for the Wilson – Solomon Corridor Project in the amount of \$ 168,414.39. Ron Smith seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

7. City – Consider Hiring Freeze {action item}

Valerie Thompson said during the budget workshop it was stated significant reductions in the budget will have to happen due to a reduction in revenues for the upcoming year. Ron asked if an opening is always brought before Council. Andrakay said an existing position is approved by the Mayor and is not brought before Council. Lisa asked if there is a date for the hiring freeze to end. Adam feels it will be when the budget is healthier. Valerie Thompson moved to implement a hiring freeze until January 1, 2021. Rick Alonzo seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

8. City – Consider Property Purchase {action item} Mayor Staples tabled this item until after executive session.

9. Executive Session Pursuant to Idaho Code 74-206, Subsection 1(c) to acquire an interest in real property which is not owned by a public agency

Rick Alonzo moved to enter into executive session pursuant to Idaho Code 74-206, Subsection 1(c) to acquire an interest in real property which is not owned by a public agency. Valerie Thompson seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

Entered into executive session at 6:54 pm.

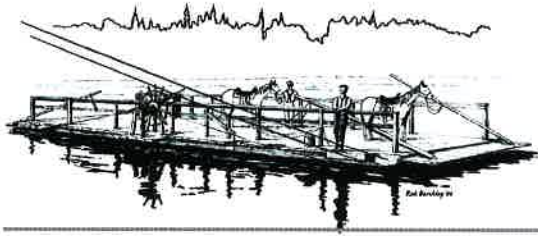
Executive session ended at 7:16 pm

City – Consider Property Purchase {action item}

Adam Arthur moved to authorize staff to negotiate a property purchase for Dunning Acre Tracts Plot 3 the Marx property and bring it back to Council. Rick Alonzo seconded the motion. The motion passed. Adam Arthur – yes, Valerie Thompson – yes, Rick Alonzo – yes, Ron Smith – yes

ADJOURNMENT

The meeting adjourned at 7:18 pm.



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: City Administrator, City Clerk/Treasurer, City Engineer
[Handwritten signatures]

DATE: June 9, 2020

RE: Utility Rate Increases for FY 2021

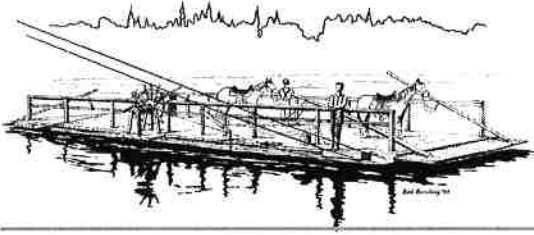
In fall of 2019, Council asked staff to bring a yearly suggested utility rate increase that will keep the utility rates consistent with the regional inflation costs.

The last water and sewer rate increases were done in 2018, which represented a 5% and 15% rate increase, respectively, across both utilities. There was no rate increase in 2019.

The Electric utility saw a 9.5% rate increase in September of 2019, the first in 10 years. This rate increase was in response to the Cost of Service rate study done by FCS consulting, who suggested the rate increase as a means to support making bond payment on the Hydro facility repairs planned for 2021. The suggested rate increases after the 9.5% to cover ongoing capital expenses, outside of the hydro facility, were 7% for two consecutive years.

Staff suggests a rate increase equal to an average of the Consumer Price Index (CPI) to keep our utilities solvent for future planned capital expenses and O&M costs. When considering what the rate increase should be, staff recommends a consistent rate increase based on an average CPI rate increase over a consistent amount of time, for example say a 20-year period. This would help bridge swings in rates that are steep one year and less another. This gives both the customer and the utility consistency in rate expectations and is based in average increases instead of one-year increments.

Currently the CPI rate shows an average of 2.2% increase over the past 20 years. Additionally, the City utilize 20-year rolling average that could be calculated by staff each year.



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: Lisa Ailport, City Administrator *LMA*

DATE: June 9, 2020

RE: **Purchase 0-Turn Mower for Streets Dept.**

For the past two years the city has requested from the Urban Renewal Agency a \$20,000 rebate of the tax increment for the purpose of supporting costs associated with managing the URA improvements. In our request to the URD, we offered that the monies were intended to cover anticipated costs associated with the highway maintenance and policing and prosecuting crimes at the new business.

We are now at a time where investments to the Streets Department are necessary to cover expenses associated with maintenance of the highway improvements that ITD is quickly completing.

With this in mind, our streets department would like to purchase a 0-turn mower that would be used to maintain our public right of way grassy strips and parks using these funds.

The attached quote is from Boundary Tractor for \$5,200.00, to purchase a Gravely 0-turn mower. Staff request permission to purchase the machine at the quote price.

Please let me know if there are any questions.

6632 MAIN - PO BOX 900
 BONNERS FERRY, IDAHO 83805
 BoundaryTractor.com



(208) 267-5571
 info@boundarytractor.com

Invoice #	BTC-0
Date	6/1/2020
Time	9:12 AM

PO #:	JOHN
Document #:	BTC-16430
Due Date:	7/25/2020

Salesman:	CAL RUSSELL
Ship Via:	
Terms:	25th of Month

CITY OF BONNERS FERRY (02400-BTC)		
PO BOX 149		
BONNERS FERRY	ID	83805
Contact:	CITY OF BF (208) 267-3105	

Wholegood Estimate

Reprint

Ship To:	

Item Number	Description	Qty	Price	Amount	Disc	Subtotal	Sales Tax	Extended Amount	Back Order	Drop Ship
(110403)	GRAVELLY 991162 GRAVELLY 991162 ZT HD 48 Z-TURN MOWER(SN:41007)	1.00	\$5,199.00	\$5,199.00	0.00%	\$5,199.00	\$0.00	\$5,199.00	0.0000	0

Cash	Check/Check#	CC/CC Type	On Acct.	Mfg Credit	CIT	Deposit	Other
\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

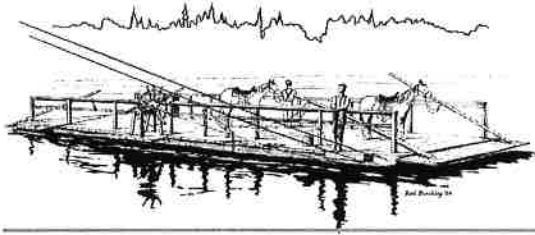
Disclaimer of Warranties
 Any warranties on the product sold hereby are those made by the manufacturer. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sales of said products. Any limitation contained herein does not apply where prohibited by law.
 UPON BREACH OR FAILURE TO PAY THIS ACCOUNT WHEN DUE THE SELLER MAY DECLARE THIS ACCOUNT TO BE DELINQUENT AND PURCHASER SHALL BE LIABLE FOR ALL COSTS OF COLLECTION INCLUDING A REASONABLE ATTORNEY'S FEE.

Summary of Charges	
\$0.00	Taxable
\$5,199.00	Non-Taxable
\$5,199.00	Subtotal
\$0.00	Sales Tax
\$5,199.00	Total
\$0.00	Amount Tendered
\$0.00	Change Due

Customer Signature _____ Date _____

Exempt Tax Cert #: _____
 Expiration Date: _____

Printed:6/1/2020 9:14 AM



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: Lisa Ailport, City Administrator *LMA*

DATE: June 10, 2020

RE: **Electrical Vehicle Charging Station- Bid Proposal**

Staff would like permission to accept the bid from General Pacific for the purchase of the electric vehicle charging station (EVCS). General Pacific was the responsible bidder with the bid for the unit and associated warranty at \$62,498.00.

The funding for this purchase will be reimbursed from the grant we've received from IDEQ VW Resettlement Program.

It is my recommendation that Council accept the bid from General Pacific for the EVCS and authorize staff to move forward with the purchase of the station.

Please let me know if you have any questions.

INDEPENDENT CONTRACTOR AGREEMENT

AGREEMENT made between CITY OF BONNERS FERRY, a political subdivision of the state of Idaho, herein "ENTITY" and GENERAL PACIFIC, INC. herein "CONTRACTOR",

THE PARTIES AGREE AS FOLLOWS:

1. **CONTRACT:** ENTITY hereby employs CONTRACTOR as an independent contractor to complete and perform the following project and work:

Supply a DC single-port fast charger station at our downtown city lot near our city visitor's center

CONTRACTOR agrees to provide all materials and services for the project.

2. **TIME OF PERFORMANCE AND TERMINATION:** Parties agree that:

CONTRACTOR will deliver the unit by or before September 1, 2020.

3. **COMPENSATION:** ENTITY agrees to pay CONTRACTOR as compensation:

Per attached quote, not to exceed \$62,498.00 without prior written approval from the City.

4. **INDEPENDENT CONTRACTOR:** The parties agree that CONTRACTOR is the independent contractor of ENTITY and in no way an employee or agent of ENTITY and is not entitled to workers compensation or any benefit of employment with the ENTITY. ENTITY shall have no control over the performance of this Agreement by CONTRACTOR or its employees, except to specify the time and place of performance, and the results to be achieved. ENTITY shall have no responsibility for security or protection of CONTRACTOR'S supplies or equipment. CONTRACTOR agrees to pay and be responsible for all taxes due from the compensation received under this contract.

5. **WARRANTY:** CONTRACTOR warrants that all materials and goods supplied under this Agreement shall be of good merchantable quality and that all services will be performed in a good workmanlike manner. CONTRACTOR acknowledges that it will be liable for any breach of this warranty.

6. **INDEMNIFICATION:** CONTRACTOR agrees to indemnify, defend, and hold harmless ENTITY, and its officers, agents and employees, from and against any and all claims, losses, actions, or judgments for damages or injury to persons or property arising out of or in connection with the acts and/or any performances or activities of CONTRACTOR, CONTRACTOR'S agents, employees, or representative under this agreement.

7. **INSURANCE:** CONTRACTOR agrees to obtain and keep in force during its acts under this agreement a comprehensive general liability insurance policy in the minimum amount of \$1,000,000 which shall name and protect CONTRACTOR, all CONTRACTOR'S employees, ENTITY and its officers, agents and employees, from and against any and all claims, losses, actions, and judgments for damages or injury to persons or property arising out of or in connection with the CONTRACTOR'S acts. CONTRACTOR shall provide proof of liability coverage as set forth above to ENTITY prior to commencing its performance as herein provided, and require insurer to notify ENTITY ten (10) days prior to cancellation of said policy. Said policy shall specifically cover any and all underwater divers utilized to perform maintenance.

8. **WORKER'S COMPENSATION:** CONTRACTOR shall maintain in full force and effect worker's compensation for CONTRACTOR and any agents, employees, and staff that the CONTRACTOR may employ, and provide proof to ENTITY of such coverage or that such worker's compensation insurance is not required under the circumstances.

9. **COMPLIANCE WITH LAWS:** CONTRACTOR agrees to comply with all federal, state, city, and local laws, rules and regulations.

10. **ENTIRE AGREEMENT:** This is the entire agreement of the parties and can only be modified or amended in writing by the parties.

11. **ATTORNEY FEES:** Reasonable attorney fees shall be awarded to the prevailing party in any action to enforce this Agreement or to declare forfeiture or termination of this Agreement.

DATED this _____ day of _____, 2020.

ENTITY:

CITY OF BONNERS FERRY

CONTRACTOR:

By _____

By _____
James R "Dick" Staples, Mayor

Its _____

ATTEST:

Christine McNair, Clerk

WITNESS:

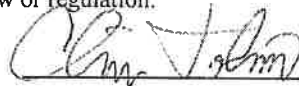
Form and content approved by Andrakay Pluid as attorney for the City of Bonners Ferry.

2020 DC Fast Charger - Bid Form

Item	Minimum Specifications	Bid Amount
DC Single Port Fast Charger	DC Station (US version), 2x power Modules, 1x CCS1 cable, 1x CHAdeMO cable and software upgrade to increase max power from 50 kW to 62.5 kW.	\$40,800
Warranty	5-year comprehensive parts and on-site labor warranty plan. Includes station management, remote monitoring of station and proactive repair dispatch.	\$15,500
*Enterprise Commercial Cloud Plan	5-year DC, Commercial Cloud Plan. Including Secure Network Connection, On-going Station Software updates, 24x7 Driver Support, Host Support, Session Data and Analytics, Driver Access Control, Pricing and Automatic Funds Collection, Waitlist.	\$4,799
Shipping/Delivery Cost	All costs associated with receiving the unit to the city yard in Bonners Ferry, Idaho.	\$450
Installation Cost/Kits	Any specific installation products or kits supplied by the contractor required to properly install the unit	Included
Start-Up Costs	Initial testing and start-up services	\$949
Total		\$62,498

Understanding that this lump sum price and per unit prices includes all permit fees, sales and consumer use taxes, etc. required by law or regulation.

Signed



Name and Title

Christopher Talarico, Project Manager

Date

6/2/2020

Company Name

General Pacific, Inc.

Company Address

22414 NE Townsend Way

Fairview, OR 97024

Phone Number

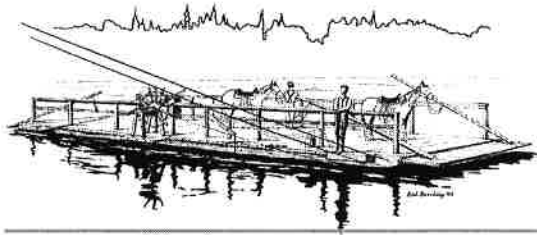
503-907-2877

Email:

ctalarico@generalpacific.com

* The Commercial Cloud Plan is no longer available for the CPE250 station.

The Enterprise Cloud Plan is an upgraded service that includes: Fleet and driver Access Control, Pricing Policy and automatic funds collection, Waitlist, station availability monitoring, station owner support, 24x7 driver support, session data and analytics, Valet dashboard, scheduled charging, Real-Time Power Management, ongoing software updates, videos (on supported hardware), Meter Data and Advanced Analytics, Building/Energy Management System API, Plug-n-charge, Occupancy Detection, Predictive Maintenance and Diagnostics



CITY OF BONNERS FERRY

7232 Main Street
P.O. Box 149
Bonners Ferry, Idaho 83805
Phone: 208-267-3105 Fax: 208-267-4375

TO: Mayor and City Council

FROM: Lisa Ailport, City Administrator *LMA*

DATE: June 10, 2020

RE: Contract with Exbabylon for IT programming

Staff would like permission to enter into an agreement with Exbabylon for assistance with purchasing and programming our Sonicwall firewall for the sever systems. Our IT manager needs assistance with this task in order to switch from the Microtik to the Sonicwall and Exbabylon can accomplish this through a contract. I don't expect those programming costs will exceed \$1,000.000

At the time of this memo, we were working through their draft contract with some edits required by the City Attorney. Once we have those in place we were hopeful to purchase the firewall have it configured by Exbabylon.

It is my request that Council approve the draft contract and authorize the Mayor to sign it once it is approved by the City Attorney.

Please let me know if you have any questions.

DRAFT
MASTER SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT ("MSA") is entered into this June 5, 2020 by and between Exbabylon LLC, a Washington Limited Liability Company, ("Exbabylon"), and the person or entity identified below as the "Client". The Client and Exbabylon are sometimes collectively referred to herein as the "parties" or individually as a "party". This MSA, effective as of the date entered into by both parties (the "Effective Date"), includes any exhibits, schedules, appendices, policies, service schedules, and documents attached hereto and made a part hereof, or incorporated herein by reference (collectively, the "Agreement").

NOW, THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. **Definitions.**

- a. **"Service Schedule(s)"** shall mean those agreements which relate to and more particularly set forth the Services that Client contracts to receive from Exbabylon, the terms and conditions for such Services, as may be amended from time to time by Exbabylon in its sole discretion, and the prices paid by Client for those Services.
- b. **"Exbabylon Services" or "Services"** means those certain communication, data, hosting, business continuity, and network services, including but not limited to, managed IT, network security, cloud, voice, and backup services, as may be modified, upgraded, or revised from time to time, and as more particularly described in the Service Schedule(s).

II. **Provision of Services.** Exbabylon will provide those Services selected by Client and set forth in Service Schedule(s), in accordance with the specific terms and conditions set forth in the Service Schedule(s) and the general terms and conditions of this Agreement.

III. **Term.** This Agreement shall remain in effect until the last of any Services received by Client from Exbabylon is terminated. The initial term for each of the Services shall be as set forth in the Service Schedule(s) (the "Initial Term").

IV. **Automatic Renewal.** Contracted services shall automatically renew for successive terms equal in length to the original contracted term and at the then-applicable rate exclusive of promotional rates, (the "Renewal Term(s)") (collectively, with the Initial Term, the "Term"), unless either Exbabylon or Client provides written notice of its intent not to renew at least ninety (90) days prior to the end of the Initial Term or any Renewal Term. Notwithstanding the foregoing, Exbabylon and Client shall have the right to terminate this Agreement and any of the Services provided through this Agreement, as provided herein. However, it is understood and agreed that, in the event of a partial cancellation or termination, the terms and conditions of this Agreement, including the MSA, any applicable Service Schedule(s), and all applicable exhibits, schedules, appendices, policies, documents, terms and provisions, shall continue to govern the remainder of the parties' relationship.

V. **Billing and Fees.** In consideration of the Services provided, Client shall pay Exbabylon those fees itemized in the Service Schedule(s) plus any applicable excise, sales, use, or other taxes and regulatory fees at the rate in effect at the time the Service is provided, unless Client provides a valid tax exemption certificate. Client shall also pay Exbabylon for any supplemental charges applicable to the Services, such as charges for incremental usage, design changes, Service relocation, maintenance, expedites requested by Client, and third party charges. It is understood that changes to these rates and supplemental charges may be made from time to time, under the terms of the applicable Service Schedule(s).

a. **Payments.** Client shall pay for Services and all other fees itemized on the Service Schedule(s) as stated on a monthly invoice from Exbabylon within five (5) days of the date when such fees become due, as provided on the invoice ("Due Date"), unless a Service Schedule provides a different date of payment for certain Services, *i.e.*, Services provided on an annual basis.

b. **Late Fees and Collection Costs.** In the event Client fails to make full payment by the Due Date, Client also shall pay a late fee on the unpaid balance in the amount of the maximum lawful rate under applicable state law that shall accrue from the Due Date. Client shall pay any amounts incurred by Exbabylon in the collection of past-due amounts owed, including, but not limited to, reasonable attorneys' fees and costs.

c. **Service Suspension for Non-payment.** In the event Client fails to make full payment by the Due Date, Exbabylon may suspend any or all of the Services with no additional notice. Such suspension may be rescinded by Exbabylon upon payment in full of Client's account.

VI. **Use of Services.**

a. Client shall be the end-user of the Services. The Services are not to be resold or distributed without the prior express, written consent of Exbabylon. Exbabylon has not granted to Client any license to use any software or systems provided to Client in connection with the Services, other than a nontransferable, revocable license to use the software or systems, strictly according to the uses contemplated by this Agreement.

b. Client, its employees, agents, or other representatives may be required to maintain a secure password for use of a Service. Client is solely responsible for maintaining the security and integrity of all password(s). Client is responsible for maintaining the integrity of the Services it receives from Exbabylon that are under the control of Client. Client shall be responsible to Exbabylon and shall indemnify Exbabylon for any and all costs, including service charges incurred through fraudulent, improper, or other use stemming from activities that are under Client's control.

c. Client shall not use any process, program, or tool via Exbabylon's system for guessing the passwords or circumventing any security measures of Exbabylon clients or other systems. Client shall not use Exbabylon's system to make unauthorized attempts to access the systems and networks of others.

d. Client shall not copy or alter, or cause a third party to copy or alter, any software or systems related to the Services. Client is solely responsible for any costs, liabilities, or charges incurred as a result of such actions. Client shall not attempt to hack or otherwise disrupt the Services or make any use of the Service that is inconsistent with its intended purpose.

e. Client shall use the Service in accordance with all applicable local, state, and federal laws, including but not limited to, obscenity laws. Client's use of the Service shall not impinge upon the use of Exbabylon's system by other clients.

f. Violations of any of the conditions of use are unethical and may be deemed criminal offenses. Client shall report to Exbabylon any information Client may have concerning instances in which the conditions of use have been or are being violated. In the event that Exbabylon determines that Client has violated or will violate any of the conditions of use, Exbabylon may take such action as deemed to be appropriate under the circumstances as known to Exbabylon at the time such action was taken to eliminate or preclude such

violation. Exbabylon shall not be liable for any damages of any nature suffered by any Client or third party resulting in whole or in part from its exercise of its rights under these conditions of use. Client is responsible for any charges resulting from the violation of these conditions of use, including but not limited to, charges resulting from the compromise of any Client secure password or Service under the control of Client.

g. Notwithstanding anything herein which may indicate or require otherwise, including, without limitation, any requirements that Exbabylon provide certain notices to Client, Client's use of any Service is an absolute acknowledgement by Client that Client has received delivery of such Service.

VII. **Equipment.**

a. Exbabylon may sell to Client certain devices, including but not limited to, network equipment, hardware, mobile devices, peripherals, etc. ("Purchased Device(s)") for Client's use in conjunction with the Services. Payment for Devices shall be made in accordance with Section V. Ownership of, and title to, the Purchased Devices shall transfer from Exbabylon to Client at the time of delivery of the Purchased Devices. Client will own and bear all risk of loss, theft, or damage.

b. Exbabylon may provide Client certain devices, including but not limited to, network equipment, hardware, etc. for Client's use in conjunction with the Services ("Hardware as a Service", hereinafter "HaaS"). Unless a device is purchased by Client, Exbabylon shall own and retain title to HaaS.

i. In the event that Client ceases to be a client of Exbabylon for any reason, whether voluntarily or involuntarily, or if all or a portion of this Agreement or the Services to which the HaaS relates is disconnected, canceled, or terminated, for any reason, then Client shall contact Exbabylon within seven (7) days after such event and make arrangements for the HaaS to be returned to Exbabylon at the Client's expense. Client must return all HaaS in the event Client ceases to be a client of Exbabylon. Client need only return the HaaS related to the disconnected, canceled, terminated, or non-renewed Services if Client, after such disconnection, cancellation, termination or non-renewal of such Services, remains a client in good standing with Exbabylon and is contracting for other Services and HaaS. Acceptance of HaaS by Exbabylon does not constitute a waiver of any of the rights Exbabylon has under this Agreement.

ii. HaaS returned to Exbabylon must be full, complete, and in good working order, normal wear and tear excepted. In the event that HaaS is not returned to Exbabylon within thirty (30) days of disconnection, cancellation, termination, or non-renewal or if it is damaged, Client agrees to pay to Exbabylon a fee, as liquidated damages, as compensation for a portion of the expenses by Exbabylon in establishing Client's account, Services, and providing HaaS for Client's use.

iii. Client is solely responsible for loss or damage to any HaaS. Furthermore, Client shall provide physical security for HaaS, including protection against environmental conditions and provide a clean power source to HaaS, during the Term of the Service at its own cost or expense. HaaS shall be delivered to Client and returned to Exbabylon at the Client's risk, cost, and expense. Client shall have no right to sell, give away, transfer, pledge, mortgage, remove, relocate, alter, or tamper with the HaaS at any time.

iv. Client shall allow Exbabylon to enter Client's premises where HaaS is stored or used at all reasonable times to locate and inspect the state and condition of the HaaS. If Client is in default on any of the terms and conditions of this Agreement, or any other agreement that Client has with Exbabylon, Exbabylon or its agent, at the Client's risk, cost, and expense, subject to applicable law,

may at all reasonable times enter the Client's premises where the HaaS is located and recover any and all HaaS.

c. As set forth in Section VIII, Exbabylon makes no warranty as to the Devices ("Devices" includes both Purchased Devices and HaaS) either expressly or implied. All such warranties, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose, are expressly excluded. For Devices that fail to operate in a manner to support the associated Exbabylon Service, Exbabylon will make all reasonable attempts in a timely fashion to provide assistance with repair or replacement with a like device. Expedited delivery services when available can be provided to a client location for an additional charge when equipment is in stock either at Exbabylon or the equipment manufacturer. Exbabylon may also offer certain types of support pursuant to certain service plans if Client elects to pay for and receive this additional Service, the terms and conditions of which will be set forth in the applicable Service Schedule(s). Non-expedited shipping charges will be the responsibility of Exbabylon for equipment that is determined to be non-operational due to equipment failure. If it is determined the cause of failure is related to customer damage outside of normal wear and tear, then the Client will be responsible for all shipping and delivery charges.

d. Client may elect to use its own equipment instead of purchasing or using equipment direct from Exbabylon. Exbabylon shall not be responsible in any way for the compatibility or fitness for use of any Client-supplied equipment.

e. Client acknowledges that the performance of equipment, including the Purchased Devices, the HaaS, and equipment supplied by Client, can be affected, and thus the corresponding Services can be directly impacted, by environmental conditions, which are out of the control of Exbabylon. It is the responsibility of Client to ensure that such equipment is receiving proper care, such as proper cooling, a clean power supply, being housed in proper facilities, etc. Client will be responsible to Exbabylon for any damage caused to the HaaS stemming from these factors. In addition, Exbabylon will in no way be responsible to Client for any damage caused by these factors to the Purchased Devices, Client's supplied equipment, or any degradation in Service levels resulting therefrom.

VIII. **Representations, Warranties, and Acknowledgements.**

a. **Representations and Warranties of Exbabylon.** Exbabylon hereby represents, warrants, and covenants that:

- i. It has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement;
- ii. The Services will conform to the specifications set out in the applicable Service Schedule(s);
- iii. Its provision of the Services does not and will not violate, infringe, or misappropriate the intellectual property rights of any third party; and
- iv. It will adhere to the terms and conditions of this Agreement.

b. **Representations and Warranties of Client.** Client hereby represents, warrants, and covenants that:

- i. It has the requisite power and authority to execute, deliver, and perform its obligations under this Agreement;
- ii. It will make all payments on time;

- iii. It will adhere to the terms and conditions of this Agreement, including all applicable terms of use, and it will abide by all applicable laws;
- iv. It will not introduce to any Exbabylon system any code, device, criteria, mechanism, or function which may be used to restrict, damage, disable, destroy or otherwise shut down or alter any portion of the Exbabylon system;
- v. It will not intentionally introduce into any Exbabylon system any malicious code, commands, instructions, programs, or other internal components (e.g. a computer virus, computer worm, computer time bomb, Trojan horse, backdoor, or malware);
- vi. It will take reasonable steps to protect the Exbabylon system and assist with troubleshooting; and
- vii. It will not use the Services to violate, infringe, or misappropriate the intellectual property rights of Exbabylon or any third party.

c. **Disclaimer of Warranties.** Client acknowledges that the information available via Exbabylon's system and/or through the interconnecting networks may not be accurate and that Exbabylon makes no representation or warranty of any kind, either express or implied, regarding the quality, accuracy, or validity of the data and/or information available from or through such networks. Use of information obtained from or through Exbabylon's system is the Client's risk.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, **THE PARTIES DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED**, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

IN SOME INSTANCES, EXBABYLON IS SUPPLYING DEVICES ("DEVICES" INCLUDES BOTH PURCHASED DEVICES AND HAAS) TO CLIENT NECESSARY FOR CLIENT TO RECEIVE THE SERVICES. **EXBABYLON IS NOT THE MANUFACTURER OF THE DEVICES AND MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, DIRECTLY OR INDIRECTLY, EXPRESS OR IMPLIED, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, CONDITION, QUALITY, PERFORMANCE, OR NON-INFRINGEMENT OF THE DEVICES. WITH RESPECT TO EXBABYLON, CLIENT'S PURCHASE OR USE OF THESE DEVICES IS "AS-IS"**. DEVICES SHALL BE SUBJECT TO ANY WARRANTIES PROVIDED TO CLIENT BY THE DEVICE MANUFACTURER. MODIFICATIONS MAY VOID OR OTHERWISE LIMIT ANY WARRANTY APPLICABLE TO THE DEVICES. EXBABYLON MAY PROVIDE ASSISTANCE WITH THE DEVICES, INCLUDING REPLACEMENT AND REPAIR, AT AN ADDITIONAL CHARGE.

EXBABYLON MAKES NO WARRANTIES WHATSOEVER AS TO THE COMPATIBILITY OF ITS SERVICES WITH EQUIPMENT, DEVICES, OR SOFTWARE SUPPLIED BY CLIENT OR PURCHASED OR USED BY CLIENT FROM A VENDOR OTHER THAN EXBABYLON.

IX. **Indemnification.** Client shall indemnify, defend, and hold harmless Exbabylon from and against any and all loss, claim, liability, damage, cost, or expense, including, without limitation, court costs and reasonable attorneys' fees, arising in connection with the receipt and use of the Services or in any way related to Client's performance under this Agreement, including, but not limited to, a breach by Client of its representations and warranties, except those losses, claims, liabilities, damages, costs, or expenses arising out of the willful misconduct of Exbabylon, its employees, agents, or other representatives.

Exbabylon shall indemnify, defend, and hold harmless Client from and against any and all loss, claim, liability, damage, cost, or expense, including, without limitation, court costs and reasonable attorneys' fees, arising in connection with the provision of Services or performance under this Agreement, including, but not limited to, a breach by Exbabylon

of its representations and warranties, except those losses, claims, liabilities, damages, costs, or expenses arising out of the willful misconduct of Client, its employees, agents, or other representatives.

X. **Limitation of Liability.** Exbabylon shall not be liable to Client for any incidental, indirect, special, punitive, or consequential damages of any kind, including, but not limited to, any loss of use, loss of business, or loss of profit. Any Exbabylon liability to Client for any damages of any kind under this Agreement shall not exceed, in amount, a sum equivalent to the amounts payable by Client to Exbabylon for the Services for the six (6) month period prior to any claim. Remedies under this Agreement are exclusive and limited to those expressly described in this Agreement.

XI. **Termination.**

a. Exbabylon may terminate all, or any portion of this Agreement, at any time, for any reason, upon ninety (90) days written notice to Client. If Exbabylon elects to terminate other than for "Cause" (as prescribed below), then the Client shall be responsible for paying all amounts owed under this Agreement up to and until the date of termination, but shall not incur any termination liability.

b. Either party may terminate this Agreement, or any portion of this Agreement, for Cause, provided that the party wishing to terminate first provides written notice to the other party, specifying the alleged Cause for termination. "Cause" is defined as (i) the failure of Client to pay any amounts for Services that are undisputed, provided that any dispute is reasonable and in good faith, within forty-five (45) days after the date of the invoice or the failure to pay any amount when due that Client owes to Exbabylon under any other agreement; (ii) Any material failure by a party to comply with or to perform any material nonpayment term or condition of this Agreement and the continuance of such failure for a period of thirty (30) days after written notice thereof to such party or the failure by Client to comply with or to perform any material nonpayment term or condition under any other agreement between Exbabylon and Client; or (iii) A party becomes insolvent, is unable to pay its debts when such debts become due, or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency, or similar laws, or makes an assignment for the benefit of creditors, or is named in or its property is subject to a suit for appointment of a receiver, or is dissolved or liquidated. The party alleged of the breach shall then have a period of thirty (30) days from receipt of this notice to cure the alleged breach.

c. Client may terminate all or any portion of this Agreement without Cause by providing a minimum of thirty (30) days written notice to Exbabylon. The date of receipt by Exbabylon of any such written notice shall be the Termination Notice Date. The Termination Effective Date shall be thirty (30) days after the Termination Notice Date, or any other later date as specified by Client in the written notice. Normal service charges shall apply up to the Termination Effective Date.

d. If Exbabylon terminates all or any portion of this Agreement for Cause or if Client terminates all or any portion of this Agreement without Cause, in addition to owing any and all fees, costs, and expenses incurred up and through the Termination Effective Date, **Client shall be responsible for the full remaining balance of all amounts owed for the remaining Term of the terminated portion of the Agreement, as measured from the Termination Effective Date**, including, without limitation, payments for terminated Services and any payments for HaaS associated with the terminated portions of this Agreement up and until such HaaS are recovered by Exbabylon (as set forth in Section VII), as well as all other costs, fees, and liquidated damages set forth in Section VII.

Client agrees that actual damages in the event of a termination by Exbabylon for Cause or a termination by Client without Cause will be difficult or impossible to ascertain and that the amounts due as set forth in this section are intended to establish liquidated damages and not intended as a penalty.

XII. Service Suspension / Maintenance. Exbabylon may from time to time suspend a Service for routine maintenance. Exbabylon shall provide Client advance notification of the Service suspension. This section is not intended to impact the ability of Exbabylon to suspend or terminate a Service as otherwise provided in this Agreement.

XIII. Intellectual Property/ Proprietary Information. Client acknowledges that this Agreement is not intended to transfer ownership of any intellectual property. Exbabylon shall continue to own and retain all of its intellectual property, including, but not limited to, patents, inventions, trade secrets, trademarks, service marks, trade names, logos, designations, copyrights, and other proprietary rights, and Client agrees that it will not at any time during or after the term of this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any trademark, service mark, trade name, logo, designation, or copyright belonging to or licensed to Exbabylon (including, without limitation, any act or failure to act which may infringe or lead to the infringement of any of the proprietary rights).

XIV. Confidentiality and Non-disclosure.

a. Client understands and agrees that the terms and conditions of this Agreement and communications between the parties regarding this Agreement or the Services provided hereunder, including any price quotes or related proposals, as well as such information relevant to any other agreements between Client and Exbabylon, are confidential as between Client and Exbabylon, and shall not be used by Client for Client's own benefit, except in connection with the performance of this Agreement, or disclosed by Client to any party other than the directors, officers, employees, or agents of Client who have specifically agreed to nondisclosure of the terms and conditions hereof. Notwithstanding the foregoing, it is understood that Client shall not disclose the terms of this Agreement to any competitor of Exbabylon. The parties agree that (i) Exbabylon may, without obtaining Client's consent, provide copies of this Agreement or make disclosures to prospective purchasers or any regulatory or judicial body requesting information concerning the business of Exbabylon, Exbabylon's parent, affiliates and subsidiaries; and (ii) either party may, without obtaining the other's consent, provide copies of this Agreement or make disclosures to their auditors, banks or financial advisors, provided such third parties are bound to an obligation of confidentiality.

b. During the term of this Agreement, each party may come into contact with, or acquire confidential information of the other party. "Confidential Information" means all confidential, trade secret, and proprietary information of a disclosing party (the "Disclosing Party"), including any nonpublic information relating to the Disclosing Party's technologies, patient and personal health information, products, finances, customers, business plans, personnel and contacts, strategies and objectives, capabilities, and any third party information that Disclosing Party is otherwise obligated to keep confidential, and that should reasonably have been understood by the recipient (the "Receiving Party") because of (i) legends or other markings; (ii) the circumstances of disclosure; or (iii) the nature of the information, which may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. Such Confidential Information is, and shall remain, the exclusive property of the Disclosing Party.

The Receiving Party shall treat and maintain all Confidential Information received from the Disclosing Party as confidential, whether or not it has been physically marked as confidential. The Confidential Information

may be used by the Receiving Party only to the extent reasonably required in the performance of its obligations under this Agreement and may only be distributed to those directors, officers, employees, or agents of the Receiving Party who have a need to know in order to perform pursuant to this Agreement and who have specifically agreed to nondisclosure of the Confidential Information. The Confidential Information may not be released to any other person, entity, or the public without the prior written consent of the Disclosing Party. The Receiving Party shall protect all such Confidential Information of the Disclosing Party with no less than the care and diligence with which it protects its own and also with no less care and diligence than would generally be expected of a responsible party similarly situated. In the event of a breach, the Receiving Party shall promptly notify the Disclosing Party of any disclosure of such Confidential Information in violation of this Agreement.

If the Receiving Party receives a request to disclose any Confidential Information to comply with any law, rule, regulation or order of a court or governmental agency, Receiving Party agrees that, prior to disclosing any Confidential Information, it shall (i) notify the Disclosing Party of the existence and terms of such request; (ii) cooperate with the Disclosing Party in taking legally available steps to resist or narrow any such request; and (iii) if disclosure is required, use its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be afforded to the Confidential Information disclosed.

Upon expiration or termination of this Agreement, the Receiving Party shall return to the Disclosing Party all Confidential Information of the Disclosing Party in its possession as of the effective date of such expiration or termination, provided, however, that the Receiving Party may destroy such Confidential Information in lieu of returning, but only to the extent that the Disclosing Party expressly agrees in writing to such destruction. Any secondary copies, views, or images of such Confidential Information remaining in Receiving Party's possession after all required Confidential Information has been returned to the Disclosing Party shall be promptly destroyed by the Receiving Party; provided, however, that neither party will be required to destroy or return Confidential Information that either (a) is required by law, regulation or court order or (b) is retained as back-up tapes or other back-up media made in the ordinary course of business and is not available for commercial use.

- c. The parties agree that a breach of Section XIV shall constitute a material breach of this Agreement.
- d. Section XIV shall in all respects survive the expiration or termination of this Agreement and shall remain in full force and effect thereafter.

XV. Force Majeure. If Exbabylon's performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes including failure or malfunction of Client-supplied equipment, acts of God, explosions, vandalism, cable cuts, storms, fires, floods or other catastrophes, power failure, computer attacks or hacking, national emergencies, insurrections, riots, wars, strike, lockout, boycott, work stoppages or other labor difficulties, or any law, order, regulation or other actions of any governmental authority agency, instrumentality, or of any civil or military authority, then Exbabylon shall be excused from such performance on a day to day basis to the extent of such prevention, restriction, or interference. Exbabylon shall use commercially reasonable efforts under the circumstances to avoid or remove such causes of nonperformance with reasonable dispatch. If such occurrence occurs for a period of at least sixty (60) days, then Client shall have the option to terminate the affected portion of this Agreement and shall not incur any termination liability.

XVI. Notices. All notices required or permitted to be given hereunder shall be in writing and deemed received (a) when personally delivered, (b) one (1) day after delivered to an overnight courier guarantying next day delivery, (c) three (3) days after deposited in the United States mail, postage prepaid, sent certified or registered mail, or (d) the date upon which the read-receipt is received for electronic mail. All notices shall be addressed to the parties at the

addresses specified below or to such other address as hereafter designated in writing by the applicable party in the manner provided in this section for the giving of notices.

XVII. Dispute Resolution. If a dispute arises out of or relates to this Agreement or its breach, the parties agree to meet and confer, and endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle by mediation, prior to recourse to arbitration. Any controversy or claim arising out of or relating to this Agreement not resolved by mediation, except for claims which have been waived by the making or acceptance of final payment, shall be decided by arbitration, in accordance with the Uniform Arbitration Act, RCW 7.04A.010 et seq. A written demand for arbitration shall be filed within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.

XVIII. Attorneys' Fees. If a proceeding is brought for the enforcement of this Agreement, including the collection of any amounts owed hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such action or proceeding, in addition to any other relief to which such party may be entitled.

XIX. Governing Law. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the state of Washington without regard to any choice of law provisions.

XX. Non-Solicitation. During the term of this MSA and for a period of twenty-four (24) months after the end date, Customer shall not, directly or indirectly, solicit for employment, or offer employment, whether as an employee or independent contractor, any employee of Exbabylon.

XXI. Miscellaneous.

a. **Past Due Accounts.** In the event Client is past due on amounts owed, Exbabylon may, at its sole discretion, refuse to provide additional Services or allow Client to place additional orders, place Client's account on "hold", and/or refuse to provide support for the Services. Client shall receive notification that its account will be placed on "hold" unless Client pays the past-due amounts, including any applicable fees. Exbabylon shall not be liable in any way for damages caused by or expenses incurred by Client resulting from placing Client's account on "hold".

b. **Technical Support.** Exbabylon shall not be liable for any charges incurred by Client for Client's engagement of a third party to perform technical support, whether related or unrelated to the Services and/or Devices, except where expressly noted in an applicable Service Schedule.

c. **Assignability.** Without first obtaining Exbabylon's express, written consent, Client shall not assign or otherwise transfer, including, without limitation, a transfer due to a change of control, whether voluntarily, involuntarily, or by operation of law, its rights or obligations under this Agreement.

d. **Relationship of the Parties.** Nothing in this Agreement will create, or shall be construed to create, any partnership, joint venture, agency, franchise, sales representative, employment relationship, or other similar relationship between the parties.

e. **Severability.** In the event any provision of this Agreement is inconsistent with or contrary to any applicable law, rule, or regulation, the provision shall be deemed to be modified to the extent required to

comply with the law, rule, or regulation, and this Agreement, as so modified, shall continue in full force and effect.

f. **No Waiver.** No failure or delay on the part of any party in exercising any right or remedy provided in this Agreement will operate as a waiver thereof; nor will any single or partial exercise of or failure to exercise any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy provided herein or at law or in equity. Except as expressly provided herein, no remedy specified in this Agreement is intended to be exclusive of any other remedy, and each and every remedy will be cumulative and in addition to every other right or remedy provided herein or available at law or in equity.

g. **Headings.** The headings of the sections, subsections, and paragraphs of this Agreement are inserted for convenience reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

h. **No Third-Party Beneficiaries.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto any rights, remedies, liabilities, or obligations under or by reason of this Agreement.

i. **Modification.** This Agreement may only be amended by a writing signed by both parties. This Agreement may be executed electronically or by facsimile in one or more multiple counterparts, all of which taken together shall constitute one and the same instrument.

j. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties, succeeding all prior agreements, oral or written, related to the subject matter herein and all prior or contemporaneous discussions, negotiations, and understandings between the parties or their representatives are merged and integrated herein.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the undersigned parties or their duly authorized representatives have executed this Agreement as of the date first above written.

EXBABYLON LLC, a Washington limited liability company

CLIENT Brian Errett

Contact name: Brandi Fowler
204 W. Walnut St. STE D
Newport, WA 99156
Phone: 509-447-0440
Alt. phone:
Email: brandi@exbabylon.com

Contact name: City of Bonners Ferry
Address: 7232 Main Street
Bonners Ferry, ID 83805
Phone: 208-267-3105
Alt. phone:
Email: berrett@bonnersferry.id.gov

Brandi Fowler

Exbabylon Authorized Signature

Client Authorized Signature

Brandi Fowler

Printed Name

Printed Name

Office Coordinator

Title

Title

Service Schedule

This is a **Service Schedule** to the Exbabylon Master Services Agreement dated **June 5, 2020 (“MSA”)** by and between **City of Bonners Ferry (“Customer”)** and Exbabylon LLC on behalf of itself and its affiliates (“Exbabylon”). Customer orders and Exbabylon agrees to provide the Services and Equipment identified in the Schedule below.

Service(s):	Hourly/Project As-Needed Service Schedule
Initial Term:	3 Year
Schedule Date:	June 5, 2020
Initial Base Cost:	\$0/mo

Service|360 Hourly Rates

Service 360 Hourly Rates	Details
Standard IT Services [Basic onsite service, basic network support, user support, computer services]	\$125/hr*
Advanced IT Services [Onsite or Remote work on servers, routers, firewalls, switches, websites or voice]	\$145/hr*

*Hourly rates listed do not include all services offered by Exbabylon, Special Project Rates may vary, rates subject to change in the future during routine price adjustments to standard pricing.

Service|360 Response Times

Ticket Priority	Response Time	Resolution Time
Critical Events [Affects entire location, includes server crashes, routers, switches, phones and internet access]	Best Effort	Best Effort
High Priority [Multiple users affected/network, software outages isolated to one facility/department]	Best Effort	Best Effort
Standard Priority [Single user affected or isolated software problems]	Best Effort	Best Effort

Services Included

Description	Frequency	Included
NO MONTHLY RECURRING OR MONITORING SERVICES INCLUDED	N/A	N/A

Microsoft Cloud Services

Microsoft Cloud Licensing is provided by Exbabylon, with a rolling 60 day license adjustment cycle allowing customer to flex licensing on a month to month basis as required for eligible products. Customer agrees to purchase all Microsoft licensing and Office 365 services at standard pricing through Exbabylon and understands that Exbabylon will be the exclusive Cloud Solution Provider and Partner of Record during the term of this schedule.

Microsoft licensing costs and management fees not listed in the SERVICE|360 rate are in addition to, not included in, the Monthly SERVICE|360 rate above.

Microsoft Azure Services are not provided as part of this Service Schedule.

This Schedule and any of the provisions hereof may not be modified in any manner except by mutual written agreement. The above rates do not include any taxes, fees or surcharges applicable to the Service. This Schedule, and all terms and conditions of the MSA, is the entire agreement between the parties with respect to the Services described herein, and supersedes any and all prior or contemporaneous agreements, representations, statements, negotiations, and undertakings written or oral with respect to the subject matter hereof.

Brandi Fowler

Exbabylon Authorized Signature

Client Authorized Signature

Brandi Fowler

Printed Name

Printed Name

Office Coordinator

Title

Title

06 / 05 / 2020

Date

Date



Coeur D'Alene
208.762.7999

Newport
509.447.0440

New Business Billing Info

Section A

Company Legal Name: _____ Company Phone Number: _____

Physical Street Address: _____

City: _____ State: _____ Postal Code: _____

Billing Contact Name: _____

Phone Number: _____ **Billing Email: _____

Billing Street Address: _____

City: _____ State: _____ Postal Code: _____

FEIN/SNN: _____ Years in Business: _____

****All Invoices will be sent to provided email address unless paper invoices are requested.**

Section B

In Consideration for the extension of credit, said business promises to pay for all purchases and services within the terms agreed (NET 30) and agrees to pay a service charge per a month of 1.5% per a month (18% annual percentage rate) on all past due balances. In the event any third parties are employed to collect any outstanding monies owed by said business, the undersigned agrees to pay reasonable collection cost, including attorney fees, whether or not litigation has commenced, and all cost of litigation incurred. The undersigned represents that he/she has the authority to execute this credit agreement on behalf of the business identified and authorizes Exbabylon LLC to use above information provided to verify credit worthiness.

Business Name

Date

Printed name & Title

Signature