

10. RESOLUTION NO. R-51-08

A RESOLUTION ACCEPTING THE BID OF M.L. ALBRIGHT & SONS, INC. FOR JACKSON-KAMIAKEN-PIONEER SEWER AND AUTHORIZING EXECUTION AND DELIVERY OF THE CONTRACT FOR SAID PROJECT.

NOTES:

REQUEST FOR COUNCIL ACTION

For Meeting of: 06/03/08

ACTION REQUESTED:

Award the Jackson-Kamiaken-Pioneer Sewer contract.

BACKGROUND:

The scope of contract 08-18, Jackson-Kamiaken-Pioneer Sewer, provides for the construction of approximately 830 feet of 6 and 8 inch sewer pipe in Pioneer Way, Kamiaken Street and Jackson Street to replace an old sewer line that runs from Woodcraft Park across a steep hillside to Jackson Street and to intercept several long services that extend from this area down the hill to McKenzie Street. Bids for this project were opened on May 28, 2008 with 4 bids received. The low bidder was M. L. Albright & Sons, Inc at \$127,531.93. The Engineer's Estimate was \$134,276.76. A copy of the bid summary is attached for reference. Funding for this project will be from the Capital Projects Budget of the Utility Fund.

RECOMMENDATION:

Adopt the attached resolution awarding contract 08-18, Jackson-Kamiaken-Pioneer Sewer, to M. L. Albright & Sons, Inc for the bid amount of \$127,531.93.

FISCAL IMPACT:

\$127,531.93
<u>403.3362.594.35.63.00</u>
BARS Code Number

SUBMITTED BY:

ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

Name Mark Workman
 Title Public Works Director
 Dept. Public Works

1. Resolution No. R-51-08
2. Bid Summary

REVIEWED BY:

	Initial	Date
Department Head	<u>MW</u>	<u>5/28/08</u>
City Supervisor	<u>JFO</u>	<u>5/30/08</u>
City Attorney (As to Form)	<u>maj</u>	<u>5-28-08</u>

RESOLUTION NO. R-51 -08

A RESOLUTION ACCEPTING THE BID OF M.L. ALBRIGHT & SONS, INC. FOR JACKSON-KAMIAKEN-PIONEER SEWER AND AUTHORIZING EXECUTION AND DELIVERY OF THE CONTRACT FOR SAID PROJECT.

WHEREAS, M.L. Albright & Sons, Inc. submitted the low bid for Contract No. 08-18 for Jackson-Kamiaken-Pioneer Sewer in the amount of One Hundred Twenty-Seven Thousand, Five Hundred Thirty-One and Ninety-Three/100 DOLLARS (\$127,531.93); and,

WHEREAS, a contract has been prepared to provide for performance of said project; and,

WHEREAS, the City Council deems it to be in the best interests of the city of Pullman to enter into said contract; now, therefore,

IT IS HEREBY RESOLVED by the City Council of the city of Pullman that the bid of M.L. Albright & Sons, Inc. for the above-described project be and it is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor and the Finance Director be and they are hereby authorized and directed to execute the contract for said project and to deliver an executed copy thereof to M.L. Albright & Sons, Inc.

BE IT FURTHER RESOLVED that pursuant to the provisions of R.C.W. 46.90.265(2), the traffic engineer is hereby authorized to place and maintain official traffic control devices as the traffic engineer may deem necessary to regulate, warn, or guide traffic during construction.

IT IS FURTHER RESOLVED that the mayor is hereby authorized to take whatever further action is necessary, including but not limited to the execution of a Contractor's Escrow Agreement if requested by the Contractor, in order to effect the purposes of this resolution.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the _____ day of _____, 2008.

DATED this _____ day of _____, 2008.

Mayor

ATTEST:

Finance Director

Approved as to Form:

City Attorney

**ENGINEER'S ESTIMATE AND BID SUMMARY
JACKSON-KAMIAKEN-PIONEER SEWER
BID OPENING 05-28-08**

Item No.	Bid Item	Estimated Quantity	Engineer's Estimate		M. L. Albright & Sons, Inc.		L. & L. Cargile, Inc.		Atlas Sand & Rock, Inc.		Ace Elliott Land.	
			Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Mobilization	1 L.S.	9,000.00	9,000.00	10,000.00	10,000.00	19,000.00	19,000.00	6,000.00	6,000.00	14,294.00	14,294.00
2a	Traffic Control Signs-Class A	4 Ea.	200.00	800.00	25.00	100.00	150.00	600.00	80.00	320.00	200.00	800.00
2b	Traffic Control Signs-Class B	1 L.S.	1,500.00	1,500.00	300.00	300.00	500.00	500.00	3,500.00	3,500.00	3,000.00	3,000.00
2c	Traffic Control Labor	30 Hours	40.00	1,200.00	45.00	1,350.00	45.00	1,350.00	42.00	1,260.00	37.00	1,110.00
3	Remove and Replace Curb & Gutter	10 L.F.	50.00	500.00	65.00	650.00	35.00	350.00	55.00	550.00	60.00	600.00
4	Sawcut Portland Cement Concrete Pavement	12 L.F.	10.00	120.00	20.00	240.00	12.00	144.00	20.00	240.00	12.00	144.00
5	Remove Portland Cement Concrete Pavement	19 S.Y.	85.00	1,615.00	10.00	190.00	15.00	285.00	25.00	475.00	15.00	285.00
6	Sawcut Asphalt Concrete Pavement	1360 L.F.	3.00	4,080.00	6.00	8,160.00	2.00	2,720.00	2.60	3,536.00	4.00	5,440.00
7	Remove Asphalt Concrete Pavement	516 S.Y.	4.00	2,064.00	3.70	1,909.20	5.00	2,580.00	6.00	3,096.00	12.00	6,192.00
8	Hot Mix Asphalt - "Class 1/2" Commercial"	70 Ton	350.00	24,500.00	225.00	15,750.00	200.00	14,000.00	174.00	12,180.00	195.00	13,650.00
9a	Furn & Install SDR 35 PVC Sewer Pipe (6-inch)	230 L.F.	30.00	6,900.00	31.00	7,130.00	40.00	9,200.00	23.00	5,290.00	36.00	8,280.00
9b	Furn & Install SDR 35 PVC Sewer Pipe (8-inch)	414 L.F.	35.00	14,490.00	34.00	14,076.00	42.00	17,388.00	43.00	17,802.00	44.00	18,216.00
9c	Furn & Install C900 PVC Sewer Pipe (8-inch)	186 L.F.	42.00	7,812.00	39.00	7,254.00	45.00	8,370.00	42.00	7,812.00	41.00	7,626.00
10	Construct Type I-48 Sewer Manhole	6 Ea.	2,000.00	12,000.00	1,800.00	10,800.00	3,000.00	18,000.00	2,200.00	13,200.00	2,000.00	12,000.00
11	Sewer Service 1	1 L.S.	1,000.00	1,000.00	975.00	975.00	1,000.00	1,000.00	1,000.00	1,000.00	500.00	500.00
12	Sewer Service 2	1 L.S.	300.00	300.00	260.00	260.00	1,000.00	1,000.00	500.00	500.00	500.00	500.00
13	Sewer Service 3	1 L.S.	1,000.00	1,000.00	715.00	715.00	1,000.00	1,000.00	1,000.00	1,000.00	300.00	300.00
14	Sewer Service 4	1 L.S.	2,000.00	2,000.00	3,025.00	3,025.00	1,000.00	1,000.00	1,770.00	1,770.00	1,600.00	1,600.00
15	Sewer Service 5	1 L.S.	2,000.00	2,000.00	1,080.00	1,080.00	1,500.00	1,500.00	1,000.00	1,000.00	800.00	800.00
16	Sewer Service 6	1 L.S.	2,300.00	2,300.00	1,080.00	1,080.00	1,500.00	1,500.00	1,500.00	1,500.00	900.00	900.00
17	Sewer Service 7	1 L.S.	300.00	300.00	260.00	260.00	1,500.00	1,500.00	1,500.00	1,500.00	500.00	500.00
18	Sewer Service 8	1 L.S.	300.00	300.00	260.00	260.00	1,500.00	1,500.00	1,500.00	1,500.00	500.00	500.00
19	Select Trench Backfill Material	1460 Ton	18.00	26,280.00	19.00	27,740.00	12.00	17,520.00	23.00	33,580.00	24.00	35,040.00
20	Unsuitable Foundation Excavation & Replacement	50 C.Y.	20.00	1,000.00	50.00	2,500.00	40.00	2,000.00	30.00	1,500.00	10.00	500.00
21	Trench Safety	1 L.S.	800.00	800.00	500.00	500.00	2,800.00	2,800.00	6,000.00	6,000.00	3,000.00	3,000.00
22	Erosion Control	1 L.S.	400.00	400.00	500.00	500.00	300.00	300.00	1,500.00	1,500.00	1,500.00	1,500.00
23	Landscape Restoration	1 L.S.	300.00	300.00	1,500.00	1,500.00	750.00	750.00	5,000.00	5,000.00	1,500.00	1,500.00
SUBTOTAL				124,561.00		118,304.20		127,857.00		132,611.00		138,777.00
7.8% sales tax				9,715.76		9,227.73		9,972.85		10,343.66		10,824.61
TOTAL				\$ 134,276.76		\$ 127,531.93		\$ 137,829.85		\$ 142,954.66		\$ 149,601.61

11. RESOLUTION NO. R-52-08

A RESOLUTION ACCEPTING THE BID OF ACE ELLIOTT LANDSCAPING FOR DECANT WASTE FACILITY AND AUTHORIZING EXECUTION AND DELIVERY OF THE CONTRACT FOR SAID PROJECT.

NOTES:

REQUEST FOR COUNCIL ACTION

For Meeting of: 06/03/08

ACTION REQUESTED:

Award the Decant Waste Facility contract.

BACKGROUND:

The scope of contract 08-04 provides for the construction of a 183 square foot reinforced concrete slab with raised curbs and stops, two catch basin manholes, and pipe to connect to the sanitary sewer system at the Quonset Hut property at the M&O yard. The purpose of this project is to construct a facility to separate waste water from vector truck debris collected from the sanitary and storm drains and properly direct it to the sanitary sewer system as required by the City's Industrial Stormwater Permit issued by the Department of Ecology. Bids for this project were opened on May 22, 2008 with two bids received. However, the apparent low bidder, Atlas Sand & Rock, had an error in their bid and asked to be relieved from the responsibilities of award. As authorized by the contract general specifications, this request was honored. The remaining bidder was Ace Elliott Landscaping at \$47,227.18. The Engineer's Estimate was \$48,811.84. A copy of the bid summary is attached for reference. Funding for this project is from the Street Fund and from the Sewer Maintenance Budget of the Utility Fund.

RECOMMENDATION:

Adopt the attached resolution awarding contract 08-04, Decant Waste Facility, to Ace Elliott Landscaping for the bid amount of \$47,227.18.

FISCAL IMPACT:

	<u>\$23,613.59</u>	<u>\$23,613.59</u>
	<u>105-4300-595.40.63.00</u>	<u>401-4100-594.35.65.00</u>
	BARS Code Number	

SUBMITTED BY:

Name Mark Workman
 Title Public Works Director
 Dept. Public Works

ATTACHMENTS FOR COUNCIL REVIEW/ACTION:

1. Resolution No. R-52-08
2. Bid Summary

REVIEWED BY:

	Initial	Date
Department Head	<u>MW</u>	<u>5/28/08</u>
City Supervisor	<u>[Signature]</u>	<u>5/30/08</u>
City Attorney (As to Form)	<u>[Signature]</u>	<u>5-28-08</u>

RESOLUTION NO. R-52 -08

A RESOLUTION ACCEPTING THE BID OF ACE ELLIOTT LANDSCAPING FOR DECANT WASTE FACILITY AND AUTHORIZING EXECUTION AND DELIVERY OF THE CONTRACT FOR SAID PROJECT.

WHEREAS, Ace Elliott Landscaping submitted the low bid for Contract No. 08-04 for Decant Waste Facility in the amount of Forty-Seven Thousand, Two Hundred Twenty-Seven and Eighteen/100 DOLLARS (\$47,227.18); and,

WHEREAS, a contract has been prepared to provide for performance of said project; and,

WHEREAS, the City Council deems it to be in the best interests of the city of Pullman to enter into said contract; now, therefore,

IT IS HEREBY RESOLVED by the City Council of the city of Pullman that the bid of Ace Elliott Landscaping for the above-described project be and it is hereby accepted.

BE IT FURTHER RESOLVED that the Mayor and the Finance Director be and they are hereby authorized and directed to execute the contract for said project and to deliver an executed copy thereof to Ace Elliott Landscaping.

BE IT FURTHER RESOLVED that pursuant to the provisions of R.C.W. 46.90.265(2), the traffic engineer is hereby authorized to place and maintain official traffic control devices as the traffic engineer may deem necessary to regulate, warn, or guide traffic during construction.

IT IS FURTHER RESOLVED that the mayor is hereby authorized to take whatever further action is necessary, including but not limited to the execution of a Contractor's Escrow Agreement if requested by the Contractor, in order to effect the purposes of this resolution.

ADOPTED by the City Council of the city of Pullman at a regular meeting held on the _____ day of _____, 2008.

DATED this _____ day of _____, 2008.

Mayor

ATTEST:

Finance Director

Approved as to Form:

City Attorney

**ENGINEER'S ESTIMATE AND BID SUMMARY
DECANT WASTE FACILITY
BID OPENING 05-22-08**

Item No.	Bid Item	Estimated Quantity	Engineer's Estimate		Ace Elliott Landscaping	
			Unit Price	Amount	Unit Price	Amount
GENERAL						
1	Mobilization	1 LS	2,500.00	2,500.00	4,000.00	4,000.00
2	Construction Surveying	1 LS	750.00	750.00	2,200.00	2,200.00
EARTHWORK						
3	Foundation Excavation and Haul	85 CY	25.00	2,125.00	35.00	2,975.00
CRUSHED SURFACING						
4	Crushed Surfacing Top Course	175 TON	18.00	3,150.00	20.00	3,500.00
SANITARY SEWER						
5	Sanitary Sewer Manhole, 48-inch Diam	2 EA	2,500.00	5,000.00	1,500.00	3,000.00
6	PVC Sewer Pipe, 8-inch Diameter	85 LF	28.00	2,380.00	35.00	2,975.00
7	Connection to Existing Manhole	1 EA	600.00	600.00	2,000.00	2,000.00
CONCRETE WORK						
8	Cement Concrete Pad including Curb	183 SY	150.00	27,450.00	120.00	21,960.00
MISCELLANEOUS						
9	Silt Fence	70 LF	7.50	525.00	10.00	700.00
10	Trench Safety for Sewer line	1 LS	800.00	800.00	500.00	500.00
SUBTOTAL				45280.00		43810.00
Sales Tax 7.8%				3531.84		3417.18
TOTAL				\$ 48,811.84	\$	47,227.18

12. RESOLUTION NO. R-53-08

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF PULLMAN AND TXTWIRE COMMUNICATIONS, FOR THE PURPOSE OF PROVIDING AN UP-TO-THE-MINUTE TRANSIT INFORMATION MESSAGING SERVICE TO RIDERS BY SUBSCRIPTION.

NOTES:

REQUEST FOR COUNCIL ACTION

For Meeting of June 3, 2008

ACTION REQUESTED:

Approval of an agreement with TxtWire Communications to provide text messaging service for our riders to get up-to-the-minute information on Pullman Transit routes and services.

BACKGROUND:

Pullman Transit was approached by a representative of TxtWire Communication after the major snowstorm we had on January 31 of this year. The company he represents, TxtWire, offers a web-based text messaging service that will aid us in communicating route and service changes to our riders. If we had this service on January 31, we could have notified our riders who subscribed that we were going to close the system.

TxtWire is a company based in Idaho who has offered their text messaging service to school districts in Idaho. The school districts use this service to notify their students of closures, delayed starts, and other emergency issues that may affect students. What they are doing for us is new to them and as a result they have made some adjustments to their service to accommodate our needs. If approved, this contract will be in effect for one year, but if it works out and we like the service it can be extended from year-to-year.

The basic premise of this service is that we will be able to send text messages to riders' cell phones through a web page so our riders who subscribe will know what the buses are doing. To subscribe, riders will need to enter a code number for the route they wish to know about. Riders can subscribe to individual routes, a group of routes or to all the routes we provide. We imagine that riders will only want to know about the bus they ride, but they may want to learn how other routes are doing if they travel around Pullman.

The service is basically free to riders, if they have free incoming text messaging, or unlimited text messaging. The brunt of the cost will be borne by Pullman Transit. Our contract allows for 10,000 subscribers to have access to this service without additional costs to us, but if we exceed the 10,000 subscribers it will cost us an additional \$0.20 per month per additional subscriber. We don't expect more than 10,000 subscribers, but we need to anticipate that many if this service catches on.


This is an unfunded expenditure for the 2008 budget. If savings in other line items cannot be realized to offset this expenditure an appropriate budget amendment will be requested at a later date.

RECOMMENDATION:

Adopt the attached resolution authorizing the Mayor and Finance Director to sign and execute an agreement between the City of Pullman and TxtWire Communications Inc. for the purpose of providing text messaging service.

FISCAL IMPACT : \$ 7,400 _____
 BARS # 405-4700-547.80.41.00

SUBMITTED BY:

Name Rod Thornton 
Title Transit Manager
 Public Works/Transit

ATTACHMENTS FOR COUNCIL REVIEW/ACTION

Resolution NO. R-53-08

REVIEWED BY:

	Initial	Date
Department Head	<u>MW</u>	<u>5/30/08</u>
City Supervisor	<u>gms</u>	<u>5/30/08</u>
City Attorney	<u>maj</u>	<u>5-23-08</u>

(As to form)

RESOLUTION NO. R-53 -08

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN THE CITY OF PULLMAN AND TXTWIRE COMMUNICATIONS, FOR THE PURPOSE OF PROVIDING AN UP-TO-THE-MINUTE TRANSIT INFORMATION MESSAGING SERVICE TO RIDERS BY SUBSCRIPTION.

WHEREAS, the City Council for the City of Pullman has before it an Agreement entitled TxtWire Communications Messaging License Agreement - Yearly, which is attached hereto and marked as Exhibit "A"; and,

WHEREAS, this Council believes it to be in the best interests of the City of Pullman to authorize the execution of said Agreement; now, therefore,

IT IS HEREBY RESOLVED that the Mayor and the Finance Director be and they are hereby authorized and directed to execute the agreement for said services and to deliver an executed copy thereof to TxtWire Communications.

IT IS FURTHER RESOLVED that the Mayor and Finance Director are each hereby authorized and directed to take such further action as may be appropriate in order to effect the purpose of this Resolution and the Agreement authorized thereby.

ADOPTED by the City Council of the City of Pullman at a regular meeting held on the _____ day of _____, 2008.

DATED this _____ day of _____, 2008.

Mayor

ATTEST:

Finance Director

Approved as to form:

City Attorney

Txtwire Communications Messaging LICENSE AGREEMENT-YEAR

This Txtwire Communications Messaging License Agreement ("Agreement") is entered into on this ____ day of _____, 200__, between Txtwire Communications, Inc. (herein referred to a "TXTWIRE") with its principal place of business located at 2265 E. 25th, Idaho Falls, ID, 83404 and City of Pullman (herein referred to as "CLIENT"), a municipal corporation of the State of Washington, with its principal place of business located at 325 SE Paradise St. Pullman, WA 99163, and shall be effective as of ____ day of _____, 200__, (the "Effective Date").

RECITALS:

- A. TXTWIRE has developed a mobile messaging service that can be utilized by businesses to instantly broadcast messages to their clients on an opt-in or permission basis.
- B. Client wishes to license the software and receive certain limited rights in said software pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of these premises and the mutual covenants set forth below, TXTWIRE and Client hereby agree as follows:

1. SERVICES.

1.1 Grant of License. TXTWIRE grants to Client a non-transferable, non-exclusive license (the "License") to use the TXTWIRE messaging service (the "Messaging Service"), during the term of this agreement, for the sole use and purpose of enhancing the functionality and marketability of Client's software product offering. Title to the Software will remain vested with TXTWIRE, and nothing in this Agreement will give or convey any right, title or interest therein to Client except as a licensee under the terms of this Agreement. Client shall not incorporate Messaging Service into any product which directly competes with a TXTWIRE product offering without TXTWIRE's express written authorization.

1.2 Services to be Provided. Subject to the terms and conditions of this Agreement, during the term hereof TXTWIRE shall provide to Client the Messaging Service and products and services (collectively, the "Products and Services") outlined in this Agreement.

1.3 Contents of Agreement. The terms and conditions of this Agreement shall consist of this Agreement and exhibits, appendices or schedules attached hereto, the and any Terms of Use set forth on the TXTWIRE Web Site ("Web Site") at the following URL: www.txtwire.com.

1.4 Modifications to Terms and Conditions. TXTWIRE reserves the right from time to time to amend any of the terms and conditions referred to, effective upon written notice to Client of the revised terms and conditions. Client's continued use of the Product and Services following any such amendment shall constitute Client's acceptance of such amendment; provided, however, if an amendment has a material adverse effect on Client's use of the Product and Services covered by the amended terms and conditions, Client may terminate this Agreement and the use of the Product and Services without penalty during the (30) days following the effectiveness of such change. This paragraph shall not apply to the fees referenced in Section 2 of this Agreement.

1.5 Modifications to or Termination of Services. TXTWIRE reserves the right to modify any Product or Service from time to time; however, if any change has a material adverse effect on the functionality of the Messaging Service or that Product or Service, Client may terminate this Agreement without penalty during the sixty (60) days following the effectiveness of such change if TXTWIRE

fails to correct the adverse effect within fourteen (14) days after Client's written notice to TXTWIRE of such effect.

2. FEES AND PAYMENTS.

2.1 Fees. Client shall pay TXTWIRE fees and charges for the Products and Services to be provided hereunder (collectively, the "License Fees") in accordance with this Agreement and the Customer Fee Schedule-Year, attached hereto.

2.2 Payment. All License Fees shall be due and payable as stated on the TXTWIRE Customer Fee Schedule-Year. All other fees, out-of pocket expenses, custom programming, and consulting services performed by TXTWIRE at the prior written request of Client shall be scoped, documented, invoiced and paid as and when incurred. Overdue accounts and any other fees and expenses not paid to TXTWIRE in accordance with this Agreement will be charged a late fee at the rate of one and one-half percent (1-1/2%) per month, or the maximum rate allowed under applicable law if lower, commencing with the date payment was first due.

3. PROPRIETARY RIGHTS.

3.1 Ownership and Use of Trademarks. TXTWIRE's trademarks, trade-names, service marks, logos, other names and marks, and related Product and Service names, design marks and slogans (collectively, the "TXTWIRE Marks") are the sole and exclusive property of TXTWIRE. Client agrees not to display or use any of the TXTWIRE Marks in any manner without TXTWIRE's express prior written consent.

3.2 Ownership of the TXTWIRE Software.

(a) The Messaging Service and Software, and related object code, source code, design features, visual expressions, screen formats, graphics, content, report and display formats, trademarks and copyrights, and the ideas, methods and concepts used in the Messaging Service, Product and Service, and all modifications of the foregoing, are TXTWIRE's valuable, confidential property. Client acknowledges that TXTWIRE and/or its licensors have copyright, trade secret and other intellectual property rights in the TXTWIRE Software and the TXTWIRE Products and Services and the documentations relating hereto, and that all such copyright, trade secret and other intellectual property rights remain the exclusive property of TXTWIRE and/or its licensors at all times

(b) Client agrees that it shall not, in whole or in part, at any time during the term of or after any expiration or termination of this Agreement: (i) sell, assign, sub-licensee, lease, rent, timeshare, grant a security interest in, distribute, transfer, communicate or disclose any of those items to any third party; (ii) modify or try to modify any of those items, or decompile, reverse engineer, create or recreate any Product or Service source code; (iii) use any of those items to provide services to, or to otherwise benefit, any third party; (iv) use any of those items to create a program having features or functions substantially similar to those of the Software; (v) remove or modify any copyright or other proprietary notice contained in any of those items; (vi) use or possess any of those items in any foreign jurisdiction in violation of any trade laws or regulations; or (vii) allow others to do any of the foregoing. This paragraph may be enforced by injunction.

3.3 Use of the TXTWIRE Software. Client agrees that it will use the Messaging Service only in its own business, and not directly or indirectly for the use or benefit of anyone other than Client, and only pursuant to the scope of the grant of the License set forth herein. This License is personal and may not be conveyed in any way without the prior written consent of TXTWIRE. Any purported sale, assignment, transfer or sublicense without such prior written consent will be null and void ab initio, and will automatically terminate this Agreement.

3.4 Privacy of Subscribers. TXTWIRE agrees that it will keep in place reasonable security measures to ensure that the privacy of all subscribers is maintained.

4. DISCLAIMER OF TXTWIRE WARRANTIES.

4.1 Warranty of Title. TXTWIRE warrants that it is the lawful owner of the Messaging Service and Product and/or that it has the authority to grant the License specified herein. TXTWIRE warrants that the Messaging Service and Product has been developed in a workmanlike manner, and in conformity with generally prevailing industry standards. Client must report any material deficiencies in the Messaging Service and Product to TXTWIRE in writing within thirty (30) days of the first event of material deficiency. Client's exclusive remedy for the breach of the above warranties will be the correction of the material deficiency within a commercially reasonable time.

4.2 Disclaimer of Warranties. Client expressly understands and agrees as follows:

(a) TXTWIRE EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, REGARDING ANY TXTWIRE SOFTWARE, PRODUCTS AND SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, EVEN IF TXTWIRE HAS BEEN INFORMED OF SUCH PURPOSE. CLIENT'S USE OF THE

TXTWIRE SOFTWARE, PRODUCTS AND SERVICES IS AT CLIENT'S SOLE RISK. THE TXTWIRE SOFTWARE, PRODUCTS AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. NO AGENT OF TXTWIRE IS AUTHORIZED TO ALTER OR EXCEED THE WARRANTY OBLIGATIONS ON TXTWIRE AS EXPRESSLY SET FORTH HEREIN.

(b) TXTWIRE MAKES NO WARRANTY THAT (i) THE TXTWIRE SOFTWARE, PRODUCTS AND SERVICES WILL MEET CLIENT'S REQUIREMENTS, (ii) THE TXTWIRE MESSAGING SERVICE, SOFTWARE, PRODUCTS AND SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE.

5. LIMITATION OF LIABILITY.

5.1 Exclusion of Consequential Damages. In no event shall TXTWIRE or its licensors or any of their respective officers, directors, employees, shareholders, agents or representatives be liable for any indirect, incidental, punitive, special or consequential damages (including without limitation loss of profits, revenue, goodwill, data, or use, work stoppage, computer failure or malfunction), or any and all other commercial damages or losses incurred by Client or any third party, in any way relating to this Agreement or resulting from the use of or inability to use the TXTWIRE Software or any TXTWIRE Products and Services, or the performance or non-performance of the TXTWIRE Software or any TXTWIRE Products and Services, including the failure of essential purpose, even if TXTWIRE has been notified of the possibility or likelihood of such damages.

5.2 Limitation of Liability. IN NO EVENT SHALL TXTWIRE'S AGGREGATE LIABILITY FOR ALL DAMAGES TO CLIENT AND ANY THIRD PARTIES EXCEED THE AMOUNT OF LICENSE FEES PAID HEREUNDER BY CLIENT TO TXTWIRE DURING THE PRECEDING TWELVE (12) MONTHS. In addition, TXTWIRE shall not be liable for any loss resulting from a cause over which TXTWIRE does not have direct control, including without limitation failure of electronic or mechanical equipment or communication lines; telephone or other interconnect problems; bugs, errors, configuration problems or incompatibility of computer hardware or software; failure or unavailability of Internet access; problems with Internet service providers or other equipment or services relating to Client's computers; problems with intermediate computer or communications networks or facilities; problems with data transmission facilities or Client's telephones or telephone service; or unauthorized access, theft, operator errors, severe weather, earthquakes or labor disputes. TXTWIRE is not responsible for any damage to Client's computers, software, modems, telephones or other property resulting from Client's use of the TXTWIRE Software, Products and Services.

6. INDEMNIFICATION. Client shall indemnify and hold harmless TXTWIRE, its officers, directors, employees, shareholders, and agents, from and against all claims, losses, causes of action, liability, damages, costs and expenses (including without limitation reasonable attorneys' fees, costs and expenses) relating to, arising from, or in connection with Client's breach or violation of this Agreement, including without limitation infringement of any copyright or violation of any proprietary right. The obligations set forth in this Article 7 shall survive any expiration or termination of this Agreement.

TXTWIRE shall indemnify and hold harmless Client, its officers, directors, employees, shareholders, and agents, from and against all claims, losses, causes of action, liability, damages,

costs and expenses (including without limitation reasonable attorneys' fees, costs and expenses) relating to, arising from, or in connection with Client's breach or violation of this Agreement, including without limitation infringement of any copyright or violation of any proprietary right. The obligations set forth in this Article 7 shall survive any expiration or termination of this Agreement.

7. TERM AND TERMINATION.

7.1 Term. The initial term of this Agreement shall be one (1) year, commencing on the Effective Date of this Agreement. Thereafter, the term of this Agreement may be renewed for successive terms of one (1) year each upon written notice at least thirty (30) days prior to such renewal date of Client's intention not to renew. Should Client fail to renew this Agreement at anytime, the term of this Agreement shall expire upon the expiration of the then-current term. In addition to the foregoing, this Agreement may be terminated by either party at any time for convenience upon sixty (60) days' notice, and otherwise in accordance with Sections 7.2, 7.3 and 7.4 below. If Client terminates this Agreement at any time, Client agrees that there will be no refunds, pro-rates or rebates.

7.2 Termination for Breach. Either party may terminate this Agreement effective upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after written notice of the same. Upon termination, TXTWIRE will immediately cancel Client's access to the Software, Product and Services.

7.3 Termination for Insolvency. Either party may terminate this Agreement immediately if the other party (i) becomes insolvent, (ii) makes a general assignment for the benefit of creditors, (iii) becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; (iv) becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing, or (v) is liquidated, voluntarily or otherwise.

7.4 Effect of Termination. Notwithstanding any expiration of termination of this Agreement, the provisions of Sections 3,4,5,6, and 8 shall continue in full force and effect, as well as any other provisions of this Agreement which by their terms are intended to survive expiration or termination. Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms; provided, however, that Client will remain liable for all applicable License Fees and other charges accrued hereunder prior to such expiration or termination.

8. GENERAL PROVISIONS.

8.1 Confidentiality. Client agrees to observe complete confidentiality with respect to the Software, and will not copy, reproduce, publicize or otherwise disseminate it to third parties, except as required by law. Any breach of confidentiality, except as required by law, by Client will automatically terminate this Agreement. Client agrees that TXTWIRE's remedies at law for breach of confidentiality are inadequate and that TXTWIRE will be entitled to equitable relief, including without limitation, injunctive relief, specific performance and/or other remedies in addition to remedies provided by law.

8.2 Licensee's Obligation to Notify of Infringement. Licensee will immediately notify TXTWIRE of any infringement or attempt infringement of TXTWIRE's rights in the Software of which it becomes aware. Licensee will affirmatively cooperate with TXTWIRE in any legal or equitable action that TXTWIRE may

undertake to protect any of its rights in connection with Client's use of the Software.

8.3 Entire Agreement. This Agreement, consisting of the components identified in Section 1.3 above, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

8.4 Notice. All notices, consents and other communications under this Agreement shall be in writing and shall be deemed to have been received and effective (i) on the date of personal delivery, (ii) on the date it is officially recorded as delivered to the intended recipient when sent by postage prepaid, return receipt requested, registered or certified mail, or the equivalent of registered or certified mail under the laws of the country where mailed, or in the absence of such record of delivery, the effective date shall be deemed to be the fifth (5th) business day after it was deposited in the mail, (iii) on the date it is officially recorded as delivered to the intended recipient when sent by internationally recognized overnight courier, such as Federal Express, DHL, or UPS, or in the absence of such record of delivery, the effective date shall be deemed to be the third(3rd) business day after delivery to such courier, or (iv) the date transmitted by facsimile with a confirmation copy sent simultaneously by one of the other methods permitted under this Section 8.4, in each case addressed to the addresses specified in the Introduction to this Agreement. Notice not given in writing shall be effective only if acknowledged in writing by a duly authorized representative of the party to whom it was given.

8.5 Governing Law. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of Washington.

8.6 No Waiver of Rights. The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

8.7 Dispute Resolution and Arbitration. Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The arbitration will be held at a mutually agreed location. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

8.8 Attorney's Fees. If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorney's fees and costs.

8.9 Severability. If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

8.10 Relation of Parties. Nothing in this Agreement will create or imply an agency relationship between TXTWIRE and Client, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

8.11 Force Majeure. Neither party shall be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any natural calamity, act of God or a public enemy, act of any military, civil or regulatory authority, change in any law or regulation, disruption or outage of communications, power or other utility, failure to perform by any supplier or third party, or other cause which could not have been prevented with reasonable care.

8.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original instrument, but all of which together shall constitute only one and the same instrument. Execution and delivery of this Agreement by exchange of facsimile copies bearing facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

8.13 Headings. The subject headings of the Sections and other subdivisions of this Agreement are included for the purposes of convenience only, and shall not affect the construction or interpretation of any of its provision.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives.

TXTWIRE, Inc.

By: Chad Robbins

Date: 5/23/08

Name: Chad Robbins for Creg Fielding

Title: President

Client Name: City of Pullman

By: _____

Date: _____

Name: Glenn A. Johnson

Title: Mayor

Attest:

By: _____

Date: _____

Name: Troy Woo

Title: Finance Director

CUSTOMER FEE SCHEDULE - YEARLY

TxtDispatcher Service:

\$616.00 per month (also requires one time set up fee of \$400.00)

\$7400.00 per year, paid up-front (no setup fee)

Price includes unlimited subscription groups with all TxtDispatcher Features
Price includes unlimited mass messages
Price includes up to 10,000 subscribers per month
Price includes one (1) countertop display with print
Price includes 1,000 display cards
Price includes license to use software

*Contract automatically renews unless canceled in writing prior to renewal date.
**All contracts paid monthly require credit card or auto draft payment

Additional Services:

Subscription Increases

1 Subscriber: \$0.20 each month for each additional subscriber

*Customer is allowed up to 10,000 subscribers as part of the TxtDispatcher service, additional charges will be incurred for any additional subscribers.

**Customer's account will be debited & invoiced monthly for all subscription increases.

Other Fees

Display Cards: \$50.00 per 1,000
Countertop Displays with print: \$25.00 each
Custom Software Programming: \$100.00 per hour

Date: 5/23/08

Brad Robbins
TxtWire Communications

Date: _____

Customer

