CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
August 1, 2022 6:00 PM

The city is conducting this public meeting using a hybrid model. The public is welcome to attend tonight's meeting in-person at City Hall (Council Chambers), or virtually by using the meeting access link below.
https://sumnerwa-gov.zoom.us/j/86045268519
Or One tap mobile :
US: +12532158782,,86045268519# or +13462487799,,86045268519#
Or Telephone:
+1 253 215 8782
Webinar ID: 860 4526 8519

CALL TO ORDER

Pledge of Allegiance

Invocation

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

EXECUTIVE SESSION

Pursuant to RCW 42.30.110.1.a.11 to consider information regarding the infrastructure and security of computer and telecommunications networks.

The following items are distributed to Councilmembers in advance for study and review, and the recommended actions will be accepted in a single motion. Any item may be removed for further discussion if requested by a Councilmember.

CONSENT AGENDA

1. Resolution No. 1633 - Interlocal Agreement with the Port of Tacoma (Ryan House)
2. Approval of the meeting minutes from the regular council meeting of July 18, 2022 and July 25, 2022 study session.

PUBLIC HEARING

1. Cyber Security Performance Audit
2. Ordinance No. 2832 - Houston Road Annexation

REGULAR BUSINESS

1. **Unfinished Business**

a. Ordinance No. 2827 - Comcast Franchise Renewal

2. **Public Comment (Limit 3 minutes)**
Members of the community who wish to give public comment are strongly encouraged to join the meeting via the ZOOM link or by telephone. If you are unable to join the meeting, please submit your public comment in writing via email to the City Clerk at Michellec@sumnerwa.gov no later than 5:30pm on the date of the meeting. Any written comments received will be read into the record and

provided to the City Council. Please contact the City Clerk at 253-299-5590 with any questions.

3. **New Business**
   a. Appointment to the Civil Service Commission (Lomax)
   b. Ordinance No. 2831 - ARPA Budget Amendment
   c. Resolution No. 1632 - Employee Retention Payment Program
4. **Reports**
   a. Council
   b. City Administrator
   c. Mayor
5. **Adjournment**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact the City Clerk at (253) 299-5590, 24 hours in advance.

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2478

SUBJECT: Pursuant to RCW 42.30.110.1.a.11 to consider information regarding the infrastructure and security of computer and telecommunications networks.

CATEGORY: Information Only

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
STAFF CONTACT:

SUMMARY BACKGROUND:

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION: Committee Do-Pass

STAFF RECOMMENDATIONS/MOTION:

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2459

SUBJECT: Resolution No. 1633 - Interlocal Agreement with the Port of Tacoma (Ryan House)

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Resolution No. 1633 - Interlocal Agreement with the Port of Tacoma (Ryan House)

STAFF CONTACT: Carmen Palmer, Communications Director

SUMMARY BACKGROUND:

The City of Sumner applied for $15,380 from the Port of Tacoma Local Economic Development Investment Fund for the portion of the Ryan House Renovation to install a new ADA door in the kitchen addition and use PCTV to produce a short film about the project. The Port awarded $7,500 to the City of Sumner for this project. Because it's a fund, not a grant, the Port handles the process through an inter-local agreement, which is attached and needs to be approved by the City Council.

Although this is not funding our full request and will not cover our full costs for these two items, accepting the funding is important to help build more funding. The City's request is currently in for a Heritage Capital Projects grant at the State level and the request for further Pierce County Lodging Tax funding was submitted by the July 18 deadline. Both these funds expect to see diverse funding of projects in order to consider adding their funding. Although a small amount, the Port's funding signifies the City's willingness to seek funding from multiple sources and the value this project has for a diverse group of funders.

COUNCIL COMMITTEE/STUDY SESSION: Finance Committee
MEETING/STUDY SESSION DATE: 7/6/2022
COMMITTEE RECOMMENDATION: Do pass

STAFF RECOMMENDATIONS/MOTION:

Approve Resolution No. 1633 - Interlocal Agreement with the Port of Tacoma for $7,500 from the Local Economic Development Investment Fund for the Ryan House Renovations.

RESOLUTION NO. 1633
CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY OF SUMNER, WASHINGTON, ENTERING INTO AN INTERLOCAL AGREEMENT WITH THE PORT OF TACOMA FOR RYAN HOUSE RENOVATIONS

WHEREAS, the City of Sumner applied for $15,380 from the Port of Tacoma Local Economic Development Investment Fund; and

WHEREAS, the Port awarded $7,500 in funding to the City to help install a new ADA door in the kitchen addition and have PCTV to produce a short film about the project; and

WHEREAS, this support is important to build regional support for the project, which helps the chances of success for further funding with pending applications for Heritage Capital Projects at the State level and Pierce County Lodging Tax funding; and

WHEREAS, City Council acceptance of the interlocal agreement and authorization for the Mayor to execute a grant agreement is required by law; and

WHEREAS, it is in the City's interests to accept the funds and enter into any necessary agreements regarding the same.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:

Section 1. That the City Council of the City of Sumner, Washington, does hereby accept the Agreement Between City of Sumner and Port of Tacoma Regarding Renovation of Sumner's Historic Ryan House and authorizes the Mayor to execute any necessary funding agreements, and any and all documents necessary to carry out and effectuate this funding acceptance.

Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. Effective Date. This resolution shall take effect and be in full force immediately upon passage by the City Council.

ADOPTED AND APPROVED this 1st day of August 2022.

____
Kathy Hayden, Mayor

Attest: Approved as to form:

__________________________ __________________________
Michelle Converse, City Clerk Andrea Marquez, City Attorney

AGREEMENT BETWEEN
CITY OF SUMNER
and
PORT OF TACOMA
REGARDING
RENOVATION OF SUMNER'S HISTORIC RYAN HOUSE

THIS AGREEMENT ("AGREEMENT") is entered into this ____day of ____________, 2022, by and between the City of Sumner, a city of the State of Washington (hereinafter the "City"), and the **PORT OF TACOMA,** a Washington public port district (the "Port"), (each a "Party," collectively the "Parties") in consideration of the mutual covenants contained herein. The Parties hereby recite and agree as follows:

RECITALS

1. The Port is charged by state statute with a mission of furthering economic development. To that end, the Port has adopted a Local Economic Development Policy by which the Port administers its monetary support of economic projects sponsored by local public agencies in Pierce County.

2. The City proposes the renovation of Sumner's historic 'Ryan House' (the "Project").

3. The City has requested and the Port agrees to provide an investment of $7,500 toward the Project costs, conditioned upon proof of Project expenditures, and as expressly specified herein.

4. The Port finds the requested contribution meets the Port's Local Economic Development Policy criteria as follows:

A. The renovation of Sumner's Historic Ryan House meets the policy criteria by promoting tourism from outside Pierce County, creating a destination for people to come and learn about the history of Sumner.

CONSIDERATION

NOW, THEREFORE, pursuant to Chapter 39.34 RCW, and in consideration of the mutual benefits and covenants described herein, the Parties agree as follows:

1. SCOPE OF WORK

A. The City of Sumner Ryan House Renovation consists of the following:

i. ADA access improvements

ii. Video documentation of the project.

B. All as described in the City's Application, as attached hereto as **Attachment A.**

2. PORT'S CONDITIONAL AGREEMENT TO CONTRIBUTE FUNDS

A. Subject to the terms herein, the Port agrees to provide reimbursements of an amount not to exceed $7,500 reimbursable up to 24 months from the Port signing for expenses incurred by City for the Project. City shall be responsible for timely payment of all invoices submitted by third parties providing goods or services for the Project. City shall submit to the Port, or its designee, paid project invoices within ninety (90) days after the referenced goods or services have been provided. The Port or its designee shall review any such invoices and as appropriate make payment to City within thirty (30) days of receipt of the invoice. The Port shall not be obligated to reimburse City for invoiced goods or services where invoices are not submitted in a timely fashion. City shall be solely responsible for compensation of City's employees, including those employees' salaries, fringe benefits, or any other compensation, including for time spent by those employees related to the Project. The Port shall not be responsible to provide reimbursement for any compensation to City's employees.

B. Conditions of the Port's funding are as follows:

i. If the Project costs are higher than projected, the City will assume any excess Project costs.

ii. The Port's annual Project contribution shall be allocated and is identified in the Port's 2022 budget.

C. The Port's distribution of funds is further contingent on the City obtaining full committed funding 24 months from the Port signing for the complete Project scope and the contents of this AGREEMENT remain unchanged.

D. Port payments up to the not-to-exceed amount will be made pursuant to this signed AGREEMENT, and within 45 days of the City's submittal of written proof to the Port that City has paid its minimum contribution of $7,500 in expenditures.

3. TIMEFRAME/PROJECT SCHEDULE

TWENTY-FOUR MONTHS FROM THE DATE OF THE PORT'S SIGNATORY

4. CITY' S PROJECT FINANCIAL SUMMARY

A. Total Project Cost: $1,406,225

B. Source of Funds (other than the Port):
- Pierce County Lodging Tax (2019): $100,000
- Pierce County Lodging Tax (2020-21): $25,000
- Sumner Lodging Tax (2022): $125,000

5. ABANDONMENT. If the Project is abandoned, then this AGREEMENT shall be of no further force or effect.

6. ASSIGNMENT. Neither Party to this AGREEMENT shall have the right to convey, assign, apportion or otherwise transfer any and all of its rights, obligations, conditions, and interests under this AGREEMENT, without the prior written approval of the other.

7. THIRD PARTY BENEFICIARIES. This AGREEMENT is made and entered into for the sole protection and benefit of the Parties hereto and their successors and assigns. No other person shall have any right or cause of action based upon any provisions of this AGREEMENT.

8. EQUAL DRAFTING. This AGREEMENT has been reviewed and revised by legal counsel for both Parties, and no presumption or rule construing ambiguity against the drafter of the document shall apply to the interpretation or enforcement of this AGREEMENT.

9. SEVERABILITY. If any provisions of this AGREEMENT are determined to be unenforceable or invalid pursuant to a final decree or judgment by a court of law with jurisdiction, then the remainder of this AGREEMENT not decreed or adjudged unenforceable or invalid shall remain unaffected and in full force and effect to the extent that the primary purpose of this AGREEMENT can be preserved.

10. MODIFICATION. This AGREEMENT may not be modified except by mutual agreement reduced to writing in a formal amendment hereto and approved by each Party's governing body.

11. TERMINATION. This AGREEMENT shall terminate after all reimbursements are paid or two years following completion of the Project, whichever occurs first, unless terminated earlier by written agreement. However, absent express authorization by the Port, in no case will the Port's allocations as provided under this AGREEMENT be committed for more than two years after approval of this AGREEMENT by the Port.

12. GOVERNING LAW. This AGREEMENT shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial proceeding for the endorsement of this AGREEMENT or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington.

13. NOTICES. All notices given pursuant to this AGREEMENT shall be deemed delivered to the respective party on the date that it is personally delivered to the address(es) set forth below, or on the date that it is successfully sent by email transmission to the email addresses set forth below:

City: Attention: Carmen Palmer
Email: ***carmenp@sumnerwa.gov***

Port: P.O. Box 1837
Tacoma, Washington 98406
Attention: Matthew Mauer
Email: ***mmauer@portoftacoma.com***

14. ENTIRE AGREEMENT. This AGREEMENT constitutes the entire agreement of the Parties, supersedes all previous oral or written understandings, and incorporates all prior discussions and agreements pertaining to this subject matter. The Parties participated equally in any negotiations and the process leading to execution of this AGREEMENT. If a dispute should arise with regard to the meaning or interpretation of any provision hereof, there shall be no presumption of draftsmanship as to such provision.

15. LEGAL RELATIONS

A. Independent Governments. The Parties hereto are independent governmental entities, and nothing herein shall be construed to limit the independent government powers, authority, or discretion of the governing bodies of each Party. It is understood and agreed that this AGREEMENT is solely for the benefit of the Parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. No employees or agents of any Party shall be deemed, or represent themselves to be, employees of the other Party.

B. Legal obligations. This AGREEMENT does not relieve either Party of any obligation or responsibility imposed upon it by law.

C. Timely Performance. The requirements of this AGREEMENT shall be carried out in a timely manner according to a schedule negotiated by and satisfactory to the Parties.

D. Recording. A copy of this AGREEMENT shall be recorded in the Office of the Pierce County Auditor in accordance with chapter 39.34 RCW or shall be posted to each Parties' web site.

16. RECORDS AND AUDIT. During the term of this AGREEMENT, and for a period not less than six (6) years from the date of termination, records and accounts pertaining to the work of this AGREEMENT and accounting therefore shall be kept by each Party and shall be available for inspection and audit by representatives of either Party and any other City with legal entitlement to review said records. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claims, or audit finding has been resolved, even though such litigation, claim, or audit continues past the six-year (6) retention period. This provision is in addition to and is not intended to supplant, alter, or amend records retention requirements established by applicable state and federal laws.

17. LIMITS OF FINANCIAL OBLIGATIONS/PROPERTY OWNERSHIP. Except as provided above, each Party shall finance its own conduct of responsibilities under this AGREEMENT. No ownership of property will transfer as a result of this AGREEMENT.

18. INDEMNIFICATION AND HOLD HARMLESS

A. The City releases the Port from, and shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the City and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

B. The City shall defend, indemnify, and hold the Port and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the City's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the Port or its agents, employees, and/or officers.

C. The Port releases the City from, and shall defend, indemnify, and hold the [City] and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of the Port and/or its agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

D. The Port shall defend, indemnify, and hold the City and its agents, employees, and/or officers harmless from and against all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, made by or on behalf of any third parties and/or their agents, employees, officers, contractors and/or subcontractors, arising out of or in any way related to the Port's performance of its obligations under this AGREEMENT, unless and except to the extent the same be caused in whole or in part by the negligence or willful conduct of the City or its agents, employees, and/or officers.

E. Each Party specifically assumes liability for actions brought by its own employees against the other Party and for that purpose each Party specifically waives, as respects to the other party only, any immunity under the Worker's Compensation Act, RCW Title 51.

F. The Parties recognize that this waiver was the subject of mutual negotiation. In the event any Party incurs attorney's fees, costs, or other legal expenses to enforce the provisions of this AGREEMENT against the other Party, all such fees, costs and expenses shall be recoverable by the prevailing Party.

G. No liability shall attach to either Party by reason of entering into this AGREEMENT except as expressly provided herein.

H. The provisions of this Article 18 shall survive any termination or expiration of this AGREEMENT.

CITY :

By:______________________________

Its:

Date:____________________________

PORT OF TACOMA:

Eric D. Johnson

By: Eric D. Johnson (Jun 13, 2022 15:53 PDT)

Eric Johnson

Its: Executive Director

Date: Jun 13, 2022

Approved as to form:

By:______________________________

Its:

By: [signature]

Heather L. Burgess

Its: Legal Counsel

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2483

SUBJECT: Approval of the meeting minutes from the regular council meeting of July 18, 2022 and July 25, 2022 study session.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Minutes - July 25, 2022 study session
2. Minutes - July 18, 2022, regular council meeting

STAFF CONTACT:

SUMMARY BACKGROUND:

Meeting minutes from the previous council meetings.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve as written.

CITY COUNCIL STUDY SESSION MINUTES
City Hall – 1104 Maple Street
July 25, 2022 6:00 PM

The city conducted this public meeting using a hybrid model, in-person and Zoom.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Deputy City Attorney Maili Barber, Public Works Director Mike Dahlem, Community Development Director Ryan Windish, Development Services Director Doug Beagle, Senior Planner Ann Siegenthaler and City Engineer Michael Kosa

Council present: Bitetto, Brown, Cole, Hochstatter, Neuman, Rees and Stuard

Mayor Hayden called to order the Sumner City Study Session of July 25, 2022 at 6pm.

REGULAR BUSINESS

1. YMCA Annual Update Presentation
2. YMCA Service Agreements Amendment
3. Ordinance No. 2830 – Accessory Dwelling Units Code Update
4. Manufacturing / Industrial Center (MIC) Transit

CITY ADMINISTRATOR REPORT

AGENDA SETTING

1. Council Meeting Agenda Calendar
2. Council Committee Meeting Calendar

EXECUTIVE SESSION

ADJOURNMENT
With no further business before the Council, Mayor Hayden adjourned the meeting at 7:50pm. Councilmembers concurred.

____
Kathy Hayden, Mayor

Attest:

____
Michelle Converse, City Clerk

CITY COUNCIL MEETING MINUTES
City Hall – 1104 Maple Street
July 18, 2022 6:00 PM

The city conducted this public meeting using a hybrid model, in-person and Zoom.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Administrative Services Director Jeff Steffens, Deputy City Attorney Maili Barber, Deputy Chief Andy McCurdy, Public Works Director Mike Dahlem, Community Development Director Ryan Windish, Development Services Director Doug Beagle, Chief Financial Officer Kassandra Raymond, and City Clerk Michelle Converse

THE REGULAR MEETING OF THE SUMNER CITY COUNCIL WAS CALLED TO ORDER BY MAYOR HAYDEN AT 6:00PM.

CALL TO ORDER

Pledge of Allegiance

Invocation

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

MAYOR HAYDEN ASKED DEPUTY MAYOR HOCHSTATTER FOR A MOTION TO AMEND THE AGENDA, REMOVING FROM NEW BUSINESS ITEM (B) ORDINANCE NO. 2823 – ZONING CODE TEXT AMENDMENTS: ELECTRONIC READER BOARD. SECONDED BY BROWN.

PASSED BY VOICE VOTE.

MOVED BY HOCHSTATTER SECONDED BY BITETTO TO APPROVE THE **CONSENT AGENDA** CONSISTING OF:

1. Approval of checks/electronic payments in the amount of $1,198,576.91
2. Water Rights - Consultant Contract Amendment (Tom Pors)
3. White River Restoration Project (WRRP) Puget Sound Energy (PSE) Transmission Relocation - Alderton 115kv Construction Agreement
4. WRRP PSE Transmission Relocation - Alpac 115kv Construction Agreement
5. WRRP PSE Transmission Relocation - Alderton 230kv Construction Agreement
6. 24th St E Utility Relocation - Gas Line Relocation Reimbursement Agreement
7. 24th St E Utility Relocation - Easement from City to PSE Gas
8. 24th St E Utility Relocation - Easement from PSE Gas to City
9. Resolution No. 1629 - Petty Cash & Change Funds
10. Resolution No. 1631 - Paper of Record
11. Teamsters 2022-2024 Collective Bargaining Agreement.
12. Approval of the meeting minutes from the following: June 21, 2022 regular council meeting, June 27 special council meeting and study session and the study session of July 11, 2022.

PASSED BY VOICE VOTE.

PUBLIC HEARING
There was no Public Hearing tonight.

REGULAR BUSINESS

1. **Unfinished Business**

a. Ordinance No. 2821 - Expanding Multifamily Tax Exemption Residential Target Areas
MOVED BY NEUMAN SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2821 TO EXPAND THE MULTIFAMILY TAX EXEMPTION RESIDENTIAL TARGET AREAS FOR AFFORDABLE HOUSING.

Community Development Director Ryan Windish addressed the council.

PASSED BY ROLL CALL VOTE.

2. **Public Comment (Limit 3 minutes)**

There were none tonight.

3. **New Business**

a. Ordinance No. 2822 - 2022 Comprehensive Plan Amendments: Density Descriptions
MOVED BY BROWN, SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2822, 2022 COMPREHENSIVE PLAN AMENDMENTS – DENSITY DESCRIPTIONS.

Community Development Director Ryan Windish addressed the council.

PASSED BY ROLL CALL VOTE.

~~b. Ordinance No. 2823 - 2022 Zoning Code Text Amendments: Electronic Reader Board Signs and Digital Message Signs~~

c. Ordinance No. 2824 - 2022 Zoning Code Text Amendments: Gas Stations
MOVED BY COLE SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2824 - 2022 ZONING CODE TEXT AMENDMENTS: GAS STATIONS.

Community Development Director Ryan Windish addressed the council.

PASSED BY ROLL CALL VOTE.

d. Ordinance No. 2827 - Comcast Franchise Renewal (First Reading)
MOVED BY REED SECONDED BY HOCHSTATTER TO CONDUCT FIRST READING OF ORDINANCE 2827, REGARDING A RENEWAL FRANCHISE AGREEMENT BETWEEN THE CITY OF SUMNER AND

COMCAST CABLE COMMUNICATIONS MANAGEMENT LLC.

City Attorney Andrea Marquez addressed the council.

Since this was a first reading, there was no vote, this will return to the next regular meeting of August 1, 2022.

e. Ordinance No. 2828 - Parking Code Amendments

MOVED BY NEUMAN, SECONDED BY STUARD TO APPROVE ORDINANCE NO. 2828 – PARKING CODE AMENDMENT.

Community Development Director Ryan Windish addressed the council.

Mary Urback, Attorney for the Sumner Bonney Lake School District spoke in favor of the ordinance.

PASSED BY ROLL CALL VOTE.

f. Ordinance No. 2829 - 2022 Compensation Schedule Amendment

MOVED BY BITETTO, SECONDED BY STUARD TO APPROVE ORDINANCE NO. 2829 – 2022 COMPENSATION SCHEDULE AMENDMENT.

Administrative Services Director Jeff Steffens addressed the council.

PASSED BY ROLL CALL VOTE.

4. **Reports**

a. Council

Councilmember Reed had nothing to report tonight.

Councilmember Neuman thanked the community for supporting Rhubarb Days!

Deputy Mayor Hochstatter reported the first Music Off Main was well attended and the location at the Ryan House couldn't have been better, it was cool and comfortable and there was plenty of space to move around. There was also Night's on Ryan right after the concert. Overall, a great success, and she hopes to see everyone next Friday.

Councilmember Stuard attended Rhubarb Days with out-of-town family, and they enjoyed themselves. He thanked staff for their assistance in coordinating the event with SMSA.

Councilmember Bitetto was at the Salute to the Troops at the Cannery on Friday, July 15, 2022. While everyone she met enjoyed the area, they just wished it didn't rain so much. She received her ballot in the mail and ended her remarks by reminding everyone to vote.

Councilmember Brown nothing to report to night.

Councilmember Cole also attended Rhubarb Days with her grandchildren. They all had a ball and the food tucks were fantastic!

b. City Administrator

City Administrator Wilson reported on the following:

Upcoming Policy Issues:

- Next Week's Study Session:
  - YMCA Annual Update
  - YMCA Services Agreements Amendments
  - Accessory Dwelling Units
  - MIC Transit Proposal

- Next Regular Council Meeting on August 1st:
  - Executive Session for discussing Cybersecurity (15 minutes)
  - Resolution accepting a grant from the Port of Tacoma for the Ryan House
  - Resolution Creating an Employee Retention Incentive
  - Resolution Extending the Capital Facilities Plan
  - Public Hearing regarding the Houston Road Annexation
  - Public Hearing regarding the City's Cyber Security Audit
  - Ordinance adopting a Franchise Agreement with Comcast
  - Ordinance allocating ARPA funds

Significant Development Activity:

- The property owner for the vacant land the corner of Valley and Main Street notified submitted a new Conditional Use Permit Application for an unbranded gas station and convenience store. The complete application is what vests the project to existing code and development regulations. That means the code approved tonight has no effect on the property owner's proposed project.

Miscellaneous:

- Summer events are back in full swing, with something going on every weekend for the next five weeks. Visit our website for more information.

c. Mayor

The majority of her report was previously reported on by other Councilmembers, but she did add she hasn't seen the number of people at events in a long time, it's a nice thing to see and she hopes it continues through the summer.

5. **Executive Session**

There was none tonight.

6. **Adjournment**

With no further business before the Council, Mayor Hayden adjourned the meeting at 6:32pm. Councilmembers concurred.

ATTEST:

____
Kathy Hayden, Mayor

____
Michelle Converse, City Clerk

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2468

SUBJECT: Cyber Security Performance Audit

CATEGORY: Public Hearings

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Sumner Performance Audit Report

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Pursuant to RCW 43.09.470, members of the Washington State Auditor's Office will be present to provide a brief overview of the City's recently completed Cybersecurity Performance Audit and then this topic will be opened up for the required public hearing.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Performance Audit Report

Opportunities to Improve City of Sumner's Information Technology Security

Published July 18, 2022

Report No. 1030920

Find out what's new at SAO by scanning this code with your smartphone's camera

Office of the Washington State Auditor
Pat McCarthy

July 18, 2022

City Council
City of Sumner
Sumner, Washington

Report on Opportunities to Improve Information Technology Security

We are issuing this report in order to provide information on the City's information technology security.

Sincerely,

Pat McCarthy, State Auditor

Olympia, WA

Americans with Disabilities

In accordance with the Americans with Disabilities Act, we will make this document available in alternative formats. For more information, please contact our Office at (564) 999-0950, TDD Relay at (800) 833-6388, or email our webmaster at webmaster@sao.wa.gov.

Insurance Building, P.O. Box 40021 • Olympia, Washington 98504-0021 • (564) 999-0950 • Pat.McCarthy@sao.wa.gov

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ABOUT THE AUDIT

Critical government services depend on IT systems with confidential information, which must be protected to avoid service disruptions and financial losses

Governments depend on information technology (IT) systems to deliver an array of critical functions. The security of IT systems and related data underpins the stability of government operations, and the safety and well-being of residents. Therefore, protecting these systems is paramount to public confidence, because the public expects governments to protect these systems from IT security incidents that could disrupt government services.

These IT systems also process and store confidential data. Aside from the loss of public confidence, a data breach involving such data can cause governments to face considerable tangible costs. These include identifying and repairing damaged systems as well as and notifying and helping victims of the breach.

> ***IT security incident*** - Any unplanned or suspected event that could pose a threat to the confidentiality, integrity or availability of information assets.
>
> ***Data breach*** – An IT security incident that results in the confirmed disclosure of confidential information to an unauthorized party.

This audit looked for opportunities to improve the City's IT security

To help the City of Sumner protects its IT systems and secure the data it needs to operate, we conducted a performance audit designed to identify opportunities to improve IT security. This audit answered the following questions:

- Does the City have vulnerabilities in its IT environment that could lead to increased risk from external or internal threats?
- Do the City's IT security practices align with selected security controls?

Evaluating if there are any problems and vulnerabilities present in the IT environment that could increase risk

To determine if the City has effective IT security practices in place, we conducted tests to determine if selected controls were implemented properly and functioning effectively. We reported the results, including any problems and vulnerabilities we identified, to the City as they were completed.

Comparing the City’s IT security program to leading practices

We assessed the City’s IT security policies, procedures and practices to selected leading practices in this area to identify any improvements that could make them stronger. We selected leading practices from the Center for Internet Security’s Critical Security Controls (CIS Controls), which were developed by a broad community of private and public sector stakeholders after examining the most common attack patterns. The CIS Controls are a prioritized list of control areas designed to help organizations with limited resources optimize their security defense efforts to achieve the highest return on investment.

We gave City management the results of the assessments as they were completed.

Next steps

Our performance audits of local government programs and services are reviewed by the local government’s legislative body and/or by other committees of the local government whose members wish to consider findings and recommendations on specific topics. The City’s legislative body will hold at least one public hearing to consider the findings of the audit. Please check the City’s website for the exact date, time and location. The State Auditor’s Office conducts periodic follow-up evaluations to assess the status of recommendations, and may conduct follow-up audits at its discretion. See **Appendix A**, which addresses the I-900 areas covered in the audit. **Appendix B** contains more information about our methodology.

AUDIT RESULTS

We found that, while the City's IT policies and practices partially aligned with industry leading practices, there were areas where it could make improvements. We communicated the detailed results of our work and recommendations to responsible officials and staff for review, response and action. In summary, responsible officials and staff expressed agreement with the audit results and an intent to use them to continue to improve their cybersecurity posture. The City has since taken steps to address our recommendations, and continues to make improvements.

Because the public distribution of tests performed, test results, recommendations, and the government's responses could increase the risk to the City, distribution of this information is kept confidential under RCW 42.56.420 (4), and under Generally Accepted Government Auditing Standards, Sections 9.61-9.67.

We communicated the results of our audit work and recommendations to City management for review, response and action. We found that, while the City's IT policies and practices partially align with industry leading practices, there are areas where it can make improvements. The City has taken steps to address significant issues we identified, and continues to make improvements.

Because the public distribution of tests performed and test results could increase the risk to the City, distribution of this information is kept confidential under RCW 42.56.420 (4), and under Generally Accepted Government Auditing Standards, Sections 9.61-9.67. We shared detailed results with the City.

Recommendations

To help ensure the City protects its IT systems and the information contained in those systems, we make the following recommendations:

- Continue remediating identified gaps.
- Revise the City's IT security policies and procedures to align more closely with leading practices.

Auditor's Remarks

The Washington State Auditor's Office recognizes the City's willingness to volunteer to participate in this audit, demonstrating its dedication to making government work better. It is apparent the City's management and staff want to be accountable to the citizens and good stewards of public resources. Throughout the audit, they fostered a positive and professional working relationship with the State Auditor's Office.

APPENDIX A: INITIATIVE 900 AND AUDITING STANDARDS

Appendix A: Initiative 900 and Auditing Standards

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor's Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor's Office to "review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts." Performance audits are to be conducted according to the U.S. Government Accountability Office's *Government Auditing Standards*.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor's Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Schedule of Audit Findings and Responses section of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	No. The audit did not identify measurable cost savings. However, strengthening IT security could help the City avoid or mitigate costs associated with a data beach or security incident.
2. Identify services that can be reduced or eliminated	No. The audit objectives did not address services that could be reduced or eliminated.
3. Identify programs or services that can be transferred to the private sector	No. We did not identify programs or services that could be transferred to the private sector.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	Yes. The audit compares the City's IT security controls against leading practices and makes recommendations to align them.
5. Assess feasibility of pooling information technology systems within the department	No. The audit did not assess the feasibility of pooling information systems; it focused on the City's IT security posture.
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	Yes. The audit evaluates the roles and functions of IT security at the City and makes recommendations to better align them with leading practices.

I-900 element	Addressed in the audit
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	No. The audit did not identify a need for statutory or regulatory change.
8. Analyze departmental performance data, performance measures, and self-assessment systems	Yes. Our audit examined and made recommendations to improve IT security control performance.
9. Identify relevant best practices	Yes. The audit identified and used leading practices published by the Center for Internet Security to assess the City's IT security controls.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with Generally Accepted Government Auditing Standards (July 2018 revision) by the U.S. Government Accountability Office and *Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: SCOPE, OBJECTIVES AND METHODOLOGY

Scope

The audit assessed the extent to which the City's IT security programs, including their implementation and documentation, aligned with selected CIS Controls and their supporting sub-controls. This audit did not assess the City's alignment with federal or state special data-handling laws or requirements.

Objectives

To help the City protect its IT systems and secure the data it needs to operate, we conducted a performance audit designed to identify opportunities to improve IT security. This audit answered the following questions:

- Does the local government have vulnerabilities in its IT environment that could lead to increased risk from external or internal threats?
- Do the local government's IT security practices align with selected security controls?

Methodology

To answer the audit objectives, we conducted technical testing on the City's network, and we compared the City's IT security programs to selected leading practices.

Internal and external security testing

To determine if the City has vulnerabilities in its IT environment, we conducted internal and external security testing of selected key applications, systems and networks. This work was performed in November 2021 by a third-party vendor on our behalf and in January 2022 by our IT security specialists. This work included identifying and assessing vulnerabilities, and determining whether they could be exploited.

Comparing the City's IT security programs to leading practices

To determine whether the City's IT security practices align with leading practices, we interviewed key City IT staff, reviewed the City's IT security policies and procedures, observed City security practices and settings, and conducted limited technical analysis of City systems. This work was completed at the City in October 2021 with some additional follow-up afterwards.

We used selected controls from the CIS Controls, version 7.1, as our criteria to assess the City's IT security programs and to identify areas that could be made stronger.

CIS is a nonprofit organization focused on safeguarding public and private organizations against cyber threats. The CIS Controls are a prioritized set of actions that collectively form a defense-in-depth set of best practices that mitigate the most common attacks against systems and networks. The CIS Controls are developed by a community of IT experts who apply their first-hand experience as cyber defenders to create these globally accepted security best practices. The experts who develop the CIS Controls come from a wide range of sectors including retail, manufacturing, healthcare, education, government, defense and others.

Each control consists of a series of sub-controls that are distinct and measurable tasks; when the sub-controls are implemented together, they fully meet the requirements of the overall control. We assessed the City against all applicable sub-controls to determine the alignment with each of the overall controls assessed. We did this by assessing the extent to which the City met each sub-control in three areas:

1. **Implementing** the sub-control
2. **Automating or technically enforcing** the sub-control, which minimizes the possibility of the sub-control failing due to human error or inconsistent processes
3. **Maintaining documentation** to support the sub-control, such as policies or procedures

We also assessed to extent to which the City's IT management was **reporting** on the control to leadership.

Work on Internal Controls

This audit assessed the IT security internal controls at the City. We used a selection of controls from the CIS Controls as the internal control framework for the assessment. Based on an initial assessment, we selected five controls to include in the scope. To protect the City's IT systems, and the confidential and sensitive information in those systems, this report does not identify the specific controls assessed during the audit. We completed our assessment for the purpose of identifying opportunities for the City to improve its internal IT security controls, but not to provide assurance on the City's current IT security posture.

INFORMATION ABOUT THE PERFORMANCE AUDIT

Contact information related to this report

Address:	1104 Maple Street Sumner, WA 98390
Contact:	Jeff Steffens, Administrative Services Director
Website:	https://sumnerwa.gov/

Information current as of report publish date.

Audit history

You can find current and past audit reports for the City of Sumner at http://portal.sao.wa.gov/ReportSearch.

ABOUT THE STATE AUDITOR'S OFFICE

The State Auditor's Office is established in the Washington State Constitution and is part of the executive branch of state government. The State Auditor is elected by the people of Washington and serves four-year terms.

We work with state agencies, local governments and the public to achieve our vision of increasing trust in government by helping governments work better and deliver higher value.

In fulfilling our mission to provide citizens with independent and transparent examinations of how state and local governments use public funds, we hold ourselves to those same standards by continually improving our audit quality and operational efficiency, and by developing highly engaged and committed employees.

As an agency, the State Auditor's Office has the independence necessary to objectively perform audits, attestation engagements and investigations. Our work is designed to comply with professional standards as well as to satisfy the requirements of federal, state and local laws. The Office also has an extensive quality control program and undergoes regular external peer review to ensure our work meets the highest possible standards of accuracy, objectivity and clarity.

Our audits look at financial information and compliance with federal, state and local laws for all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits and cybersecurity audits of state agencies and local governments, as well as state whistleblower, fraud and citizen hotline investigations.

The results of our work are available to everyone through the more than 2,000 reports we publish each year on our website, www.sao.wa.gov. Additionally, we share regular news and other information via an email subscription service and social media channels.

We take our role as partners in accountability seriously. The Office provides training and technical assistance to governments both directly and through partnerships with other governmental support organizations.

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- Toll-free Citizen Hotline: (866) 902-3900
- Email: webmaster@sao.wa.gov

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2475

SUBJECT: Ordinance No. 2832 - Houston Road Annexation **CATEGORY:** Public Hearings

---

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
1. Presentation
2. Ordinance No. 2832 - Houston Road Annexation
3. Staff Report and Exhibits

STAFF CONTACT: Ann Siegenthaler, Senior Planner

SUMMARY BACKGROUND:
In July 2021, the City received a request from property owners in an area along Houston Road/Valley Avenue East to annex to the city. The annexation area is comprised of approximately 12.6 acres and 18 parcels, located adjacent to city limits in Sumner's urban growth area (UGA), located generally north of SR410, east of SR167, and west of the river, along Houston Road, Valley Avenue/Cannery Way, west of downtown, with portions of nearby parcels located directly east of the river.

Under state law, property located within the UGA may be annexed to its respective city, following state-adopted procedures for annexations. In September 2021, the City Council authorized the circulation of an annexation petition for the area. In April 2022, the property owners' applicant submitted the required petition documents to the City.

COUNCIL COMMITTEE/STUDY SESSION: **Council Study Session**
MEETING/STUDY SESSION DATE: 8/23/2021
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Conduct the required public hearing on the annexation, and forward the proposal for adoption at a September 2022 Council meeting.

Houston Road Annexation

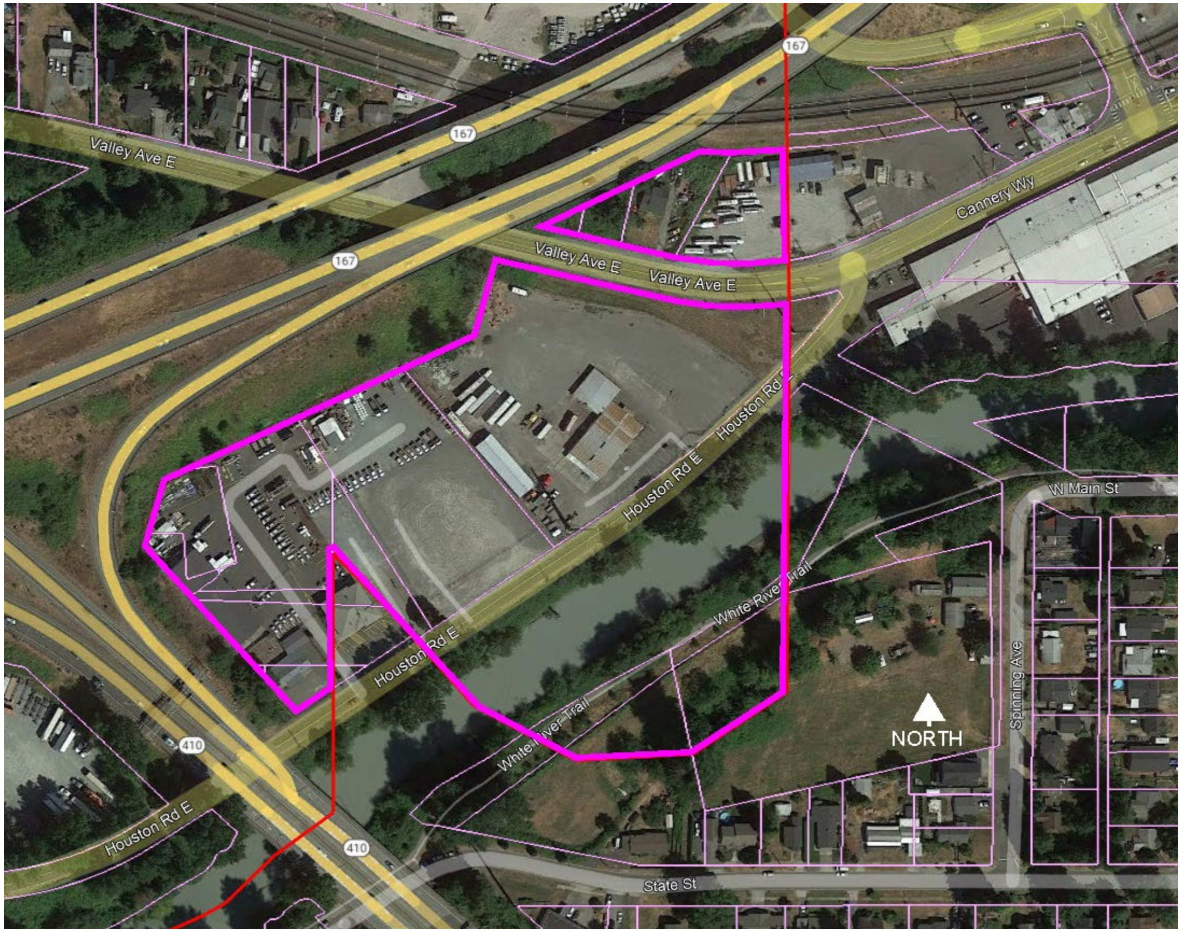
City Council Public Hearing – August 1, 2022

Location and Description

- "Houston Road Annexation" is mostly west of river along Valley Avenue and Houston Road

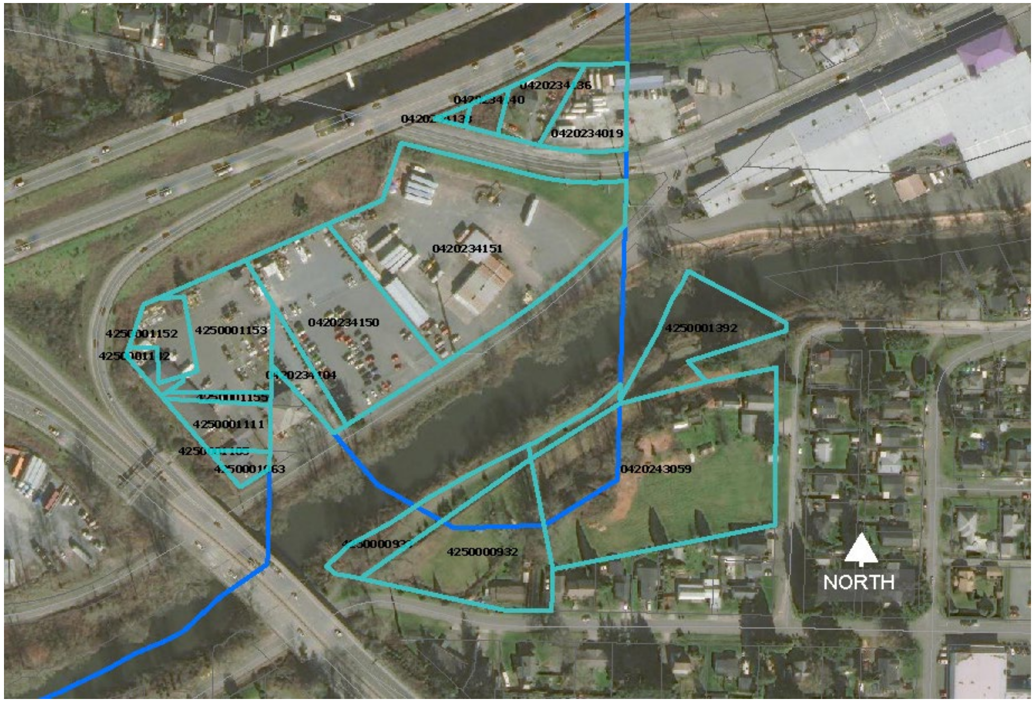
- 4 parcels east of river in Town Center

- Total approx. 12.67 acres and 18 parcels.



Background

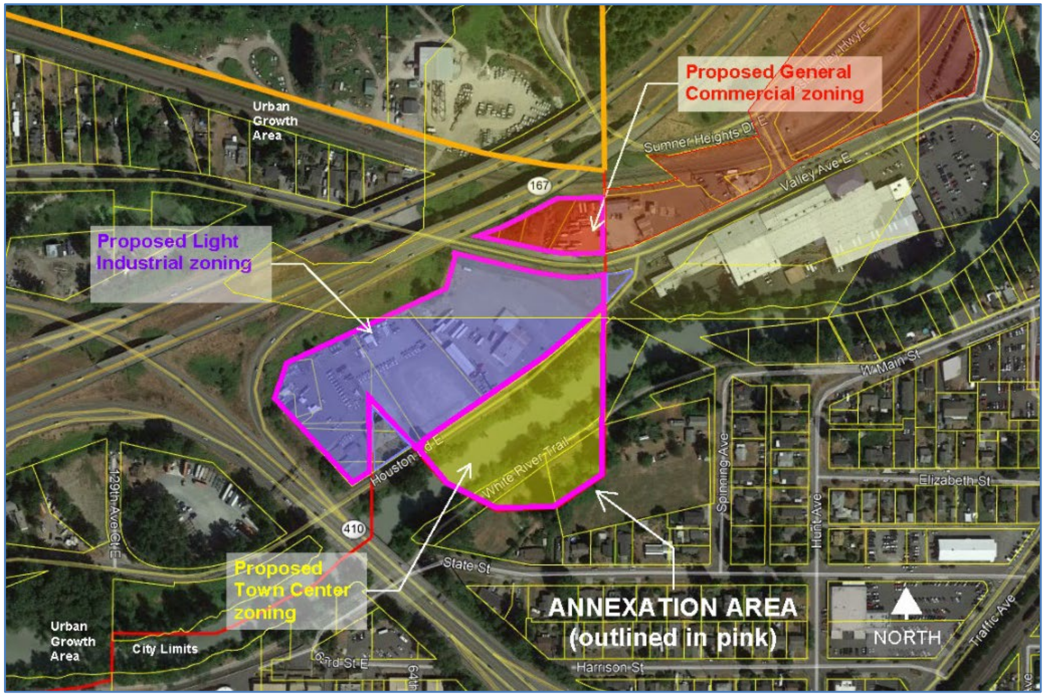
- **Annexation has followed process established in State law**
  - Applicant submitted request to annex July 2021.
  - City Council authorized applicant to circulate annexation petition.
  - Applicant submitted required petition documents April 2022.
  - City Council set a public hearing date for August 1, 2022.



- **Next steps in the process:**
  - After public hearing, City submits a Notice of Intent to Annex to the County Boundary Review Board.
  - Boundary Review Board must approve.

Effects of Annexation

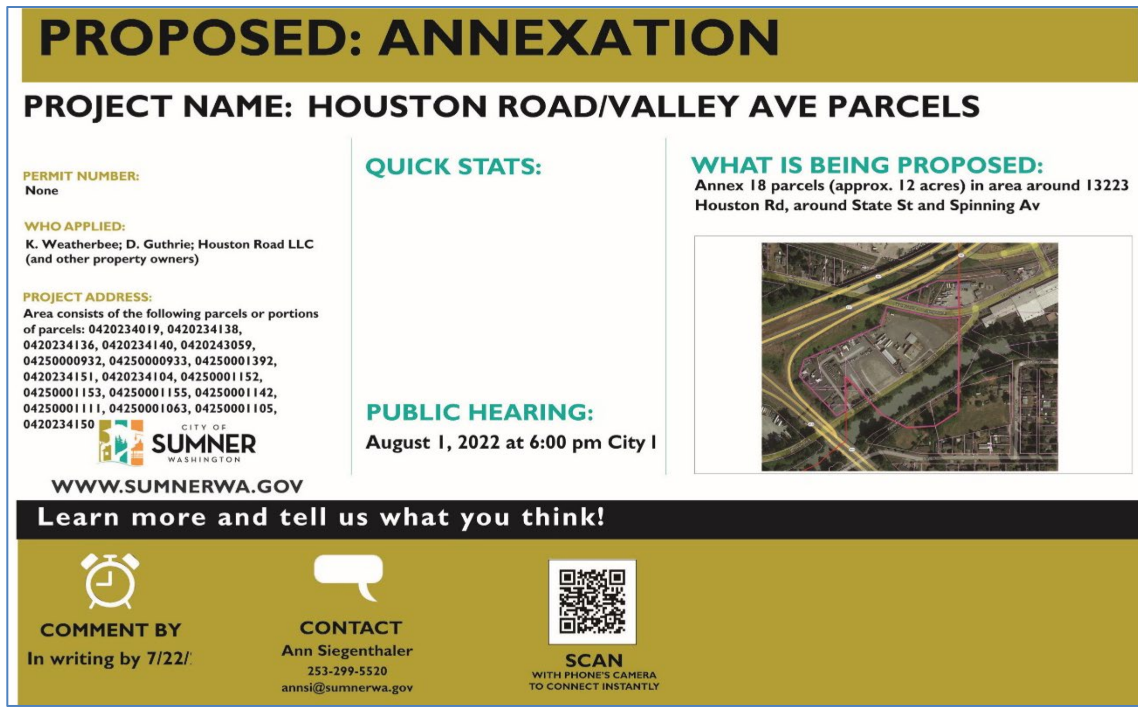
- **Population**
  - Mostly non-residential land uses.
  - Slight population increase if Commercial and Town Center properties redevelop.
- **Land Use/Zoning**
  - All subject to Sumner Municipal Code instead of County.
  - No longer County zoning of Moderate Density Single Family.
  - Zoning will become same as current Comprehensive Plan.
- **Services**
  - Area is within City water/sewer service area.
  - Fire, school district, library district same.



Public Notice and Comments

Public notice follows State requirements

- **Published in newspaper**
- **Posted signs in the area**
- **Mailed notice to all property owners in the annex area**
- **Published City website and email lists of interested parties**



Next Steps

- **August: Public hearing with City Council**
- **September: Council meets to decide on ordinance approving annexation**
  - Ordinance has delayed effective date to allow for County review
- **September-October: Submit to County Boundary Review Board for approval**
  - Staff submits documentation
  - Annexation approved/denied
  - Takes about 45-120 days

City of SUMNER Washington

Questions?

Ann Siegenthaler, City of Sumner Community Development
253-299-5520 annsi@sumnerwa.gov

ORDINANCE NO. 2832
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON PROVIDING FOR THE ANNEXATION OF CERTAIN REAL PROPERTY COMMONLY KNOWN AS HOUSTON ROAD ANNEXATION AREA.

WHEREAS, the Houston Road Annexation Area consists of 18 parcels within approximately 12.67 acres of unincorporated Pierce County contiguous to the City of Sumner and is generally located west of Houston Road and Valley Avenue East/Cannery Way, with a portion of the annexation area located east of Houston Road and the White River; and is described in more detail in Exhibit A and Exhibit B incorporated herein; and

WHEREAS, the Houston Road Annexation Area is situated within the City of Sumner's Urban Growth Area; and

WHEREAS, pursuant to RCW 35A.14.120, proceedings for initiating annexation of unincorporated territory to a noncharter code city may be commenced by the filing of an intent to petition by property owners constituting at least ten percent (10%) of the assessed valuation of the territory proposed to be annexed ("Initiating Party"); and

WHEREAS, the property at issue in this ordinance, commonly known as the "Houston Road Annexation Area," has been processed under the assessed valuation petition method of annexation; and

WHEREAS, having received a legally sufficient request to commence annexation proceedings from individuals whose ownership represents in excess of ten percent (10%) of the assessed valuation of the Houston Road Annexation Area, the Sumner City Council adopted Resolution No. 1596, authorizing the circulation of an annexation petition in the Houston Road Annexation Area and accepting the geographic area of the proposed annexation; and

WHEREAS, following passage of Resolution No. 1596, the Initiating Party presented the City with a petition reflecting the signatures of parties whose ownership represents more than sixty percent (60%) of the assessed valuation of the Houston Road Annexation Area; and

WHEREAS, on May 12, 2022, the Pierce County Assessor-Treasurer officially certified the sufficiency of the petition filed in the Houston Road Annexation Area, finding that the parties signing the petitions did own at least sixty-percent (60%) of the proposed annexation area; and

WHEREAS, through the existing comprehensive plan designations for the Houston Road Annexation Area, the City Council already adopted zoning regulations for the proposed area; and

WHEREAS, the Sumner Shoreline Master Program has established an Urban Shoreline Environment Designation for all of the annexation area within the State 200-foot shoreline jurisdiction; and

WHEREAS, City services are adequate and available to support the area upon annexation; and

WHEREAS, no interested parties invoked jurisdiction of the Boundary Review Board and challenged the proposed annexation within forty-five (45) days of the City submitting appropriate notice; and

WHEREAS, the City Council held a duly noticed public hearing on the subject of this ordinance on August 1, 2022; and

WHEREAS, the City Council has heard all persons wishing to be heard and finds that all statutory requirements have been satisfied in order to accomplish the proposed annexation;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER DO ORDAIN AS FOLLOWS:

Section 1. Annexation of the Houston Road Annexation Area. The real property known as the proposed Houston Road Annexation Area, which is more particularly described in Exhibit A, a copy of which is attached hereto and incorporated herein by this reference as if set forth in full, is hereby annexed to and made a part of the City of Sumner on _________, 2022.

Section 2. Assumption of Existing City Indebtedness. On ________, 2022, pursuant to the terms of the annexation petition and consistent with Resolution No. 1596, all property within the proposed Houston Road Annexation Area be assessed and taxed at the same rate and on the same basis as other property within the City of Sumner including assessments or taxes in payment of all or any portion of the outstanding indebtedness of the City contracted, incurred prior to, or existing on the date of annexation, if any.

Section 3. Zoning for Annexation Area. The property annexed by this ordinance shall be zoned consistent with the existing comprehensive plan designations for the Houston Road Annexation Area; and the Sumner Shoreline Master Program Urban Shoreline Environment Designation will be applied to the area upon annexation, subject to final approval by the Washington State Department of Ecology.

Section 4. Duties of the City Clerk. Upon passage of this annexation ordinance, the City Clerk is directed to file a certified copy of such document with the Pierce County Council. The Clerk is further directed to file a certificate of annexation with the State Office of Financial Management as directed by RCW 35A.14.700.

Section 5. Contemporaneous Updates. The City's Comprehensive Plan and zoning map are hereby amended to conform to the annexation approved in this ordinance.

Section 6. Severability - Construction. (1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this ordinance. (2) If the provisions of this ordinance are found to be inconsistent with the other provisions of the Sumner Municipal Code, this ordinance is deemed to control.

Section 7. Effective Date. This Ordinance, being the exercise of a power specifically delegated to the legislative body of the City of Sumner, is not subject to referendum, and shall take effect and be in force five (5) days after its approval and publication, as provided by law.

Section 8. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Passed by the City Council of the City of Sumner, Washington, on the __________ day of ______________________________, 2022.

____
Kathy Hayden
Mayor

Approved as to form:

____
Andrea Marquez
City Attorney

Attest:

____
Michelle Converse
City Clerk

Published:

EXHIBIT A

MAP AREA

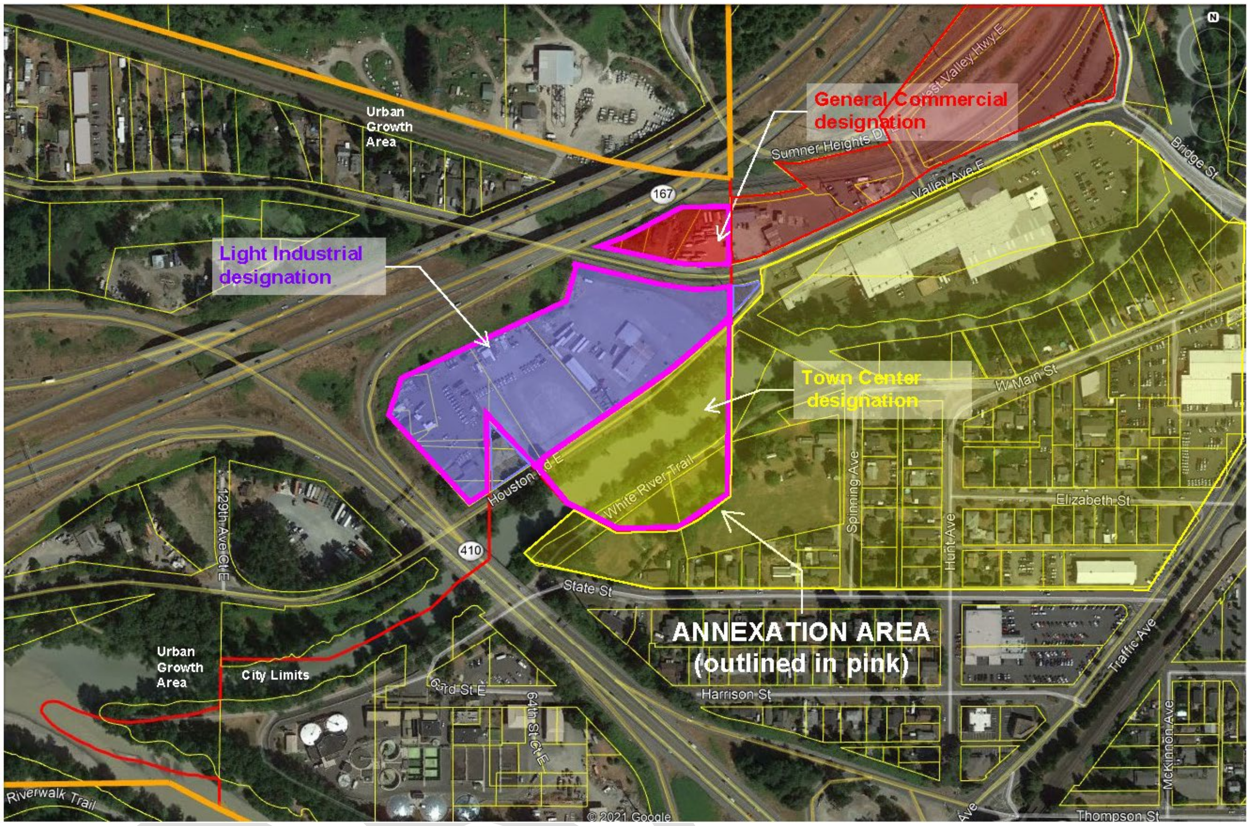


EXHIBIT A

ANNEXATION LEGAL DESCRIPTIONS

LEGAL DESCRIPTION
PROPOSED ANNEXATION TO THE CITY OF SUMNER

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 20 NORTH, RANGE 4 EAST, W.M., PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 23; THENCE SOUTH 01°33'26" WEST, ALONG THE EAST LINE OF SAID SECTION 23, ALSO BEING THE EXISTING WEST LINE OF THE SUMNER CITY LIMITS, ESTABLISHED BY ORDINANCE 311, 558.1 FEET MORE OR LESS, TO THE ORIGINAL CITY LIMITS OF SUMNER AS ESTABLISHED BY ELECTION ON JANUARY 27, 1891; THENCE ALONG SAID ESTABLISHED CITY LIMITS SOUTH 51°44'26" WEST, 166.25 FEET; THENCE SOUTH 86°14'26" WEST, 174.40 FEET; THENCE NORTH 63°45'34" WEST 174.60 FEET; THENCE NORTH 42°45'34" WEST, 307.85 FEET MORE OR LESS, TO THE CENTERLINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, SAID TOWNSHIP AND RANGE; THENCE SOUTHERLY ALONG SAID CENTERLINE, SOUTH 0°39'20" WEST 176.1 FEET MORE OR LESS, TO THE NORTHERLY RIGHT OF WAY LINE OF HOUSTON ROAD; THENCE SOUTH 57°43'48" WEST ALONG SAID RIGHT OF WAY LINE, 46.42 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF THE SR 410 A-19 LINE, OPPOSITE APPROXIMATE HIGHWAY ENGINEER'S STATION 50+02.2, AS SHOWN PER WASHINGTON STATE HIGHWAY COMMISSION RIGHT OF WAY PLAN FOR SR 167, JCT. SR 161 TO JCT. SR 410, DATED MAY 23, 1968, SHEET 7; THENCE CONTINUING ALONG SAID RIGHT OF WAY LINE, NORTH 41°35'05" WEST, 338.89 FEET TO A POINT OPPOSITE A-19 STATION 34+50; THENCE NORTH 18°50'44" EAST, 98.08 FEET TO INTERSECT A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SR 167, OPPOSITE CENTERLINE STATION 399+50, PER THE AFORESAID RIGHT OF WAY PLAN; THENCE NORTH 64°11'29" EAST ALONG SAID RIGHT OF WAY LINE, 506.58 FEET TO A POINT OPPOSITE SR 167 CENTERLINE STATION 404+55; THENCE NORTH 20°00'00" EAST, 126.41 FEET TO A POINT OPPOSITE SR 167 CENTERLINE STATION 405+38.4; THENCE ALONG THE SOUTHERLY RIGHT OF WAY OF SR 167 AS SHOWN PER WASHINGTON STATE HIGHWAY COMMISSION RIGHT OF WAY PLAN FOR SR 167, JCT. SR 410 TO KING COUNTY LINE, DATED MAY 1, 1969, SHEET 3, THENCE NORTH 63°03'29" EAST ALONG SAID RIGHT OF WAY LINE OF SR 167, 101.36 FEET TO A POINT OPPOSITE CENTERLINE STATION 406+39.26, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 21°16'47" WEST, 2315 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 5°34'56", AN ARC DISTANCE OF 225.55 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF THE CHICAGO MILWAUKEE & ST. PAUL RAILROAD, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT, THE RADIUS POINT OF WHICH BEARS NORTH 1°54'37" EAST, 1,323.57 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 5°41'16", AN ARC DISTANCE OF 131.39 FEET TO INTERSECT THE EXISTING WEST LINE OF THE SUMNER CITY LIMITS ON THE EAST LINE OF SAID SECTION 23; THENCE SOUTH 01°33'26" WEST ALONG SAID SECTION LINE, 255.77 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

CONTAINING 551,693

SQUARE FEET (12.67) MORE OR LESS.

CITY OF SUMNER WASHINGTON

1104 MAPLE STREET, SUMNER WA 98390

DATE: July 15, 2022
TO: Mayor Hayden and City Council
FROM: Ann Siegenthaler, Associate Planner
RE: **Houston Road Annexation – Public Hearing**

I. BACKGROUND / WHY THE CHANGES ARE PROPOSED

The properties subject to this annexation are located in an area known as the "Houston Road Annexation Area," which is primarily located west of the river along Valley Avenue East and Cannery Way, and includes portions of 2 parcels east of the river. The proposed annexation area is approximately 12.67 acres comprised of 18 parcels (see Exhibit A).

Under State law, property located within a city's urban growth area (UGA) may be annexed to its respective city, following state-adopted procedures for annexations. It is the function of a UGA to identify properties that are currently located in the County but which are appropriate for future incorporation into the adjacent city. The steps in the annexation process are laid out in State code (RCWs). The proposed annexation has followed the required steps in the process, and required City Council reviews, as summarized below.

- In July 2021, the City received an annexation request from multiple property owners in the area known as the "Houston Road Annexation" area.
- In September 2021, the City Council adopted a resolution authorizing the applicants to circulate an annexation petition to property owners.
- In April 2022, the applicant submitted the required petition documents to the City, which must be signed by owners of not less than 60% of the assessed value of the property in the annexation area.
- The Pierce County Assessor-Treasurer reviewed the petition for signature certification and issued a "certification of sufficiency" on May 12, 2022.
- Following certification, the City Council in June 2022 set a public hearing date for the annexation request to be heard August 1, 2022.
- The public hearing is a required step, and requires public notice as outlined in the RCWs. Public notice has been issued as required.

If the annexation is approved, the properties will be served by City of Sumner utilities and other City services, and will be subject to Sumner zoning laws and other applicable municipal code provisions. There is no development proposal associated with this annexation request.

II. DESCRIPTION OF PROPOSAL

A. Property location and description:

A map showing the annexation area (Exhibit A) and a list of parcels (Exhibit B) are attached. There are three sub-areas in the proposed annexation:

- Subarea A: 10 parcels (approximately 6.8 acres) are located north of SR410, east of SR167, west of Houston Road, and south of Valley Avenue East. These have a Light Industrial land use designation in Sumner's Comprehensive Plan and are developed in commercial-industrial uses, such as Wayne's Roofing. This area was the subject of a 2020 Comprehensive Plan amendment in which the Council changed the General Commercial (GC) designation to Light Industrial (M-1).

- Subarea B: 4 parcels (approximately .95 acres) are located north of SR410, east of SR167, west Cannery Way, and north of Valley Avenue East. Uses are primarily commercial, such as Snider Petroleum, with a few single family and vacant parcels. This area has a General Commercial designation.

- Subarea C: 2 narrow tax parcels located along the White (Stuck) River are owned by the City of Sumner and contain the Sumner Link Trail. The 2 remaining parcels (portions thereof) consist of approximately .86 acres located east of the White River, and west of Spinning Avenue. These are developed as single-family dwellings but have a Town Center (commercial/mixed use) land use designation. The two parcels are bisected by the city's corporate boundary. Including these parcels in the annexation proposal will create a logical city limit boundary.

B. Effects of annexation on population, land use/zoning, and services:

Population
Annexation of the area is anticipated to slightly increase population over the long term, depending on the land use designation/zoning of each parcel. At the time of annexation, the population change is likely to be negligible, given existing development patterns and land use designations. Assuming the area redevelops over the long term, residential mixed-use development in the General Commercial zone could occur, as well as 6-story residential buildings in the Town Center Plan area. At most, a rough estimate of the population change is an increase of approximately 100-150 persons over the long term.

Land Use/Zoning
Upon annexation, the parcels will be subject to the Sumner Municipal Code instead of County codes. All parcels currently have a City Comprehensive Plan designation, since they are located with the Sumner UGA. New zoning would take effect upon annexation, and would be the same as the current Light Industrial, General Commercial and Town Center mixed-use designations (see Exhibit C). Annexation would allow redevelopment and growth that is not currently allowed under the Pierce County "Moderate Density Single Family (MSF)" land use designations and regulations.

Services
The area is currently served by East Pierce Fire and Rescue, Pierce County Library District, and Sumner-Bonney Lake School District. Upon annexation, the area will continue to be served by these districts. The area is currently within the City's water and sanitary sewer service areas. The City's water and sewer utilities have sufficient capacity for the area. Therefore, the City is capable of providing services, and intends to serve the annexation area with water and sewer services once the area is annexed. Many of the parcels in the area not connected to City utilities will be required to connect to services and extend water/sewer mains at the time of development. Development/redevelopment will also trigger system development charges to ensure development covers its fair share for City services. Other City services such as parks, administrative services, police services are available to the area, and the City has capacity and the intention to provide such services upon annexation. More details regarding services can be found in the Notice of Intent to the Boundary Review Board (see Draft Notice of Intent, Exhibit D).

V. PUBLIC & AGENCY COMMENTS

Public notice was issued for the proposed annexation in accordance with requirements for annexation hearings in RCW 35A.01.040:

- Published notice of the hearing in the newspaper; and
- Posted large signs in 4 public places within the annexation area.
- In addition, staff posted notices at City Hall, on our website and to City's public notice list.
- Staff also mailed the hearing notice to all property owners in the annexation area.

VI. NEXT STEPS IN ANNEXATION PROCESS

After the required public hearing, the City Council may approve the annexation request by ordinance (see Draft Ordinance Exhibit E). However, before the annexation can become effective, it must go through the following additional steps:

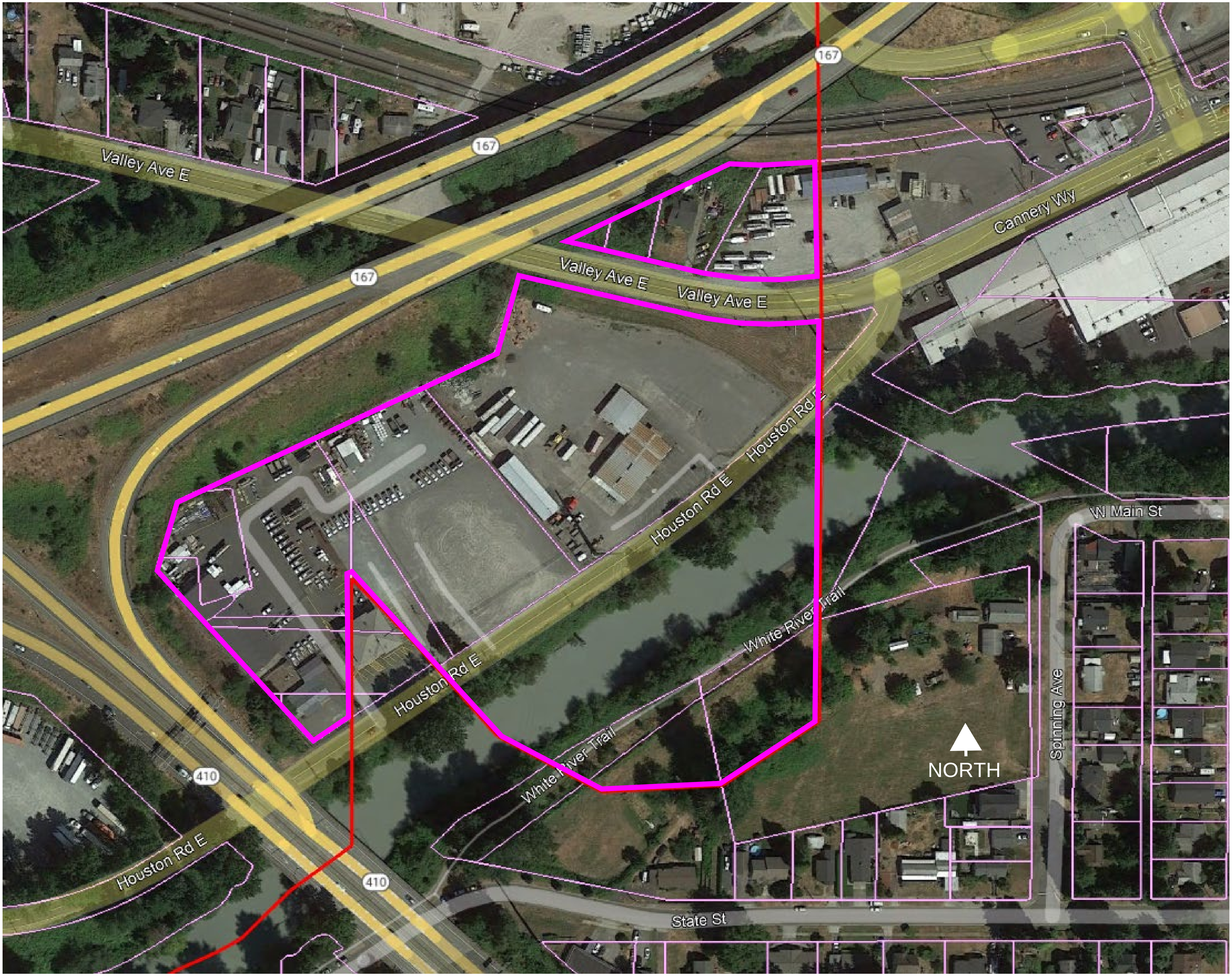
- The City submits a Notice of Intent to Annex to the County Boundary Review Board. The submittal includes additional details regarding the effects of the annexation on land use, utility services, revenues/expenditures, and other services (see Exhibit D Draft Notice of Intent).
- Approval by the County Boundary Review Board is required. This is typically a 45-day to 120-day review process.
- Notification of the annexation is to be provided to the County Commissioners, Assessor-Treasurer, and all service providers (e.g. districts, utilities) in the annexation area.

VII. STAFF RECOMMENDATION

Staff recommends that the Council conduct the required public hearing on the proposed annexation, and forward the proposal for adoption at a September 2022 Council meeting.

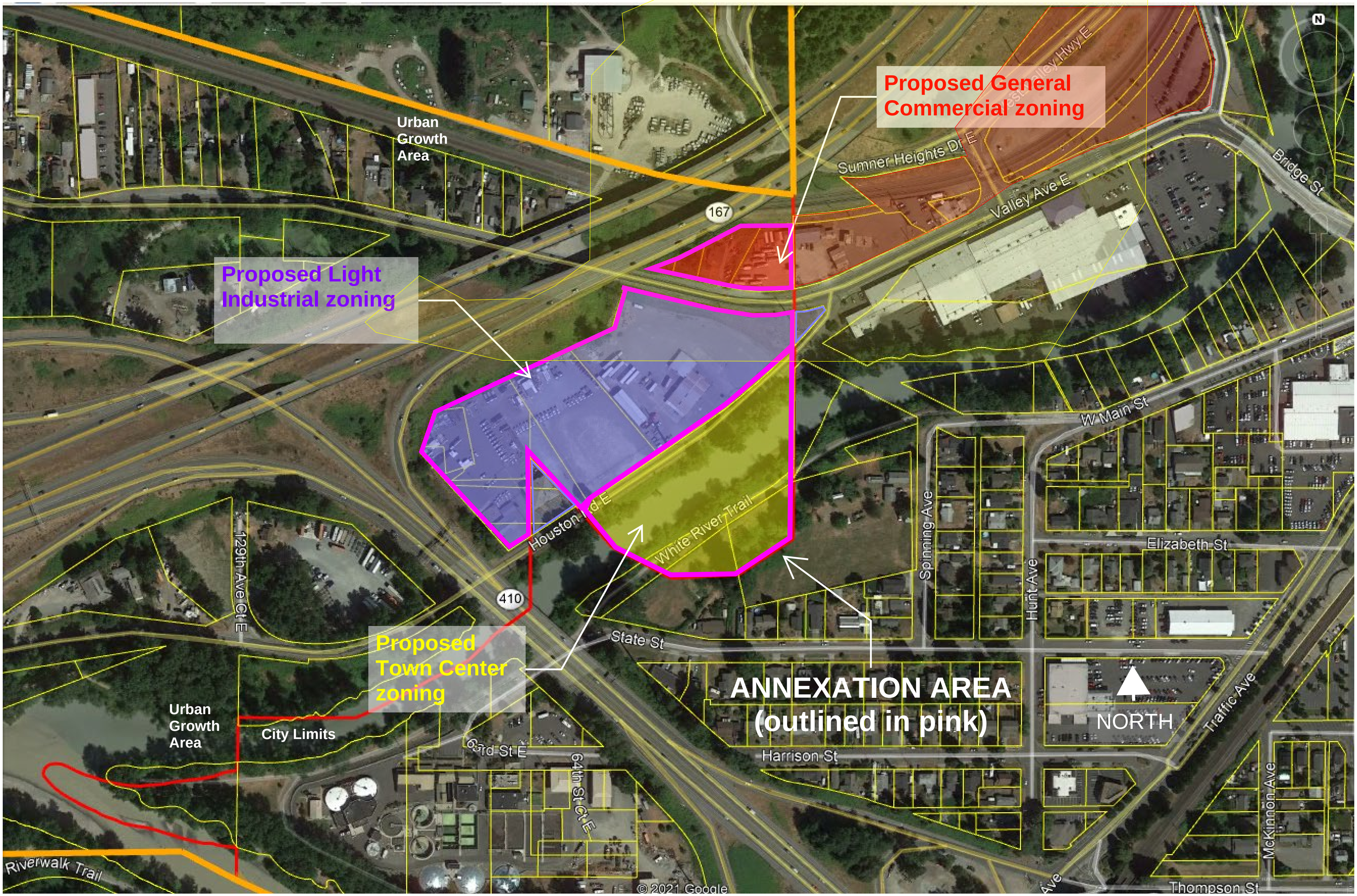
VII. EXHIBITS

A. Map of annexation area
B. Annexation parcel inventory
C. Map of annexation area future zoning designations
D. Draft Notice of Intent to Boundary Review Board
E. Draft Ordinance No. 2832 annexation approval


167
167
167
Valley Ave E
Valley Ave E
Valley Ave E
Cannery Wy
Houston Rd E
Houston Rd E
Houston Rd E
Houston Rd E
W Main St
White River Trail
White River Trail
Spinning Ave
NORTH
410
410
State St

Parcel no.	Property Address	Owner Name	Mailing Address	Assessed Value		Notes	Signed Supporter?
0420234019	13401 Valley Avenue E	O D Snider & Son Inc	PO Box 368, Sumner, WA 98390	$	231,000.00		Yes
0420234136	13315 Valley Avenue E	John and Stacia Dorman	29417 22nd Ave E, Roy, WA 98580	$	323,900.00		Contacting
0420234140	XXX Valley Avenue E	MEHEA USA LLC c/o Michael Behzad	10866 Wilshire Blvd Ste 400, Los Angeles, CA 90(	$	5,300.00		Contacting
0420234138	XXX Valley Avenue E	Justin and Joleen Jones	PO Box 1055, Sumner, WA 98390	$	2,800.00		Yes
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]
0420234151	13223 Houston Road E	Houston Road LLC	13608 Cannery Way, Sumner, WA 98390	$	1,695,300.00		Yes
0420234150	13223 Houston Road E	Kitty Wetherbee and D & V Guthrie	PO Box 2287, Sumner, WA 98390	$	842,800.00		Yes
0420234104	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	96,500.00		Yes
4250001153	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	410,300.00		Yes
4250001152	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	407,700.00		Yes
4250001142	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	47,400.00		Yes
4250001155	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	41,500.00		Yes
4250001111	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	142,500.00		Yes
4250001063	13105 Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	72,600.00		Yes
4250001105	XXX Houston Road E	Kitty Wetherbee	PO Box 2287, Sumner, WA 98390	$	2,700.00		Yes
4250001392	XXX Spinning Avenue	City of Sumner	1104 Maple Street, Suite 245, Sumner, WA 9839	$	82,100.00	A portion of	City property
4250000933	XXX State Street	City of Sumner	1105 Maple Street, Suite 245, Sumner, WA 9839	$	73,300.00	A portion of	City property
4250000932	401 State Street	Mitchell Soholt	401 State Street, Sumner, WA 98390	$	378,200.00	A portion of	Contacting
0420243059	910 Spinning Avenue	Daniel Mickey	5713 Parker Road E, Apt 131, Sumner, WA 9839(	$	553,000.00	A portion of	Contacting

Total Value	**$**	**5,452,800.00**
10% Value	$	545,280.00
Value of Letter of Intent Supporters	$	4,037,000.00
% of Total Value		74%



Proposed General Commercial zoning
Proposed Light Industrial zoning
Proposed Town Center zoning
ANNEXATION AREA (outlined in pink)
NORTH
Urban Growth Area
Urban Growth Area
City Limits
Sumner Heights Dr E
Valley Ave E
Bridge St
W Main St
Elizabeth St
State St
Harrison St
Thompson St
Spinning Ave
Hunt Ave
Traffic Ave
McKinnon Ave
Houston Rd E
White River Trail
129th Ave Ct E
63rd St E
64th St Ct E
Riverwalk Trail
167
410
© 2021 Google

Before the Pierce County Boundary Review Board

NOTICE OF INTENT
TO ANNEX

Submitted by the City of Sumner
September XX, 2022

CONTACT:
Ann Siegenthaler
Senior Planner
City of Sumner
1104 Maple Street
Sumner, WA 98390

RE: Annexation of a 12.67-acre area located in the northwest portion of the
City of Sumner Urban Growth Area

Comprising that portion of the Southeast Quarter of Section 23, Township 20, Range 4 East, W.M., Pierce County, Washington, hereinafter known as:

"*The Houston Road Annexation Area*"

Table of Contents

I. SUMMARY

By this Notice, the City of Sumner, Washington formally declares its intent to annex an area referenced herein as "The Houston Road Annexation Area," a 12.67-acre area located north of SR410, east of SR167, west of Houston Road and Cannery Way, and south of Main Street, comprising a portion of the City's Urban Growth Area (UGA) north and west of existing corporate limits. The annexation area contains 18 parcels or portions of these parcels of varying sizes, primarily developed with commercial and commercial-industrial lands uses. Most have a land use designation of Light Industrial or General Commercial. Two parcels contain single family dwellings but have a Town Center designation, which is a mixed use (commercial-multifamily) designation.

The Houston Road Annexation request is being processed under the Direct Petition Method (i.e., sixty percent (60%) assessed valuation) authorized within RCW 35A.14. This Statute authorizes proceedings for annexation to begin upon the filing of a written notification of intent to commence an annexation process. Having received the legally sufficient notification of intent, the Sumner City Council passed Resolution No. 1596 authorizing circulation of annexation petitions in the Houston Road Annexation area. Since passage of Resolution No. 1596, the annexation proponents presented the City with a petition reflecting the signatures of parties who are the owners of the requisite sixty percent (60%) of the assessed valuation of the Annexation Area.

The annexation area is located within the City's established Urban Services Area and designated Urban Growth Area. The area is currently served by East Pierce Fire and Rescue, Pierce County Library District, Sumner-Bonney Lake School District, and is within the City's water and sanitary sewer service areas. The City's water and sewer utilities have sufficient capacity for the area. Therefore, the City is capable of providing services, and intends to serve the annexation area with water and sewer services once the area is annexed.

Based on the location and services available to the annexation area, the proposed annexation is consistent with the intent and purpose of the Growth Management Act, which reads in relevant part: "[i]n general, cities are the units of local government most appropriate to provide urban governmental services." RCW 36.70A.110(4). Accordingly, the City of Sumner seeks to fulfill its obligations and responsibilities under the Growth Management Act by extending its boundaries to include the Houston Road Annexation Area.

II. BACKGROUND AND MAPS

1. Proposed Action and Description of Area

By this Notice, the City of Sumner, Washington formally declares its intent to annex an area referenced herein as "The Houston Road Annexation Area" (**see Exhibit E**). This annexation is being processed under the Direct Petition (Assessed Valuation) Method authorized by RCW 35A.14, with property owners with 60% of the assessed valuation of the area signing a petition in support of annexation. This Statute authorizes proceedings for annexation to begin upon the filing of a written notification of intent to commence an annexation process from any initiating party or parties who are the owners of not less than ten percent of the assessed valuation of the area for which annexation is sought.

The City received a legally sufficient request in July 2021 to commence annexation proceedings from individuals who own in excess of ten percent (10%) of the assessed valuation for this annexation area. Subsequently, the Sumner City Council passed Resolution No. 1596 on September 20, 2021, authorizing circulation of annexation petitions in the Houston Road Annexation area; and declaring the City Council's acceptance of the geographic area in the annexation. The Council, in the resolution, affirmed that it has already adopted zoning regulations for the annexation area, and that there is no current City indebtedness for which the proposed annexation would be required to assume per RCW 35A.14.120. Since the passage of Resolution No. 1596, the annexation proponents presented the City with petitions reflecting the signatures of parties who are the owners of the requisite sixty percent (60%) of the assessed valuation of the Annexation Area. On May 12, 2022 the Pierce County Assessor-Treasurer issued a declaration certifying that the petition bears the names and purported signatures of persons who are owners of at least 60% of the assessed value of the area proposed for annexation.

The Houston Road Annexation Area is situated within the City of Sumner's designated Urban Growth Area and Pierce County's overlapping Comprehensive Urban Growth Area. The annexation area is situated within the City's established Urban Services Area and the designated Urban Growth Area. The proposed annexation area is approximately 12.67 acres adjacent to the city limits, comprised of 18 parcels, located generally north of SR410, east of SR167, and south of Main Street, northwest of the existing corporate limits. Maps showing the general vicinity of the annexation area and an orthophotograph are attached to this report **(Exhibits G & H).** The annexation area consists of the following sub-areas:

- Subarea A: 10 parcels (approximately 6.8 acres) are located north of SR410, east of SR167, west of Houston Road, and south of Valley Avenue East. These have a Light Industrial land use designation in Sumner's Comprehensive Plan and are developed in commercial-industrial uses.

- Subarea B: 4 parcels (approximately .95 acres) are located north of SR410, east of SR167, west Cannery Way, and north of Valley Avenue East. Uses are commercial, single family, and vacant, and the parcels have a General Commercial designation.

- Subarea C: 2 narrow tax parcels located along the White (Stuck) River are owned by the City of Sumner and contain the Sumner Link Trail. The 2 remaining parcels (portions thereof) consist of approximately .86 acres located east of the White River, and west of Spinning Avenue. These are developed as single-family dwellings but have a Town Center (commercial/mixed use) land use designation. The two parcels are bisected by the city's corporate boundary. Including these parcels in the annexation proposal will create a logical city limit boundary.

2. Initial Resolution Accepting the Annexation Proposal and Copy of Petition for Annexation

Having received a legally sufficient request for annexation (i.e., a written notification from the owners of not less than ten percent of the assessed valuation for which annexation is sought), the Sumner City Council passed Resolution No. 1596 on September 20, 2021, authorizing circulation of annexation petitions in the Houston Road Annexation area; and declaring the City Council's acceptance of the geographic area in the annexation. Since passage of Resolution No. 1596, the annexation proponents presented the City with petitions reflecting the signatures of parties who are the owners of the requisite sixty percent (60%) of the assessed valuation of the Annexation Area. A copy of the resolution is included in the Appendix to this Notice and marked as **Exhibit A.** The Pierce County Assessor-Treasurer issued a Declaration, dated May 12, 2022 certifying that submitted petitions represent owners of at least 60% of the annexation area’s assessed valuation **(Exhibit C).** A true and correct copy of the annexation petition certified by the Pierce County Boundary Review Board and Assessor-Treasurer is included in the Appendix and marked as **Exhibit B.**

3. Environmental Review

Annexation actions are specifically exempt from the application of the State Environmental Policy Act (RCW 43.21C.222). As part of the City’s annual Comprehensive Plan amendment process in 2020, a *portion* of the annexation area was evaluated in the Draft and Final Supplemental Environmental Impact Statement (SEIS) for the City of Sumner Comprehensive Plan Update, prepared in 2020. As part of this annual Plan update, the annexation proponent received approval for a privately initiated Comprehensive Plan map amendment (File #MA-01) to redesignate 14 parcels, 10 of which comprise Subarea A of the annexation area, from a General Commercial designation to a Light Industrial land use designation. The SEIS addressed future land use and services within the city for various proposed Comprehensive Plan amendments, which included the proposed designation change in Subarea A. There are no other known environmental reviews of the area. Environmental review and Comprehensive Plan designations and proposed Zoning are discussed in sections below.

At the time of future development or redevelopment, proposals will be evaluated under project-specific SEPA environmental review where applicable, which may include analyses such as a Traffic Impact Analysis, public safety improvements and any other design upgrades to comply with applicable City of Sumner codes.

4. Legal Description

Enclosed is a copy of the legal description and survey for the proposed annexation prepared by Parametrix **(Exhibit D).** The legal description was submitted to the County as a part of the County’s Determination of Sufficiency process, and was reviewed for accuracy by County staff.

5. Maps

Included in this Notice of Intent is an Assessor quarter section map(s) that covers this annexation area, as well as other maps required for this report. All maps are included as exhibits attached to this report (refer to Appendix – Exhibits).

III. <u>FACTORS THE BOARD MUST CONSIDER</u>

1. Background

RCW 35A.14.200 specifies the factors to be considered by the Board. These factors are listed below and discussed in subsequent sections.

1) “The immediate and prospective population of the area proposed to be annexed, the configuration of the area, land use and land uses, comprehensive use plans and zoning, per capita assessed valuation, topography, natural boundaries and drainage basins, the likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years, location and coordination of community facilities and services; and

2) The need for municipal services and the available municipal services, effect of ordinances and governmental codes, regulations and resolutions on existing uses, present cost and adequacy of governmental services and controls, the probable future needs for such services and controls, the probable effect of the annexation proposal or alternatives on cost and adequacy of services and controls in area and adjacent area, the effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units; and
3) The effect of the annexation proposal or alternatives on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county."

Further, per RCW 35A.14.200, "The county annexation review board shall determine whether the proposed annexation would be in the public interest and for the public welfare."

2. Population

The annexation area consists of approximately 12.67 acres. This area is a mix of primarily commercial and industrial uses, with 3 parcels having single family residential uses. The City's total population in the 2020 estimate by the Washington State Office of Financial Management is approximately 10,700 individuals. The annexation will slightly increase the total City population, as further described below. Anticipated population depends on the land use designation Sumner has assigned to each area.

In Subarea A (west of the river, south of Valley Avenue), existing industrial/commercial uses indicate that there are no residences there. Once annexed with a Light Industrial designation, residential uses will not be allowed in that zone. Therefore, it is assumed that the area will contribute no additional residents to the city.

Subarea B (west of the river, north of Valley Avenue) has a General Commercial designation, where residential uses are allowed in a mixed-use development. The maximum density allowed under Sumner code is 25 dwelling units per acre (du/ac). Given that the commercial area comprises approximately .95 acres, it could see at most approximately 23 additional units. Assuming 2.41 people per household***** redevelopment here could yield at most 55 additional persons.

Subarea C has a Town Center designation. The 2 residential parcels that have unincorporated portions could redevelop under the Town Center plan zoning. With approximately .83 acres, the undeveloped/unincorporated portions of the residential parcels could be developed into 6-story multifamily uses with approximately 50 units total. This could result in a future population of approximately 90-100 persons. Actual development constraints will likely result in much fewer units/persons.

Upon annexation, the population change is likely to be negligible in the near term, given existing development patterns and land use designations. As the area redevelops over the long term, at most, a rough estimate of the population change is an increase of approximately 100-150 persons. Unincorporated areas adjacent to the annexation have a Pierce County designation of Moderate Density Single Family (MSF) and are developed in single family and small commercial uses. Therefore, the adjacent county area is unlikely to see significant population increases. The incorporated (Sumner) area adjacent to the annexation area has land use designations where high density residential uses and commercial services are allowed. Based on this, the annexation area is a logical area to incorporate into the city.

** Based on Sumner household size of 2.41 persons in 2020. (Source: ESRI Business Analyst (household size, households); ACS 2014-2018; OFM; BERK 2020 Sumner Comprehensive Plan and Zoning Amendments 2020.) Estimates from PSRC in VISION 2050, project that household sizes in Pierce County and its cities will decline to 2.38 in 2044.*

3. Topography and Natural Boundaries

The annexation area is located on the valley floor, immediately northwest of the White (Stuck) River. Areas of incorporated Sumner are also located on this side of the river. The annexation area is bounded by the railroad tracks, SR167 and SR410 rights-of-way, and boundaries follow parcel boundaries and rights-of-way. The terrain in this area is relatively flat, and all parcels are directly accessible from arterials and collectors.

Portions of the annexation area are located within the 200-foot shoreline jurisdiction, but developable areas appear to be outside of the 50-foot protected Urban Environment buffer (see Land Use section below). Part of Subarea A and all of Subarea C are mapped on City and County floodplain maps as being located within the 100-year floodplain (FEMA 2017). Future development/redevelopment of these parcels will be required to address floodplain regulations or provide new data on location of base flood elevation.

4. Land Use

As noted above, the annexation area consists of a mix of industrial and commercial development, a few residential uses, and vacant parcels. Access to the area is from Valley Avenue East and Cannery Way/Houston Road. Proposed zoning upon annexation would maintain the current industrial, commercial and mixed-use designations, and City of Sumner regulations would apply. The annexation area is relatively underdeveloped, therefore many of the parcels are expected to redevelop to expand commercial and industrial uses, and/or redevelop to more intensive residential uses in the future (see Comprehensive Plans and Zoning section below). Annexation would allow this type of redevelopment and growth that is not currently allowed under the Pierce County land use designations and regulations. Further, the annexation would correct a problem with the city limits boundary that affects development. The current city limit line bisects several parcels, development sites and even a building. Upon annexation, these development sites would fall under one jurisdiction and gain certainty as to which development regulations apply.

5. Comprehensive Plans and Zoning

<u>Pierce County Comprehensive Plan</u>. The area in question is located within the Comprehensive Urban Growth Area (CUGA). The entire annexation area and adjacent unincorporated areas are currently designated Moderate Density Single Family (MSF) in Pierce County, which does not allow industrial or commercial uses. The annexation area is not within an adopted Pierce County Neighborhood Plan Area. The annexation area is located entirely within the City of Sumner's sanitary sewer and water service areas.

<u>City of Sumner Comprehensive Plan.</u> The City's adopted Comprehensive Plan includes an Urban Growth Area that includes the annexation area; this UGA has been previously approved by Pierce County. The Comprehensive Plan also contains a Capital Facilities Plan element which details a financing strategy for providing urban services within the City and

its UGA at locally adopted level of service standards. Fire service will continue to be provided by East Pierce Fire & Rescue; library service will continue to be provided by Pierce County Library District. The City will be the primary provider of all other services for this annexation.

City of Sumner Zoning: In City Resolution No. 1596, the City Council adopted zoning for the annexation area consistent with the area's Comprehensive Plan Designations, which are Light Industrial and General Commercial west of the river, and Town Center Plan area east of the river (see **Exhibits I and J)**. This zoning would become effective upon annexation. Future development/redevelopment of the parcels would be subject to the Sumner Municipal Code, including development standards in the Sumner Zoning Code.

City of Sumner Shoreline Environments:
Portions of the annexation area are located within the 200-foot shoreline jurisdiction along the White (Stuck) River. The Pierce County Shoreline Master Program applies to some portions of the annexation area, while the Sumner Shoreline Master Program (SMP) applies to other portions. The status of the different subareas is described below.

Subarea A: This subarea west of the river (10 parcels) falls under County shoreline jurisdiction. It is assigned a High Intensity Shoreline Environment Designation (SED). The High Intensity SED applies to areas that currently support high-intensity uses.

Subarea B: This subarea (4 parcels) west of the river and north of Valley Avenue is outside of the shoreline jurisdiction.

Subarea C: The subarea located east of the river (4 parcels) falls under the Sumner SMP, as established by both the County and the City. It is currently designated in the Sumner SMP as "Urban Shoreline Environment," with a 50-foot shoreline buffer.

The Sumner SMP (adopted 2004, updated 2020) established the shoreline environment designations (SED) for the entire annexation area. Table 4-4 "Urban Designation Description" in the SMP designates as Urban Environment: 1) the left (east) bank of the river from SR410 to the Union Pacific Railroad Bridge, and 2) the right (west) bank of the river from SR410 to the Bridge Street (Cannery Way) Bridge. This description covers all of the annexation area within the shoreline jurisdiction. Based on Table 4-4 in the SMP, the Urban SED and 50-foot buffer will be applied to the annexation area upon annexation. This will be consistent with the adopted Sumner SMP. Further, all of the incorporated parcels abutting the annexation parcels currently have the same Urban SED.

For Subarea A, the Sumner SMP maps will need to be updated after annexation to show that the area has changed from County to City jurisdiction. The SMP update is subject to approval by the Washington Department of Ecology and must demonstrate consistency with the criteria set forth in WAC 173-26.

6. Revenues/Expenditures

The current assessed valuation of the area is approximately $5,400,000, based on the annexation properties inventory from July 19, 2021 submitted by the applicant **(Exhibit N)**.

Water and Sanitary Sewer Extensions: The annexation area is within the City's sewer and water service area; however, mains currently do not extend to all properties in the area. Following annexation, the City will extend services based upon adopted capital improvement plans relative to development demand. Specific costs will be determined based upon specific extension scenarios.

Fire District: The annexation area is currently serviced by East Pierce Fire and Rescue. Once the area is annexed, it will continue to be serviced by East Pierce Fire & Rescue, with no anticipated changes in district revenues/expenditures.

School District: The annexation area is, and will continue to be within School District #320, the Sumner-Bonney Lake School District.

Library District: The area is currently within the Pierce County Library system and will continue to be part of that library district upon annexation. Therefore, no change is anticipated in district revenues due to the annexation.

Other Services Revenues/Expenditures: Upon annexation, the City of Sumner will have responsibility for providing other municipal services to the annexation area, including police, public works and community services. These functions are primarily funded through the General Fund of the City. Based on the relatively low anticipated population in the annexation area (see population section above), City operating departments (e.g. administration, finance, legal, community development) are projected to be able to adequately accommodate the proposed annexation.

Property tax revenues:
Based upon the current taxable valuation of the annexation area, approximately $5,400,000 (2021), estimated property tax revenues increased/reduced* would be as follows:

- City of Sumner: Rate: 0.994156 = increase of $5,400 per year
- Pierce County: Rate: 0.846408 = decrease of $4,570 per year.

** Source: 2022 Levy Rates & Taxes Table, Pierce County Assessor-Treasurer*

7. Services

A. Water & Sanitary Sewer

The proposed annexation area is within the City of Sumner's water and sanitary sewer service areas. Sumner is also identified as the water purveyor for the area in the Pierce County GIS data. There are available water mains located in Houston Road/Cannery Way and in the Valley Avenue rights-of-way. There is a sewer force main line extending down Cannery Way/Valley Avenue. East of the river, City water and sewer lines are located close to the portions of parcels to be annexed (see **Exhibits K and L)**. The City will allow connection to these service lines for redevelopment. All properties will be required to connect to the City sanitary sewer system. While the annexation area is within Sumner service districts, some parcels in the annexation area currently utilize private wells or private water systems and septic systems. Developers of some parcels within the annexation area, including properties in the far northwest corner of the annexation area located along Valley Avenue and properties located along Houston Road, may be required to extend water and sewer mains at the time of development or expansion.

Sumner's water and sewer systems both have the capacity and are capable of being extended to serve parcels within the annexation area to address future development in this area. The City plans to serve the annexation area with water and sewer services once the area is annexed.

B. Fire Service

The area is currently served by East Pierce Fire and Rescue which also provides the City's fire service. Upon annexation, the area will continue to be served by East Pierce Fire and Rescue. The level of service for response time, established in Sumner's 2020 Comprehensive Plan Capital Facilities element is: First-due response units arrive at fire and emergency medical incidents in urban areas within 5 minutes to the 90th percentile; and a capable response force arrives at emergency incidents within 10 minutes to the 90th percentile.* Parcels in the annexation area are located approximately .5 mile to 1 mile from Fire Station 113 in downtown Sumner. With a population gain of 7 persons in the immediate future and up to 100 persons in the distant future, fire service to the annexation area is expected to be adequate.

** Source: Policy 1.3.1 and Policy 1.3.2 Sumner 2020 Comprehensive Plan*

C. Police Service

The Sumner Police Department currently responds to calls in the area and will continue to serve the area upon annexation. The level of service for police services, established in Sumner's 2020 Comprehensive Plan Capital Facilities element is:

- Maintain a ratio of 2 commissioned officers per 1,000 population.
- Establish and maintain a ratio of not less than 1 commissioned patrol officer for every 1000 calls for service per year.
- Provide 1 sergeant for every 6-7 commissioned patrol officers.
- Provide and maintain 1 detective position at a ratio of 1/400 part A offenses.*

** Source: Policy 1.2.1 Sumner 2020 Comprehensive Plan*

The projected population for the annexation area is approximately 7 persons upon annexation, with the potential for redevelopment to approximately 100 persons in the distant future (see Population section assumptions above). Based on this relatively small population increase over time, it is anticipated that the Sumner Police Department has the capacity to serve the annexation area.

D. Other Services

The City of Sumner contracts with DM Disposal for waste collection. DM Disposal already provides service to this area, so there would be no change in service levels. Puget Sound Energy would continue to provide electrical and gas service, while cable television service would remain with existing providers (e.g. Comcast, etc.). The City is within the Pierce County Library District, which provides all Sumner residents with library services. The City owns and operates the wastewater treatment plant located in Sumner, which serves Sumner and Bonney Lake. The City also operates its own parks system. The closest City-owned park facilities are approximately .4 miles to .6 miles away in downtown Sumner, and the regional Sumner Link Trail is approximately .65 miles away. Other parks and sports fields exist throughout the city in relatively close proximity to the annexation area.

As noted above, the City will assume services for basic City operations and administrative services. The current level of service for City facilities and buildings is:

- General Government 1.13 s.f./capita

- Police 0.44 s.f./capita
- City Shops (buildings only) 1.8 s.f./capita.

** Source: Policy 1.5.1 Sumner 2020 Comprehensive Plan*

The annexation area is located one-half to one mile from City Hall government services and police department, library, parks and schools in Sumner; therefore, services are available nearby. Based on the projected population for the area, it is anticipated that the City can continue providing services to the annexation area at the same level of service.

Pursuant to RCW 35A.14.801(6), notification will be provided by certified mail or electronic means, of the annexation and a list of annexed parcel numbers and the street address to the county treasurer and assessor, to the light and power businesses and gas distribution businesses, and to the fire district and library district, at least sixty days before the effective date of the annexation.

E. Service delivery delays

All City services will be available immediately upon annexation.

F. Adequacy, cost or rates of services

As stated above, several parcels in this annexation area are currently on septic service or well water; therefore, future extensions would be necessary to provide City sewer and water services. At the time of service extension, the lots connecting to the sewer and water system will help pay for the cost of expansion through payment of a system development charge (SDC). In addition to sewer and water SDCs, any building permits issued after this annexation action would be subject to City park, school, fire, stormwater drainage, and transportation (traffic) impact fees, which are exacted at time of building permit issuance. Transportation impact fees are based on p.m. peak hour trips generated, based on specific use, and based on the transportation district. The annexation area <u>west of the river</u> currently is assigned to District 3, which includes primarily non-residential areas, commercial areas and Sumner's industrial zones. The annexation area <u>east of the river</u> currently is assigned to District 1, the high-density Town Center Plan area.

Given that the future zoning of the area will be light industrial, commercial, and multifamily mixed use, SDCs can be roughly estimated for future development for those uses. The approximate cost range of typical SDC and impact fees for new development permits in 2022 are shown below.* Note these are generalized fee ranges for general categories of uses, not calculated nor site-based.

- School: $2000/unit (multifamily)
- Parks: $2600/unit (multifamily); $700-$1500 per 1,000 s.f. (industrial to commercial)
- Fire: $80/unit (residential); $30/employee (commercial/industrial)
- Sewer: $4,000-6800/unit or per 1,000 s.f. (multifamily to mixed use); $540-$6800 per 1,000 s.f. (general industrial to general retail)
- Stormwater: $2600/unit (multifamily); $3300 per 3100 s.f. impervious area (others)

- Water: $5100/unit (multifamily); $23,800/acre (industrial); or based on meter size: $170,000-$340,000 for 4”-6” meter for (general commercial)

- Traffic: Based on ITE land use code, ITE pm peak hour trips and reductions shown in Sumner Permit Fee Schedule, typical examples are:
  District 1 (east of river):
    - Multifamily-mixed Use: $730-890/unit
    - General light industrial: $1700 per 1,000 s.f.
    - General office: $2300 per 1,000 s.f.
    - General commercial $2200-5900 per 1,000 s.f.
    - High-traffic commercial: $34,000-50,000 per 1,000 s.f.

  District 3 (west of river):
    - Multifamily-mixed Use: $1200-1500/unit
    - General light industrial: $3000 per 1,000 s.f.
    - General office: $4200 per 1,000 s.f.
    - General commercial: $3900-10,500 per 1,000 s.f.
    - High-traffic commercial: $59,000-88,000 per 1,000 s.f.

* *Source: City of Sumner Permit Fee Schedule October 2021-September 2022*

Ratepayers within the City’s system are charged for water/sewer services via monthly bills for services. These charges also help defray the cost of the treatment plant maintenance. Approximate current rates are listed below.*

- Water: Based on flow per 100 cu.ft.: $2 low water usage to $1,970 larger customers with irrigation.
- Stormwater disposal: Based on s.f. of impervious area: $17 per 3100 s.f.
- Sewer: Based on water flow: $9 to $59 per 100 cu.ft. (single family) to $50-$59 per 100 cu.ft. (other uses).
- Fire flow: Based on building size over 5,000 s.f.: $1.70 per 1,000 s.f.
- Landfill services: Properties are required to have solid waste disposal, but fees are not paid directly to DM Disposal.

A few properties within the annexation area already are in the City utility system for certain services. Some of these parcels might have their own a septic system but pay the City for water, storm, etc. The following addresses are currently billed for City utilities: 13401 Valley Avenue East (water, storm), 13223 Houston Road East (water), 13105 Houston Road East (water), 401 State Street (all), and 910 Spinning Avenue (all).

* *Source: City of Sumner Finance Department June 2022*

IV. OBJECTIVES OF THE BOUNDARY REVIEW BOARD (RCW 36.93.189)

1. Preservation of natural neighborhoods and communities

The proposed annexation area is approximately 12.67 acres, bounded by existing city corporate limits to the south, north and east. The annexation area is also bounded by the railroad tracks, SR167 and SR410 rights-of-way, which creates a logical neighborhood boundary. The area is also closer to downtown Sumner than any other urban area or downtown, creating an extension of the downtown neighborhood. Portions of parcels on the east side of the river will become a part of the Town Center mixed use neighborhood like surrounding parcels, instead of being bisected from the Town Center neighborhood by city limit lines and county zoning. The annexation area west of the river is a mix of primarily commercial and industrial uses, and the post-annexation zoning will preserve the pattern of existing uses. Both sides of the river in this area contain adjacent parcels that are already within city limits. Based on these characteristics, the proposed annexation preserves natural neighborhoods in the area.

2. Use of physical boundaries, including but not limited to bodies of water, highways, and land contours

The boundaries of the annexation area follow physical boundaries, such as adjacent roads, highways and railroad tracks. The area is entirely located on the valley floor, with generally level land contours, adjacent to incorporated areas of Sumner also located on the valley floor. Current city limit lines do not follow logical physical boundaries; the annexation will create a more logical corporate boundary.

3. Creation and preservation of logical service areas

As noted above, the annexation area is located within the City of Sumner's Urban Growth Area (UGA) and its water and sanitary sewer service areas. The area is currently served by the same fire district, school district, and library district that will provide services following annexation. The area is also located closer to City police protection administrative services, and other City services than such comparable services within unincorporated Pierce County. Based on this, the proposed annexation creates a more logical service area than the existing unincorporated area.

4. Prevention of abnormally irregular boundaries

The annexation is a logical extension of the City of Sumner within its defined UGA. The proposed annexation area will correct the existing boundary that is illogical in some locations and that bisects parcels and buildings in other instances.

5. Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of ten thousand population in heavily populated areas.

This area is located within the City of Sumner UGA and is not contested by another municipality. Given its configuration, it would not be feasible for separate incorporation.

6. Dissolution of inactive special purpose districts.

There are no known inactive special purpose districts in the area. As noted above, upon annexation the area will continue to be served by active districts currently providing services.

7. Adjustment of impractical boundaries.

The proposed annexation area will correct the existing boundary that does not follow practical boundaries or natural boundaries in some locations and that bisects parcels and buildings in other instances.

8. Incorporation as cities or towns or annexation to cities or towns of unincorporated areas which are urban in character.

The entire annexation area is currently zoned for urban uses by Pierce County, and is developed in industrial, commercial and residential uses. Such uses are consistent with the urban uses in adjacent areas of the City of Sumner. Therefore, it is appropriate for the area to be annexed to the City which is urban in character.

9. Protection of agricultural and rural lands which are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

This entire annexation area is currently zoned for urban uses by Pierce County. Most of the area is developed in industrial and commercial uses, with some residential uses. There are no areas in the annexation area that are in active agricultural production, nor are they suitable for agricultural production.

STUDY SESSION
DATE: August 1, 2022
AGENDA BILL: 22-2447

SUBJECT: Ordinance No. 2827 - Comcast Franchise Renewal **CATEGORY:** Ordinance

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
1. Ordinance No. 2827 - 2022 Comcast Franchise Agreement Renewal

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:
In 2017, the City renewed its franchise agreement with Comcast, for a term ending August 2022. In 2020, the members of the Rainier Cable Commission undertook a collective effort to negotiate a model franchise agreement with Comcast, that would allow all the members to have consistent terms with one another. The model franchise was finalized in 2021, and the City of Sumner is ready to adopt the new model franchise agreement (with minor modifications to fit the needs of the City). The proposed term for this franchise is 10 years. A first reading of this ordinance occurred on July 18, 2022. Tonight is the second and final reading of the ordinance, and the franchise agreement is before Council for final aciton.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE: 6/27/2022
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Motion to approve Ordinance No. 2827, authorizing the Mayor to enter into a franchise renewal agreement between the City of Sumner and Comcast Cable Communications Management LLC for a term of 10 years in a form as approved by the City Attorney.

ORDINANCE 2827
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR OR REMOVE CABLE TELEVISION FACILITIES WITHIN THE PUBLIC RIGHTS OF WAY OF THE CITY OF SUMNER ("GRANTOR") TO COMCAST CABLE COMMUNICATIONS MANAGEMENT LLC ("GRANTEE").

WHEREAS, the Grantor is authorized by RCW 35A.47.040, as currently adopted or hereinafter amended, to grant one or more nonexclusive franchises to construct, operate and maintain Cable television related facilities within the boundaries of the Grantor; and

WHEREAS, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the Grantor, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the Grantor after review of specific plans and confirmation of compliance with any applicable laws, codes, policies and regulations; and

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways, as well as costs incurred by virtue of relocations due to projects, development or emergencies; and

WHEREAS, the Grantor and Grantee desire to effectuate good coordination of the use of the rights of way within the City of Sumner; and

WHEREAS, in 2020, the City, as a member of the Rainier Cable Commission (RCC), undertook a collective effort to negotiate a model franchise agreement between Grantee and all of the RCC members; and

WHEREAS, the City's current franchise agreement with Grantee expires in August, 2022; and

WHEREAS, the City Council of the City of Sumner conducted two readings of this ordinance pursuant to RCW 35A.47.040 on July 18, 2022 and August 8, 2022; and

WHEREAS, this ordinance was reviewed by the City Attorney as required by RCW 35A.47.040; and

WHEREAS, the Grantor finds that the franchise terms and conditions contained in this ordinance are in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Adoption. The Cable Franchise Agreement between the City of Sumner and Comcast Cable Communications Management, LLC for a term ending August 31, 2032 which is attached hereto as Exhibit A, is hereby adopted.

Section 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

Section 3. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City. This ordinance shall take effect and be in full force five (5) days from and after its passage, approval, and publication as provided by law.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 8th day of August, 2022.

____
Mayor Kathy Hayden

ATTEST:

____
City Clerk Michelle Converse, CMC

APPROVED AS TO FORM:

____
City Attorney Andrea Marquez

COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC AND THE CITY OF SUMNER, WASHINGTON

CABLE FRANCHISE AGREEMENT
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SECTION 1. DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely discretionary. A list that follows the use of the word “including” is intended to illustrate examples, not be an exhaustive list, unless the context clearly indicates otherwise. The Grantor and Grantee may be collectively referred to as the “Parties.”

1.1 “Access” means the availability for non-commercial use by various agencies, institutions, organizations, groups, and individuals in the community, including the Grantor and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited educational institution, public or private, including, for example, primary and secondary schools, colleges, and universities.

b. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate” when used in connection with Grantee, means any Person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order, or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes the retransmission of local television Broadcast Channels, all EG SD Access Channels required in this Franchise, and any additional programming designated by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 "Broadcast Channel" means local commercial television stations, qualified low power stations and qualified local non-commercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 "Broadcast Signal" means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes, or any other means.

1.10 "Cable Act" means the Title VI of the Communications Act of 1934, as amended.

1.11 "Cable Operator" means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 "Cable Service" means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 "Cable System" means any facility, including Grantee's, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 "Channel" means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 "City Manager" means the chief administrative officer of the City or designee.

1.16 "City" is the City of Sumner, Washington, a body politic and corporate under the laws of the State of Washington.

1.17 "Commercial Subscribers" means any Subscribers other than Residential Subscribers.

1.18 "Designated Access Provider" means the entity or entities designated now or in the future by the Grantor to manage or co-manage Access Channels and facilities. The Grantor may be a Designated Access Provider.

1.19 "Digital Starter Service" means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.20 "Downstream" means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.21 "Dwelling Unit" means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation, and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units, unless the additional facilities are clearly accessory.

1.22 "FCC" means the Federal Communications Commission.

1.23 "Fiber Optic" means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.24 "Finance Director" means the director of the Grantor's Finance Department or designee.

1.25 "Franchise" means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Grantor and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements, and other related matters.

1.26 "Franchise Area" means the area within the jurisdictional boundaries of the Grantor, including any areas annexed by the Grantor during the term of this Franchise.

1.27 "Franchise Fee" means that fee payable to the Grantor described in subsection 3.1.

1.28 "Grantee" means Comcast Cable Communications Management, LLC or its lawful successor, transferee, or assignee.

1.29 "Grantor" means the City of Sumner, Washington.

1.30 "Grantor Council" means the Sumner City Council, or its successor, the governing body of the City of Sumner, Washington.

1.31 "Gross Revenues" means, and shall be construed broadly, to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the Franchise Area. Gross Revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium

Cable Services, digital Cable Services, pay-per-view, pay-per-event, and video-on-demand Cable Services);

- installation, reconnection, downgrade, upgrade, or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees, and administrative fees, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees;
- commissions from home shopping channels and other Cable Service revenue sharing arrangements, which shall be allocated on a pro rata basis using total Cable Service subscribers within the Franchise Area.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Franchise Area and shall be allocated on a pro rata basis using Grantee’s Cable System Subscribers within the Franchise Area in relation to the total number of Grantee’s Cable Service subscribers covered under the advertising arrangement. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, representative fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) and Comcast EffectTV or their successors associated with sales of advertising on the Cable System within the Franchise Area allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion that is subsequently collected, which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Franchise Area;
- any taxes and/or fees on services furnished by Grantee imposed by an

municipality, State, or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state, or other governmental unit on Grantee, including but not limited to Public, Educational and Governmental (hereinafter "EG") Fees;

- launch fees and marketing co-op fees; and

- unaffiliated third-party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services that includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, State, or local law. The allocations shall be done for each bundled package separately, and updated and revised within sixty (60) days, each time an element within the package has its rate card changed, including when an element is substituted for another element within the bundled package. It is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Franchise Area. The Grantor reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this subsection 1.31 in order to meet the standards required by governing accounting principles, as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF"), and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee shall notify Grantor of any changes in allocation methodologies in its next quarterly franchise fee reports delivered to Grantor.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP"), as promulgated and defined by the FASB, EITF, and/or the SEC. Notwithstanding the foregoing, the Grantor reserves its right to challenge Grantee's calculation of Gross Revenues, including the application of GAAP to Franchise Fees and the interpretation of GAAP as promulgated and defined by the FASB, EITF, and/or the SEC.

1.32 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks that are part of the Cable System, and all other related equipment and facilities.

1.33 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.34 "Municipal Code" means the Sumner Municipal Code adopted for application and enforcement within the City of Sumner, Washington.

1.35 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.36 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program, or per-event basis.

1.37 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding Persons residing in such Multiple Dwelling Units to the extent Cable Services are billed on a bulk-billing basis.

1.38 "Right(s)-of-Way" means land acquired or dedicated for public roads and streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, but does not include:

(a) State highways where the Grantor does not have authority to grant permits related to Cable Systems;
(b) Land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public, unless specifically used as a utility corridor;
(c) Structures, including poles and conduits, located within the right-of-way;
(d) Federally granted trust lands or forest board trust lands;
(e) Lands owned or managed by the state parks and recreation commission; or
(f) Federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

"Right(s)-of-Way" also includes easements dedicated for compatible use and consistent with Section 621 of the Cable Act.

1.39 "State" means the State of Washington.

1.40 "Subscriber" means any Person who or which has entered into an agreement to receive Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who has not been disconnected for failure to adhere to Grantee's regular and non-discriminatory terms and conditions for receipt of service.

1.41 "Subscriber Network" means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.44 "Tier" means a group of Channels for which a single periodic subscription fee is charged.

1.45 "Two-Way" means that the Cable System is capable of providing both Upstream and

Downstream transmissions.

1.46 "Upstream" means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Grantor hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way consistent with the requirements of 47 U.S.C. § 541(a)(2), within the Franchise Area to construct, operate, maintain, reconstruct, and rebuild a Cable System and to provide Cable Service subject to the terms and conditions set forth in this Franchise and Applicable Law.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Grantor ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision, or condition herein is subject to the provisions of State law, federal law, and the generally applicable ordinances and regulations enacted by the Grantor Council pursuant thereto, portions of which may be codified in the Municipal Code. To the extent there is any conflict between this Franchise and any provision of the Grantor's Code as it exists on the Effective Date of this Franchise, the terms of this Franchise shall control. Subject to the Grantor's right to exercise its police power under subsection 2.5, the Grantor may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) If allowed under Applicable Law, this Franchise shall not be interpreted to prevent the Grantor from imposing additional lawful conditions, for use of the Rights-of-Way should Grantee provide service other than Cable Service, nor shall this Franchise be interpreted to either prevent or authorize Grantee from making any other lawful uses of the Cable System as permitted by Applicable Law related to Grantee's non-Cable Service operations.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Franchise Area that may be required by the ordinances and laws of the Grantor;

(2) Any permit, agreement, or authorization required by the Grantor for Right-

of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits and Right-of-Way use permits; or

(3) Any generally applicable permits or agreements for occupying any other property of the Grantor or private entities to which access is not specifically granted by this Franchise including, without limitation, permits, and agreements for placing devices on poles, in conduits, or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Grantor has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

2.2 Use of Rights-of-Way

(A) Subject to the Grantor's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Franchise Area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Franchise Area.

(B) Grantee must follow Grantor’s established non-discriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by the Grantor or others, including others that may be installing communications facilities. Within limits reasonably related to the Grantor’s role in protecting public health, safety, and welfare, the Grantor may require that Cable System facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Grantor's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Grantor, or that is installed without prior Grantor approval of the time, place, or manner of installation, and charge Grantee for all the costs associated with removal and repair.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges, and authority granted hereunder shall take effect on _____________, 2022 (the “Effective Date”), and shall terminate on _______________, 2032, unless terminated sooner as hereinafter provided.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements, or licenses granted by the Grantor to any Person to use any property, Right-of-Way, right, interest, or license for any purpose whatsoever, including the right of the Grantor to use the same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Grantor may at any time grant authorization to use the Rights-of-Way for such additional franchises for Cable Systems as the Grantor deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Grantor to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Grantor or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Grantor shall have the right to adopt, from time to time, such ordinances as it may deem necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Grantor's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Grantor reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to utilize the Rights-of-Way in order to provide Cable Services within the Franchise Area. If the Grantor grants such an additional franchise or other similar lawful authorization to utilize the Rights-of-Way for Cable Services containing material terms and conditions that differ from Grantee's material obligations under this Franchise, or declines to require such franchise or other similar lawful authorization where it has the legal authority to do so, then the Grantor agrees that it shall amend this Franchise to include any material terms or conditions that it makes available to the new entrant, following Grantee's request as described in subsection 2.6(B), so as to ensure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The Parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

(B) The modification process of this Franchise as provided for in subsection 2.6(A) shall only be initiated by written notice by the Grantee to the Grantor regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the authorization granted in subsection 2.6(A) that are materially different from Grantee's obligations under this Franchise; (2) identifying the basis for Grantee's belief that certain provisions of the Franchise place Grantee at a competitive disadvantage; (3) identifying the Franchise terms and conditions for which Grantee is seeking amendments; and (4) providing text for any proposed Franchise amendments to the Grantor, with a written explanation of why the proposed amendments are necessary and consistent. Notwithstanding any modification of this Franchise pursuant to the provisions of this subsection 2.6, should any entity, whose authorization to provide Cable Services or similar video programming service resulted in a triggering of the amendments under this Section, fail or cease to provide such services within the Franchise Area, the Grantor may provide ninety (90) days' written notice to Grantee of such fact, and the Grantor and Grantee shall enter into good faith negotiations to determine the original terms, conditions, and obligations of this Franchise shall be reinstated and fully effective.

(C) Upon receipt of Grantee's written notice as provided in subsection 2.6(B), the Grantor and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the Parties. If the Grantor and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Grantor shall amend this Franchise to include the modifications.

(D) Notwithstanding anything contained in subsection 2.6(A) through (D) to the contrary, the Grantor shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services or similar video programming service available for purchase by Subscribers or customers under its franchise or similar agreement with the Grantor.

(E) In the event that a wireline multichannel video programming distributor, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or wireline video services within the Franchise Area without a Cable Service franchise or other similar lawful authorization granted by the Grantor, then Grantee shall have a right to request Franchise amendments that relieve the Grantee of regulatory burdens that create a competitive disadvantage to Grantee. In requesting amendments, Grantee shall file a petition seeking to amend this Franchise. Such petition shall: (1) indicate the presence of such wireline competitor; (2) identify the Franchise terms and conditions for which Grantee is seeking amendments; (3) provide the text of all proposed Franchise amendments to the Grantor, and (4) identify all material terms or conditions in the applicable state or federal authorization that are substantially more favorable or less burdensome to the competitive entity. The Grantor shall not unreasonably withhold consent to Grantee's petition.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges, and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms, and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State, and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Grantor's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Grantor's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Grantor, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the Grantor shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each quarterly payment shall be due and payable no later than forty-five (45) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the Grantor that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Grantor may have for further or additional sums payable or for the performance of any other obligation of Grantee. The period of limitation for recovery of Franchise Fees payable hereunder shall be six (6) years from the date on which payment by Grantee was due or such shorter period if required by Applicable Law.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Grantor, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount.

3.5 Annual Franchise Fee Reports

Grantee shall, within ninety (90) days of Grantor’s written request after the end of each year, furnish to the Grantor a statement stating the total amount of Gross Revenues for the year and all payments, deductions, and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the Grantor, including Grantor's Auditor or his/her authorized representative, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise for a period of time in accordance with state law (the "audit period"). Pursuant to subsection 1.31, as part of the Franchise Fee audit/review, the Grantor shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for the Grantor's subscribers during the audit period. To the extent that the Grantor does not believe that the relevant data supplied is sufficient for the Grantor to complete its audit/review, the Grantor may require other relevant data. For purposes of this subsection 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers), and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Grantor to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more, Grantee shall pay the actual and verifiable cost of the audit/review, such cost not to exceed seven thousand five hundred dollars ($7,500.00) for each year of the audit period. The Grantor's right to audit/review and Grantee's obligation to retain records necessary to complete any audit under this subsection shall expire consistent with the applicable statute of limitations period under State law; provided, however, that this would not apply to a time period covered under a pending audit.

3.7 Late Payments

In the event any payment due quarterly is not received within forty-five (45) days from the end of the calendar quarter, Grantee shall pay interest on the amount due at the then current maximum rate set forth in RCW 19.52.020, calculated from the date the payment was originally due until the date the Grantor receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the then current maximum rate set forth in RCW 19.52.020, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Grantor.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Grantor through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall comply with any other Applicable Law related to the right to occupy the Grantor's Rights-of-Way and compensation therefor.

3.10 Maximum Legal Compensation

The Parties acknowledge that, at present, applicable federal law limits the Grantor to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Grantor is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Grantor, by resolution of Grantor Council, to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Grantor hereunder, provided that Grantee has received at least ninety (90) days' prior written notice from the Grantor of such amendment, so long as all cable operators in the Franchise Area are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

The EG Capital Contribution pursuant to Section 9.5, as well as any charges incidental to the awarding or enforcing of this Franchise (including, without limitation, payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damage) and Grantee's costs of compliance with Franchise obligations (including, without limitation, compliance with customer service standards and build out obligations) shall not be offset against Franchise Fees. Furthermore, the Grantor and Grantee agree that any local tax of general applicability shall be in addition to any Franchise Fees required herein, and there shall be no offset against Franchise Fees. Notwithstanding the foregoing, Grantee reserves all rights to offset cash or non-cash consideration or obligations from Franchise Fees, consistent with applicable law. The Grantor likewise reserves all rights it has under applicable law. Should Grantee elect to offset the items set forth herein, or other franchise commitments against the Franchise Fees in accordance with applicable law, including any Orders resulting from the FCC, Grantee shall provide the Grantor advance written notice and up to one hundred-twenty (120) days to make an election as to an offset from franchise fees or modification of the obligation as set forth in applicable law by amendment of this Franchise. Grantor's failure to determine such offset or act to amend this Franchise shall not preclude Grantee from following through on its notice to the Grantor.

3.12 Tax Liability

Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax, or charge on the business, occupation, property, or income of Grantee that may be lawfully imposed by the Grantor. Any other license fees, taxes, or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the Grantor upon request to review

Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Grantor deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Grantor within ninety (90) calendar days of the date of the termination, a financial statement, signed by a representative of Grantee under penalty of perjury under the laws of the State of Washington, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Grantor reserves the right to satisfy any remaining financial obligations of the Grantee to the Grantor by utilizing the funds available in the letter of credit or other security provided by the Grantee, or any other manner authorized by Applicable Law.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The Grantor shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under federal, State, and local law, to any agent in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Grantor's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee’s rates and charges related to or regarding Cable Services shall be subject to regulation by the Grantor to the full extent authorized by Applicable Law.

4.3 Rate Discrimination

All of Grantee’s rates and charges shall be published (in the form of a publicly available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, gender identity, marital, military or economic status, physical or mental disability, or, where consistent with any requirement of federal or State law, geographic location within the Franchise Area. Nothing herein shall be construed to prohibit:

(A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,

(B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,

(C) The offering of rate discounts for Cable Service; or,

(D) The Grantee from establishing different and non-discriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Grantor a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Grantor, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Grantor reserve all rights they may have under the Cable Act and any other relevant provisions of Applicable Law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Grantor to invoke any relevant remedy in accordance with subsection 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, or such other time as the Parties may agree, the Grantor and Grantee shall meet to discuss the proposed amendment(s). If the Parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Grantor Council for its approval. If so approved by the Grantor Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee, or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with Applicable Law.

(B) Nothing in this subsection shall be deemed to create, limit, or otherwise affect the ability of the Grantee to impose other assessments, charges, fees, or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule, or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be non-discriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Franchise Area without regard to the neighborhood or income level of the Subscriber.

4.10 Force Majeure

In the event either party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of such party, the delayed party shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation. Those conditions that are not within the control of a party include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, pandemics and epidemics, and severe or unusual weather conditions, all of which have a direct and substantial impact on the party's ability to perform its commitments under this Franchise and were not caused and could not have been avoided by the party, who used its best efforts in its operations to avoid such results.

If a party believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, that party shall provide documentation as reasonably required by the other party to substantiate the claim. If the party claiming a force majeure condition has not yet cured the deficiency, it shall also provide the other party with its proposed plan for remediation, including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend, and hold the Grantor, its officers, officials, boards, commissions, agents, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents, or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Grantor while conducting its defense of the Grantor. Grantee shall not be obligated to indemnify the Grantor to the extent of the Grantor's negligence or willful misconduct. The provisions of this section shall survive the expiration or termination of this Franchise.

(B) RCW 4.24.115. However, should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the Grantor, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Franchise.

(C) Indemnification for Relocation. Grantee shall indemnify the Grantor for any damages, claims, additional costs, or reasonable expenses assessed against, or payable by, the Grantor resulting from, Grantee's failure to remove, adjust, or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by this Franchise.

(D) Additional Circumstances. Grantee shall also indemnify, defend, and hold the Grantor harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way resulting from:

(1) The lawful actions of the Grantor in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(E) Procedures and Defense. If a claim or action arises, the Grantor or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Grantor's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. The Grantor may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses, or other costs the Grantor may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(G) is required. In that event, the provisions of Paragraph 5.1(G) shall govern Grantee's responsibility for Grantor's attorneys' fees, expenses, or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Grantor without the Grantor's approval.

(F) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(G) Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Grantor and the counsel selected by Grantee to represent the Grantor, Grantee shall select separate counsel that does not have such a conflict to represent Grantor. Provided, however, that in the event that such separate representation is or becomes necessary, and Grantor desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Grantor shall be required to obtain Grantee's consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld. The Grantor's expenses shall include all reasonable out-of-pocket costs and expenses, such as consultants' fees and court costs, and shall also include the reasonable value of any services rendered by the Grantor's attorney or his/her assistants or any employees of the Grantor or its agents, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided to the Grantor by Grantee.

(H) Inspection. Inspection or acceptance by the Grantor of any work performed by Grantee at the time of completion of construction or maintenance projects shall not be grounds for avoidance of any of these covenants of indemnification.

(I) Damage to Grantee Facilities. Notwithstanding any other provisions of this subsection 5.1, Grantee assumes the risk of damage to its Cable System facilities located in or upon the Rights-of-Way from activities conducted by the Grantor, and agrees to release and waive any and all such claims against the Grantor except to the extent any such damage or destruction is caused by or arises from the negligence or criminal actions of the Grantor.

(J) Survival. The indemnification, defense, and hold harmless obligations contained in this subsection 5.1 shall survive the expiration, abandonment or termination of this Franchise.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than five million dollars ($5,000,000.00) per occurrence and five million dollars ($5,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by the current ISO CG 00 01 or its equivalent and include severability of interests with respect to each additional insured. Such insurance shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The Grantor shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect this Franchise Agreement using the current ISO endorsement CG 20 12 05 09.

(2) Commercial Automobile Liability insurance covering all owned, non-

owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of five million dollars ($5,000,000.00) per accident. The policy shall contain a severability of interests provision with respect to each additional insured.

(3) Excess or Umbrella Liability insurance shall be written with limits of not less than five million dollars ($5,000,000.00) per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Grantee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits. Such insurance shall name Grantor, its officers, officials, and employees as additional insureds.

(B) The insurance shall provide for notice of cancellation in accordance with policy provisions. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide notice of such cancellation or material alteration within two (2) business days of its receipt of such notice. Grantee shall additionally provide evidence of a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

(C) The Grantee shall cause each of its subcontractors to provide insurance coverage reasonably appropriate to the scope of each such subcontractor's work.

(D) Failure on the part of the Grantee to maintain the insurance as required shall constitute a material breach of this Agreement.

(E) Endorsements.

(1) All commercial general, automobile, and umbrella excess liability policies required herein shall contain, or shall be endorsed so that:

(a) Grantor, its officers, officials, boards, commissions, and employees are to be covered as, and have the rights of, additional insureds with respect to liability for which the Grantee is responsible herein;

(b) Grantee's insurance coverage shall be primary insurance with respect to each additional insured. Any insurance or self-insurance maintained by the additional insured shall be in excess of the Grantee's insurance and shall not contribute to it with respect to liability for which the Grantee is responsible hereunder; and

(c) Grantee's insurance shall provide for severability of interest with respect to each additional insured.

(F) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A: VII."

(G) Verification of Coverage. The Grantee shall furnish Grantor with certificates of insurance, evidencing the required endorsements, including but not limited to blanket additional insured status. The certificates are to be on standard forms or such forms as are consistent with standard industry practices.

(H) Adequacy of Limits and Coverage. It is agreed that these insurance requirements shall not in any way act to reduce or otherwise alter the liability of Grantee herein. No representation is made that the minimum insurance requirements of this Franchise are sufficient to cover the obligations of Grantee hereunder.

5.3 Letter of Credit

(A) If there is a claim by the Grantor of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Grantor may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Grantor, to the Grantor as security for the faithful performance by Grantee of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Grantor in the amount of twenty five thousand dollars ($25,000.00).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained at twenty-five thousand dollars ($25,000.00) until the allegations of the uncured breach have been resolved. After all allegations have been resolved, the letter of credit may be withdrawn.

(C) After completion of the procedures set forth in subsection 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Grantor for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the Grantor sums due under the terms of this Franchise;

(2) Reimbursement of actual costs borne by the Grantor to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with any Customer Service Standards of the Grantor, as the same may be amended from time to time by the Grantor Council acting by ordinance or resolution.

(D) The Grantor shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within fifteen (15) business days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(E) Grantee shall have the right to appeal to the Grantor Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Grantor erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

5.4 Bonds

Grantee shall provide a performance bond ("Performance Bond") in the amount of seventy-five thousand dollars ($75,000) to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities and to restore the Grantor Rights-of-Way and other property. The Performance Bond shall be in a standard industry form. Over the term of this Franchise, Grantee shall pay all premiums or costs associated with maintaining the Performance Bond and shall keep the same in full force and effect at all times. For large upgrade projects that have a significant potential Right-of-Way impact, both parties will assess and adjust the bond amount during the duration of the project to provide the Grantor sufficient coverage.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with customer service standards as provided in FCC Standards 47 C.F.R. Sections 76.309, 76.1602, 76.1603 and 76.1619, as amended, and any local standards adopted in accordance with applicable law. Grantee acknowledges the Grantor's ability to enact customer service standards that exceed those enacted by the FCC and the Grantor acknowledges Grantee's right to recover the costs associated with complying with such standards. The Grantee shall not enter into a contract with any Subscriber that is in any way inconsistent with the terms of this Franchise, or the requirements of any applicable customer service standards. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in Applicable Law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Grantor a sample of the Subscriber contract or service agreement then in use.

6.4 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the Grantor, Grantee shall place the Grantor's or Rainier Communications Commission's telephone number on its Subscriber bills.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Grantor. The Grantor, or its authorized representative shall have access to, and the right to inspect, books and records of Grantee, its parent corporations and Affiliates that are reasonably necessary to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Grantor access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate, or a third party. The Grantor may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Grantor, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may, within ten (10) days of a request, require that the Grantor or its designee inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and are not made available in copies to the Grantor or its designee upon written request as set forth above, and if the Grantor determines that an examination of such records is necessary or appropriate for the performance of any of the Grantor's duties, administration, or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by the Grantee.

7.2 Confidentiality

The Grantor agrees to treat as confidential any books or records that constitute proprietary or confidential information under RCW 42.56, the Public Records Act ("PRA"), to the extent Grantee makes the Grantor aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information and shall provide a brief written explanation as to why such information is confidential under the PRA. As a public agency, records and information may be subject to a request submitted under the PRA. If the Grantor receives a request under the PRA to inspect or copy the information so identified by Grantee and the Grantor determines that release of the information is required by the PRA or otherwise appropriate, Grantor will use its best efforts to promptly provide Grantee with notice of the request in accordance with RCW 42.56.540, and a copy of any written request by the party demanding access to such information, in order to have a reasonable time (of no less than ten (10) business days) within which Grantee may seek an injunction to prohibit the Grantor's disclosure of the requested record. If the Grantee fails to timely obtain a court order enjoining disclosure, the Grantor will release the requested information on the date specified. Grantee shall join the Person requesting the documents to such an action. Grantee shall defend, indemnify, and hold the Grantor harmless from any claim or judgment.

The Grantor has, and by this Section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the PRA. The Grantor shall not be liable to the Grantee for releasing records. The Grantor shall not be liable to the Grantee for any records that the Grantor releases in compliance with this Section or in compliance with an order of a court of competent jurisdiction.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall make available to the upon thirty (30) days prior written request and subject to Applicable Law:

(1) A complete set of maps showing the location of all Cable System equipment and facilities in the Right-of-Way, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Grantor's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Grantor. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations, or Affiliates that relate to the operation of the Cable System in the Franchise Area;

(3) Number of current subscribers by Tier;

(4) A log of Cable Services added or dropped, Channel changes, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates, and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Grantor is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within ninety (90) days of the Grantor's written request, Grantee shall submit to the Grantor a written report, in a form acceptable to the Grantor, which shall include, but not necessarily be limited to, the following information for the Grantor:

(A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;

(B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);

(C) The number of homes passed, beginning and ending plant miles, and any technological changes occurring in the Cable System;

(D) A statement of planned construction, if any, for the next year; and,

(E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

7.5 Copies of Federal and State Reports

Within sixty (60) days of a written request, Grantee shall submit to the Grantor copies of all regular reports maintained in the ordinary course of business submitted by Grantee or its parent corporation(s), to any federal, State, or local courts, regulatory agencies, and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Franchise Area. Grantee shall not claim confidential, privileged, or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System for the previous twelve (12) months, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints, and shall provide such information to Grantor within sixty (60) days of a written request.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

(A) Educational programming;

(B) Washington news, weather, and information;

(C) Sports;

(D) General entertainment (including movies);

(E) Children/family-oriented;

(F) Arts, culture, and performing arts;

(G) Foreign language;

(H) Science/documentary;

(I) National news, weather, and information; and,

(J) Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Grantor.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming that is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming that is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps, or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The Grantor shall have the sole and exclusive responsibility for identifying the

Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Channels provided by Grantee under this Franchise.

(B) Grantee shall cooperate with Grantor in Grantor's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to the Grantor up to five (5) Downstream Channels for EG use as provided for in this Section. Subject to a change of Applicable Law that may occur during the Term of this Franchise, this requirement regarding the provision of Access Channels or the calculation and payment of Franchise Fees, shall be addressed pursuant to subsection 3.11 of this Franchise.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Educational or Governmental Access use, within sixty (60) days after a written request for such use is submitted to Grantor, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of thirty-eight (38) hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two (2) times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, with respect to the five (5) Channels provided to Grantor. If a Channel allocated for Educational or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Grantor shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) Standard Definition ("SD") Digital Access Channels.

(1) Grantee shall provide three (3) Activated Downstream Channels for EG Access use in a standard definition ("SD") digital format. Grantee shall carry all components of the SD Access Channel Signals provided by a Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. A Designated Access Provider shall be responsible for providing the SD Access Channel Signal in an SD format to the demarcation point. Grantee shall transport and distribute the SD Access Channels signal on its Cable System and shall not unreasonably discriminate against SD Access Channels with respect to accessibility and functionality, and to the application of any applicable FCC Rules & Regulations, including, without limitation, Subpart K Channel signal standards.

(2) With respect to signal quality, Grantee shall not be required to carry a SD

Access Channel in a higher quality format than that of the SD Access Channel signal delivered to Grantee, but Grantee shall distribute the SD Access Channel signal without degradation. Upon reasonable written request by a Designated Access Provider, Grantee shall verify signal delivery to Subscribers with the Designated Access Provider, consistent with the requirements of subsection 9.2(C).

(3) Grantee shall be responsible for costs associated with the transmission of SD Access signals on its side of the demarcation point which, for the purposes of this subsection 9.2(C)(3), shall mean up to and including the receiver where the Grantor signal is transmitted over a fiber connection to Grantee. The Grantor or Designated Access Provider shall be responsible for costs associated with SD Access signal transmission on its side of the demarcation point.

(4) SD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which SD channels are made available. Grantee is not required to provide free SD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(D) High Definition ("HD") Digital Access Channels.

(1) After the Effective Date and within one hundred twenty (120) days' written notice, Grantee shall activate two (2) HD Access Channels, for which the Grantor may provide Access Channel signals in HD format to the demarcation point. After the fourth (4^{th}) anniversary of the Effective date, and with at least one hundred twenty (120) day written notice to Grantee, the Grantor may request, and Grantee shall provide on its Cable System, one (1) additional Activated Downstream Channel for EG Access use in a High Definition ("HD") digital format ("HD Access Channel or Channels"). Activation of such HD Access Channels shall only occur after the following conditions are satisfied:

(a) The Grantor shall, in its written notice to Grantee as provided for in this Section, confirm that it or its Designated Access Provider has the capabilities to produce, has been producing, and will produce programming in an HD format for the newly activated HD Access Channel; and,

(b) There will be a minimum of five (5) hours per-day, five (5) days per-week of HD EG programming available for the HD Access Channel. For the purposes of this subsection, character-generated programming (i.e., community bulletin boards) shall not satisfy, in whole or in part, this programming requirement, unless the character generated programming includes a video window with EG full motion video/audio content playing.

(2) The Grantor shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point for the HD Access Channel(s). For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of 720p or1080i, or such other resolution in this same range that Grantee utilizes for other similar non-sport, non-movie programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against the HD Access Channel(s) with respect to accessibility, functionality, and to the application of any applicable Federal Communications Commission Rules & Regulations, including, without limitation, Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry the HD Access Channel(s) in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signal provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio, and other elements associated with the Programming. Upon reasonable written request by the Grantor, Grantee shall verify signal delivery to Subscribers with the Grantor, consistent with the requirements of subsection 9.2(D).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers, and subscribe to those tiers of Cable Service, upon which the HD Channels are made available. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) The Grantor or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) The Designated Access Provider shall be responsible for providing the Access Channel signals in an HD format to the demarcation point. Grantee shall provide all necessary equipment on its side of the demarcation point, at its Headend and throughout its distribution system to deliver the Access Channel(s) in the HD format to Subscribers.

(7) At such time as Grantee determines that all Channels on the Cable System shall be delivered only in an HD format, with respect to any Access Channels simulcast in SD and HD, there shall be no further obligations to provide those Access Channels in SD. For any Access Channel that may at such time only be in SD, Grantee shall provide an additional Channel in HD in order that the content may continue to be available on the Cable System.

(E) Grantee shall simultaneously carry the first two (2) HD Access Channels provided for in subsection 9.2(D) in high definition format on the Cable System, in addition to simultaneously carrying in standard definition format the three (3) SD Access Channels provided pursuant to subsection 9.2(C). At such time as the third HD Access Channel is activated pursuant to subsection 9.2(D), Grantee shall be required to only simulcast two (2) of the SD Access Channels in addition to the three (3) HD Access Channels.

(F) There shall be no restriction on Grantee's technology used to deploy and deliver SD or HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the EG channel(s) in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the Grantor believes that Grantee fails to meet this standard, Grantor will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of SD and HD Access Channel assignments. Grantee shall also use reasonable efforts to institute common SD and HD Access Channel assignments among the jurisdictions served by the same Headend as the Grantor for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to locate HD Access Channels provided pursuant to subsection 9.2(D) in a location on its HD Channel line-up that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide the Grantor a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days' notice, prior to the time Educational and Governmental Access Channel designations are changed. Grantee, at Grantee's expense, will place the Grantor's notice of the Access Channel changes on or with its regular monthly billing, upon the Grantor's request. Such request shall be for one (1) notice per occurrence of Access Channel changes, whether one (1) or more channels are affected. The Grantor shall be responsible for the costs of printing its notice, which must conform to Grantee's reasonable mailing requirements and providing them to the Grantee. Grantee shall be provided an opportunity to review and approve all Access bill insertions.

9.5 Support for Access Costs

Within ninety (90) days of acceptance of this franchise agreement , Grantee shall provide to the Grantor up to point three seven five percent (0.375%) of Grantee's Gross Revenues per month (the "EG Contribution") to be used solely for capital costs related to Educational and Governmental Access, or as may be permitted by Applicable Law. Grantee shall make EG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment shall be due and payable no later than forty-five (45) days following the end of the quarter. The Grantor shall have sole discretion to allocate the expenditure of such payments for any capital costs related to EG Access.

9.6 Access Support Not Franchise Fees

Grantee agrees that capital support for Access Costs arising from or relating to the obligations set forth in this Section shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Grantor. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.7 Access Channels On Basic Service or Lowest Priced HD Service Tier

All SD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service. All HD Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of the lowest priced tier of HD Cable Service upon which Grantee provides HD programming content.

9.8 Change In Technology

In the event Grantee makes any change in the Cable System, related equipment, Facilities, or in Grantee's signal delivery technology, that directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Grantor's Access personnel, to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the Grantor implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the Grantor shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's Headend for distribution to subscribers.

9.9 Technical Quality

Grantee shall maintain all Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules, and regulations for Residential Subscriber Channels. In no event shall the technical quality of any Access channels be lower than the quality of other commercial SD or HD channels carried on the Cable System.

9.10 Access Cooperation

Grantor may designate any Designated Access Provider to share in the use of any Access benefit due to Grantor hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access benefits and the application of any provision under this Section as Grantor in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Grantor.

9.11 Return Lines/Access Origination

(A) As of the Effective Date of this Agreement, Grantor is not utilizing a dedicated Grantee return line or transport services to send Access programming from Grantor's location to Grantee's Headend.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Grantor. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the Grantor or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the Grantor or its Designated Access Provider, or as otherwise agreed to by the Parties. If an emergency situation necessitates movement of production facilities to a new location, the Parties shall work together to complete the new return line as soon as reasonably possible.

9.12 Promotion of EG Access Schedule

The Grantee shall include appropriate designation of the EG channels on channel cards and other channel listings provided to Subscribers in a manner comparable to commercial channels on the Cable System.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions, and ordinances of the Grantor and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Joint Trenching/Boring

Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall coordinate its project timeline and work with other providers, licensees, permittees, and franchisees so as to reduce the number of Right-of-Way cuts within the Franchise Area.

10.3 General Standard

(A) All work authorized and required hereunder shall be done in a safe, thorough, and workmanlike manner. All installations of equipment shall be permanent in nature, durable, and installed in accordance with good engineering practice and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of bundles of unused cables.

(B) All construction shall be subject to the Grantor's permitting process.

(C) Grantee agrees to comply with any regulations related to use of the Grantor’s Rights-of-Way including any adopted dig once policy(ies) and fiber optic master plan, and any amendment thereto, unless any provision of those policies and plans directly conflicts with this Franchise, in which case, the terms of this Franchise shall govern as per section 2.1(C).

(D) Grantee and Grantor shall meet, at the Grantor's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

10.4 Permits Required for Construction

Prior to doing any work in the Right-of-Way, Grantee shall apply for, and obtain, appropriate permits from the Grantor. As part of the permitting process, the Grantor may impose such conditions and regulations as are necessary and applicable in the zone in which the work will take place for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Grantor permits received by Grantee.

10.5 Emergency Permits

In the event that emergency repairs are necessary, Grantee may immediately initiate such emergency repairs, and shall notify Grantor prior, provided such emergency contact information has been provided. Grantee shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.6 Compliance with Applicable Codes

(A) Construction Codes. Grantee shall comply with all applicable industry, State and Grantor construction codes and standards.

(B) Safety Codes. Grantee shall comply with all federal, State, and Grantor safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by Applicable Law during construction, operation, and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

10.7 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules, and regulations of the Grantor regarding geographic information mapping systems for users of the Rights-of-Way.

10.8 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Grantor, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Grantor's authority. The Grantee's Cable System shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Grantor may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation, or removal thereof, and shall not obstruct or impede traffic.

10.9 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Grantor's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.10 Hazardous Substances

(A) Grantee shall comply with all Applicable Laws, statutes, regulations, and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Grantor may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to defend, indemnify, and hold the Grantor harmless against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by or assessed against the Grantor arising out of a release of hazardous substances caused by Grantee's Cable System.

10.11 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Grantor and to the notification association established in Ch. 19.122 RCW, as amended.

Within forty-eight (48) hours after any Grantor employee, contractor, franchisee, licensee, or permittee notifies Grantee of a proposed Right-of-Way excavation or the need for a design locate, Grantee shall, at Grantee's expense:

(A) Mark on the surface all of its located underground facilities within the area of the proposed excavation or design;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation or design; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation or design.

10.12 Notice to Private Property Owners

Grantee shall give reasonable notice to private property owners of work on or adjacent to private property, consistent with the requirements of the permit authorizing such work.

10.13 Underground Construction and Use of Poles

(A) When required by general ordinances, resolutions, regulations, or rules of Grantor or applicable State or federal law, or Grantor project, Grantee's Cable System shall be placed underground at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to Grantor or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with Grantor's applicable code requirements and rules. In areas where either electric or telephone utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

(C) The Grantee shall utilize existing poles wherever possible.

(D) In the event Grantee cannot obtain the necessary poles and related facilities pursuant to a pole attachment agreement, and only in such event, then it shall be lawful for Grantee to make all needed excavations in the Rights-of-Way for the purpose of undergrounding an extension of the Cable System or for placing, erecting, laying, maintaining, repairing, and removing poles, supports for wires and conductors, and any other facility needed for the maintenance or extension of Grantee's Cable System. Grantor will reasonably determine the most appropriate option between undergrounding and erecting new poles considering site specific details and availability of space in the Right-of-Way. If poles are used, all poles of Grantee shall be located as designated by the proper Grantor authorities. Grantor will determine if such poles and related facilities may be placed based on reasonable availability of space within the right of way.

(E) This Franchise does not grant, give, or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or equipment of Grantor or any other Person.

10.14 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.15 Prewiring

Any ordinance or resolution of the Grantor which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems.

10.16 Repair and Restoration of Property

(A) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(B) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Grantor may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within sixty (60) days of receipt of an itemized list of those costs, including the costs of labor, materials, and equipment, the Grantee shall pay the Grantor.

(C) Private Property. Upon completion of the work that caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed.

10.17 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any Grantor Right-of-Way, or upon the addition to the Grantor of any area in which Grantee owns or operates any such facility, Grantee shall, at the Grantor's request, submit to the Grantor a statement describing all such facilities involved, whether authorized by franchise, permit, license, or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.18 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility within the Rights-of-Way, Grantee shall submit for the Grantor's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Grantor permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Grantor may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Grantor may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Grantor. Until such time as Grantee removes or modifies the facility as directed by the Grantor, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Grantor may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.19 Movement of Cable System Facilities For Grantor Purposes

(A) The Grantor shall have the right to require Grantee to, at the Grantor's request, locate (which may include potholing) and survey Grantee's facilities and equipment, relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Grantor for public purposes, in the event of an emergency; or when the public health, safety, or welfare requires such change. For example, without limitation, this movement of or the request to locate Grantee's facilities may be needed by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Grantor for public purposes. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this subsection 10.19 shall be borne by Grantee. Such work shall be performed at Grantee's expense.

(B) Except when a shorter time is necessitated due to an emergency, Grantee shall, within sixty (60) days' of receipt of written notice by the Grantor, or such longer period as the Grantor may specify, complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of the Grantor. In the event of any Grantor Council approved capital improvement projects, which requires the removal, replacement, modification, or disconnection of Grantee's facilities or equipment, the Grantor shall complete all work to temporarily or permanently relocate, remove, replace, modify, or disconnect any of its facilities and equipment located in the Rights-of-Way or on any other property of the Grantor upon receipt of no less than one hundred twenty (120) days' advance written notice to Grantee or greater time period that does not interfere with Grantor's project schedule, and is approved by Grantor in writing.

Following notice by the Grantor, if other users of the Right-of-Way relocate aerial facilities underground as part of an undergrounding project, Grantee shall participate in the planning for relocation of its aerial facilities contemporaneously with other utilities. If the Grantor requires Grantee to relocate its facilities located within the Rights-of-Way, the Grantor will work collaboratively with Grantee to identify available alternate locations within the Rights-of-Way for Grantee to relocate its facilities at Grantee's cost.

(C) If Grantee fails to complete this work within the time prescribed above and to the Grantor's satisfaction, except in the event of a delay entirely outside the control of Grantee, the Grantor may cause such work to be done and bill the cost of the work to Grantee, including all costs and expenses incurred by the Grantor due to Grantee's delay. In such event, the Grantor shall not be liable for any damage to any portion of Grantee's Cable System. Within sixty (60) days of receipt of an itemized list of those costs, Grantee shall pay the Grantor. In any event, if Grantee fails to timely relocate, remove, replace, modify or disconnect Grantee's facilities and equipment, and that delay results in any delay damage accrued by or against the Grantor, Grantee will be liable for all documented costs of construction delays attributable to Grantee's failure to timely act. Grantee reserves the right to challenge any determination by the Grantor of costs for construction delays related to an alleged failure to act in accordance with this subsection 10.19.

10.20 Movement of Cable System Facilities for Other Entities

If any removal, replacement, modification, or disconnection of the Cable System is required to accommodate the construction, operation, or repair of the facilities or equipment of another entity with the rights to use the Rights-of-Way, Grantee shall, after at least sixty (60) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee shall require that the costs associated with the removal or relocation be paid by the benefited party.

10.21 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit (a "Permittee") and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the Permittee, and Grantee may require a reasonable deposit of the estimated payment in advance. The cost of such temporary change may be charged by the Grantee to the Permittee, and Grantee may require the estimated payment in advance. Such payment is an exchange between the Grantee and the Permittee, and the Grantor will not be the administrator of these transactions.

10.22 Reservation of Grantor Use of Right-of-Way

Nothing in this Franchise shall prevent the Grantor or public utilities owned, maintained, or operated by public entities other than the Grantor from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the use and operation of Grantee's

Cable System but insofar as the Cable System, or any portion thereof, is required to be relocated to accommodate the construction of the Grantor or public utility, Grantee shall be solely responsible for the costs associated with relocation, in accordance with State law.

10.23 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Grantor's Rights-of-Way that interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulation of the Grantor regarding tree trimming except in emergencies. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.24 Inspection of Construction and Facilities

The Grantor may inspect any of Grantee's facilities, equipment, or construction located in the Rights-of-Way at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. If an unsafe condition is found to exist, the Grantor, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Grantor establishes. The Grantor has the right to correct, inspect, administer, and repair the unsafe condition if Grantee fails to do so, and to charge Grantee for its costs.

10.25 Stop Work

(A) On notice from the Grantor that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Grantor, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Grantor.

(B) The stop work order shall become effective immediately upon issuance by the City and must:

(1) Be in writing;

(2) Be given to the Person doing the work, or posted on the work site;

(3) Also be sent to Grantee by email;

(4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

Grantee shall be liable for all costs incurred by the Grantor and associated with Grantee's violation and the Grantor's issuance of the stop work order. Grantee reserves the right to challenge any Grantor determination of Grantee's obligations under this Section.

10.26 Removal of Facilities from Poles

If Grantee leases or otherwise utilizes a pole within the Rights-of-Way owned by a third party for attachment of Grantee's facilities, and such third party subsequently abandons the pole, for example by building a replacement pole, Grantee shall remove or relocate its facilities from such pole within ninety (90) days of notification from either the third party pole owner or the Grantor. If Grantee requires additional time to accomplish the removal and/or relocation, Grantee shall notify the Grantor in writing of the reasons for the additional time and its anticipated schedule.

10.27 Work of Contractors and Subcontractors

Grantee shall be responsible for all work performed by its contractors, subcontractors, and others performing work on its behalf, as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 750 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than two hundred (200) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

11.2 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twelve (12) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Grantor no later than thirty (30) days following receipt of a request.

11.3 Emergency Alert Capability

Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the

FCC. Upon request, the Grantor shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.4 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC) standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Grantor shall have the full authority permitted by Applicable Law to enforce compliance with these technical standards.

11.5 Cable System Performance Testing

(A) Grantee shall provide to the Grantor a copy of its current written process for resolving complaints about the quality of the video programming services signals delivered to Subscribers and shall provide the Grantor with any amendments or modifications to the process at such time as they are made.

(B) Grantee shall, at Grantee's expense, maintain all aggregate data of Subscriber complaints related to the quality of the video programming service signals delivered by Grantee in the Franchise Area for a period of at least one (1) year, and individual Subscriber complaints from the Franchise Area for a period of at least three (3) years, and make such information available to the Grantor at Grantee's office upon reasonable request.

(C) Grantee shall maintain written records of all results of its Cable System tests performed by or for Grantee. Copies of such test results will be provided to the Grantor upon reasonable request.

(D) Grantee shall perform any tests required by the FCC.

11.6 Additional Tests

Where there exists other evidence that in the judgment of the Grantor casts doubt upon the reliability or technical quality of Cable Service, the Grantor shall have the right and authority to require Grantee to test, analyze, and report on the performance of the Cable System. Grantee shall fully cooperate with the Grantor in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

(A) the nature of the complaint or problem that precipitated the special tests;

(B) the Cable System component tested;

(C) the equipment used and procedures employed in testing;

(D) the method, if any, in which such complaint or problem was resolved; and

(E) any other information pertinent to said tests and analysis that may be required.

SECTION 12. SERVICE AVAILABILITY

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Franchise Area. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. The seven (7) day requirement shall be extended if necessary to comply with any underground construction permitting requirements. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement;

(2) At a non-discriminatory installation charge for a standard installation, consisting of a one hundred twenty-five (125) foot drop connecting to an inside wall for Residential Subscribers, with additional charges for non-standard installations computed according to a non-discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Grantor; and

(3) At non-discriminatory monthly rates for Residential Subscribers consistent with subsection 4.3 above.

(B) Service to Multiple Dwelling Units. The Grantee shall provide Cable Service to Multiple Dwelling Units in accordance with an agreement with the property owner or owners, this Franchise, and all applicable laws.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If the Grantor reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Grantor shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

(1) respond to the Grantor, contesting the Grantor's assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;

(2) cure the default; or,

(3) notify the Grantor that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and

notify the Grantor in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Grantor may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Grantor orders a meeting in accordance with subsection (A)(3), the Grantor shall set a meeting to investigate said issues or the existence of the alleged default. The Grantor shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Grantor determines that a default exists, the Grantor shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Grantor shall determine. In the event Grantee does not cure within such time to the Grantor's reasonable satisfaction, the Grantor may:

(1) Withdraw an amount from the letter of credit as monetary damages imposed under subsection 13.8;

(2) If a material violation, recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,

(3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Grantor, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

(E) It shall not be a violation of this Franchise if Grantee decides, on a company-wide basis, to cease providing Cable Services. Grantee shall provide a minimum of one (1) year's written notice to Grantor of the termination date, and upon that date, all rights, duties, and obligations of this Franchise shall terminate except for those that by their nature, should survive termination.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the Grantor may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

(1) If Grantee fails to perform any material obligation under this Franchise or

under any other agreement, ordinance, or document regarding the Grantor and Grantee;

(2) If Grantee fails to restore service to the Cable System after three (3) consecutive days of an outage or interruption in service; except in the case of an emergency or during a Force Majeure occurrence, or when approval of such outage or interruption is obtained from the Grantor, it being the intent that there shall be continuous operation of the Cable System;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Grantor or Subscribers;

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors; or

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Grantor shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property, and equipment of Grantee, the Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Grantor to assume and be bound by all of the terms and provisions of this Franchise.

(D) Any proceeding under the paragraph above shall be conducted by the Grantor Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the Parties. The Grantor Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Grantor Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and

the letter of credit forfeited; or, if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Grantor Council determines are reasonable under the circumstances. If the Grantor determines that the Franchise is to be revoked, the Grantor shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Grantor's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Grantor Council may, at its sole discretion, take any lawful action that it deems appropriate to enforce Grantor's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the Grantor may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Grantor's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4 below; or

(3) Upon written request of Grantee, permit the Franchise term to continue pursuant to subsection 14.1(C), or commence the transfer provisions of subsection 14.2(C).

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Grantor may order the removal of the above-ground Cable System facilities and such underground facilities from the Grantor at Grantee's sole expense within a reasonable period of time as determined by the Grantor. In removing its plant, structures, and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places, and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3(B) to the Grantor's satisfaction, after written notice to Grantee, the Grantor may cause the work to be done and Grantee shall reimburse the Grantor for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Grantor may recover the costs through the letter of credit provided by Grantee.

(D) The Grantor may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Grantor shall have the option to purchase the Cable System in accordance with Sect. 627 of the Cable Act.

13.5 Receivership and Foreclosure

(A) At the option of the Grantor, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property, and equipment of Grantee, the Grantor may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Grantor has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Grantor to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the Grantor

Grantee shall not have any monetary recourse against the Grantor or its officers, officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State, and local law. The rights of the Grantor under this

Franchise are in addition to, and shall not be read to limit, any immunities the Grantor may enjoy under Applicable Law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the Grantor to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise, nor the exercise thereof, shall be deemed to bar or otherwise limit the right of the Grantor to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The Grantor may assess against Grantee monetary damages of (i) up to five hundred dollars ($500.00) per day for any general construction delays, (ii) up to two hundred fifty dollars ($250.00) for failure to provide EG Channels, or (iii) up to one hundred dollars ($100.00) per day for any other material breaches. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. Such damages shall accrue beginning thirty (30) days following Grantee’s receipt of the notice required by subsection 13.1(A), or such later date if approved by the Grantor in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Grantor of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs, and expenses that are incurred by Grantor by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Grantor, at its option, may: operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Grantor, or until the Franchise is revoked and a new franchisee is selected by the Grantor; or obtain an injunction requiring the Grantee to continue operations. If the Grantor is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Grantor or its designee for all reasonable costs, expenses, and damages incurred.

13.10 What Constitutes Abandonment

The Grantor shall be entitled to exercise its options in subsection 13.9 if:

The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for three (3) consecutive days, unless in the case of Force

Majeure event or if the Grantor authorizes a longer interruption of service.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) The Grantor and Grantee agree that any proceedings undertaken by the Grantor that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) Notwithstanding anything to the contrary set forth herein, Grantee and Grantor agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Grantor and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Grantor may grant a renewal thereof. Grantee and Grantor consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

(C) Should the Franchise expire without a mutually agreed upon renewed Franchise Agreement, and Grantee and Grantor are engaged in an informal or formal renewal process, the Franchise shall continue on a month-to-month basis, with the same terms and conditions as provided in the Franchise, and the Grantee and Grantor shall continue to comply with all obligations and duties under the Franchise.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased, or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger, or consolidation; nor shall title thereto, either legal or equitable, or any right, interest, or property therein pass to or vest in any Person or entity without the prior written consent of the Grantor, which consent shall be by the Grantor Council, acting by ordinance.

(B) The Grantee shall promptly notify the Grantor of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Grantor for its approval of a sale or transfer and furnish all information required by Applicable Law.

(D) In seeking the Grantor's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State, or local law or regulations, or is currently under an indictment, investigation, or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data, including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Grantor may reasonably require; and

(5) Has the financial, legal, and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Grantor shall act by ordinance or resolution on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. Subject to the foregoing, if the Grantor fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Grantor agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Grantor, Grantee shall file with the Grantor a copy of the deed, agreement, lease, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Grantor may inquire into the legal, technical, and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Grantor in so inquiring. The Grantor may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Grantor shall not be required for any sale, assignment, or transfer of the Franchise or Cable System to an entity controlling, controlled by, or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Grantor and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Grantor; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term, or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court, legislative body or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term, or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State, and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address and email address for the service of notices by mail/email. All notices shall be sent via email, and such notices shall be effective upon sending. A copy may also be sent overnight delivery postage prepaid to such respective address. These addresses may be changed by the Grantor or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:

Comcast Cable Communications Management, LLC
410 Valley Ave. NW, Suite 9
Puyallup, WA 98371
Attention: Franchise Director
Email address: jamison_harris@cable.comcast.com

With a copy to:
Comcast Cable Communications Management, LLC
900 132nd Street SW
Everett, WA 98204
Attention: Franchising Department
Email address: lauri_donaldson@cable.comcast.com

The Grantor's address shall be:

City of Sumner
1104 Maple St, Suite 200
Sumner, WA 98390
Attn: City Administrator, Jason Wilson
Jason2@sumnerwa.gov

with a copy to:

City of Sumner
1104 Maple St, Suite 200
Sumner, WA 98390
Attn: City Attorney, Andrea Marquez
Andream@sumnerwa.gov

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the Grantor for all costs incurred in publishing this Franchise.

16.5 Binding Effect

This Franchise shall be binding upon the Parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the Parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the Grantor at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Grantor hereafter to enforce the same. Nor shall the waiver by the Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards, as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the Parties.

16.10 Jurisdiction

Venue for any judicial dispute between the Grantor and Grantee arising under or out of this Franchise shall be in Pierce County Superior Court, Washington, or in the United States District Court for the Western District of Washington in Seattle.

16.11 No Third-Party Beneficiaries

Nothing in this Franchise is or was intended to confer third-party beneficiary status on any Person or any member of the public to enforce the terms of this Franchise.

16.12 Acceptance

Within sixty (60) days of receipt of an executed Franchise from the Grantor, this Franchise shall be executed by Grantee by filing with the Grantor Clerk. In addition to filing the executed Franchise, Grantee shall furnish the additional insured endorsements and certificates of insurance required pursuant to Section 5. The failure of Grantee to file the executed Franchise shall be deemed a rejection by Grantee and this Franchise shall then be voidable at the discretion of the Grantor.

16.13 Termination of Prior Franchise Grantee and the Grantor agree that this Franchise replaces and supersedes Ordinance 2072 (the "Prior Franchise") with respect to Grantee; provided, however, that the grant of this Franchise shall have no effect on Grantee's obligations to indemnify or insure the Grantor against acts and omissions occurring during the period(s) that the Prior Franchise was in effect, nor shall it have any effect upon liability to pay all Franchise Fees consistent with Washington State statute of limitations that were due and owed under a Prior Franchise.

IN WITNESS WHEREOF, this Franchise is signed in the name of the ______ of _______, Washington this ___ day of ________, 2022.

ATTEST: CITY OF SUMNER, WASHINGTON:

______________________________ Clerk	Kathy Hayden______________________________ Title: Mayor__________________________________

APPROVED AS TO FORM:

____
Attorney

Accepted and approved this _____ day of _________, 2022.

ATTEST:	COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC
______________________________ Public Notary	____ Name/Title: ___________________

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2465

SUBJECT: Appointment to the Civil Service Commission (Lomax) **CATEGORY:** Motion

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BUDGET IMPACT:

Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:

1. Lomax - Civil Service Application

STAFF CONTACT: Jeff Steffens, Administrative Services Director

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SUMMARY BACKGROUND:

After a number of years on the Civil Service Commission, Mike Carnahan sold his home in Sumner and moved out of state. The Mayor is seeking the appointment of Georgia Lomax to fulfill the remainder of his term. The Civil Service Commission consists of three members and is responsible for administration of human resources policies and practices in areas of competitive testing, conducting investigations and hearings, position classification, and any other matter of general personnel administration subject to the provisions of the State statute and Civil Service Rules.

Ms. Loamax is the recently retired Executive Director of the Pierce County Library System and brings years of professional Human Resource experience to the Civil Service Commission. She looks forward to the opportunity to give back to the community in a new way.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION: Committee Do-Pass

STAFF RECOMMENDATIONS/MOTION:

Approve the appointment of Georgia Lomax to the Civil Service Commission for a term ending in April 2024.

CITY OF
SUMNER
WASHINGTON

COMMISSION APPLICATION

Thank you for your interest in serving on a City of Sumner commission. We value the contributions that volunteers make in keeping Sumner a great place. This application will help us better understand your background. ***Please fill out electronically or print clearly.***

I am interested in serving on the following:

☐ **ARTS & CULTURE** ☒ **CIVIL SERVICE** ☐ **DESIGN** ☐ **LODGING TAX** ☐ **PARKS/FORESTRY** ☐ **PLANNING**

Name: Georgia Lomax **Contact Phone:** [redacted]

Address: [redacted] Sumner, WA 98390

Email: [redacted]

Occupation *(if retired, please indicate former occupation or profession):*

Retired - Executive Director, Pierce County Library System

Education: Masters Library Science, UW; BA Journalism, WSU

Professional and / or Community Involvement:
United Way of Pierce County, Board of Directors; Resilient Pierce County; Rotary Club of Sumner

Why are you interested in serving on this commission?
I'm interested in being involved in my community and this commission supports and contributes to ensuring we have a safe community by having an excellent police department. I also have a lot of experience in hiring, union/management relations, and personnel so I think it would be interesting.

Have you previously served on a City commission? ☐ **Yes** ☒ **No**

If yes, which one(s):

Please note that all information on this form becomes public information when submitted.

Return completed form to City of Sumner, 1104 Maple Street, Sumner, WA 98390
OR email: michellec@sumnerwa.gov

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2480

SUBJECT: Ordinance No. 2831 - ARPA Budget Amendment **CATEGORY:** Ordinance

BUDGET IMPACT:
Expenditure Required: $39,000 Within Budget Allocation: N/A

ATTACHMENTS:
1. Ordinance No. 2831 - ARPA Budget Amendment

STAFF CONTACT: Jason Wilson, City Administrator

SUMMARY BACKGROUND:
This item is a companion item to Resolution No. 1632 which is also on tonight's agenda.

Resolution No. 1632 establishes an employee retention program. The program would pay existing staff a flat rate of $1500 in lieu of staying employed through the end of 2022. Due to the extreme challenges in recruiting and retaining Police positions, Police Guild Personnel would receive $3000. Staff proposed to the ARPA committee that the additional $1500 paid to Police Guild Personnel be paid using American Rescue Plan Act funds.

The one time ARPA fund allocation would be $39,000. The Committee was supportive and provided a do-pass recommendation.

COUNCIL COMMITTEE/STUDY SESSION: ARPA Committee
MEETING/STUDY SESSION DATE: 7/19/2022
COMMITTEE RECOMMENDATION: Committee Do-Pass

STAFF RECOMMENDATIONS/MOTION:
A motion to adopt Ordinance No. 2831, allocating ARPA funds to offset a police retention program, substantially in the form as approved by the City Attorney.

ORDINANCE NO. 2831
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING THE 2021-2022 BIENNIAL BUDGET AS ORIGINALLY ADOPTED IN ORDINANCE NO. 2758, APPROVED DECEMBER 7, 2020, AND PREVIOUSLY AMENDED IN ORDINANCE 2762, APPROVED FEBRUARY 16, 2021, ORDINANCE 2771, APPROVED APRIL 19, 2021, ORDINANCE 2786, APPROVED AUGUST 2, 2021, ORDINANCE 2790, APPROVED AUGUST 16, 2021, ORDINANCE 2791, APPROVED AUGUST 16, 2021, ORDINANCE 2797, APPROVED OCTOBER 18, 2021, ORDINANCE 2802, APPROVED DECEMBER 6, 2021, ORDINANCE 2803, APPROVED DECEMBER 6, 2021, ORDINANCE 2804, APPROVED JANUARY 18, 2022, ORDINANCE 2813, APPROVED FEBRUARY 7, 2022, ORDINANCE 2815, APPROVED MARCH 21, 2022, ORDINANCE 2818, APPROVED APRIL 4, 2022, and ORDINANCE 2820, APPROVED JUNE 21, 2022.

WHEREAS, The Sumner City Council approved Ordinance No. 2758 which adopted a biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2762 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2771 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2786 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2790 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2791 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2797 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2802 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2803 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2804 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2813 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2815 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2818 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2820 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, RCW 35A.34 provides procedures for adopting, managing, and amending a biennial budget; and

WHEREAS, RCW 35A.34.130 requires that the adopted biennial budget be subject to a mid-biennial review and modifications as needed; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. **Amendment.** The biennial budget for the City of Sumner for the period January 1, 2021 through December 31, 2022 as contained in the adopted 2021-2022 Biennial Budget for total revenue/sources and expenditures/uses as approved by the City Council, is hereby amended by Total Revenue and Expenditures for each fund as shown on the attached Exhibit A.

Section 2. **Corrections by City Clerk or Code Reviser**. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. **Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

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

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 1st day of August, 2022.

____
Mayor Kathy Hayden

ATTEST: | **APPROVED AS TO FORM:**

____
City Clerk Michelle Converse, CMC

____
City Attorney Andrea Marquez

Funds	Beginning Fund Balance Adopted	Revenues Adopted	Revenues Previous	Revenues 08/01/22	Expenditures Adopted	Expenditures Previous	Expenditures 08/01/22	Ending Fund Balance Revised
001 General	$ 5,978,542	$ 31,643,467	$ 585,370	$ 39,000	$ 31,919,065	1,630,504	$ 39,000	$ 4,657,810
002 General Fund Reserves	980,824	-	-	-	-	-	-	980,824
003 Building Reserves	475,000	200,000	-	-	80,000	150,000	-	445,000
103 Complete Streets	241,851	-	-	-	200,000	41,654	-	197
105 Drug Enforcement	63,457	-	-	-	4,500	-	-	58,957
106 Hotel/Motel	273,747	215,000	25,000	-	106,245	318,000	-	89,502
115 ARPA Funding	-	-	3,710,676	-	-	3,487,000	39,000	184,676
200 Debt Service	2,570,000	527,200	-	-	520,000	-	-	2,577,200
221 LID Guarantee	694,969	-	-	-	-	-	-	694,969
302 Sidewalk	477,769	4,308,069	(310,000)	-	3,524,069	(310,000)	-	1,261,769
305 Real Estate Excise Tax	1,093,200	1,600,000	-	-	-	1,776,000	-	917,200
307 LID Capital Project Fund	9,545	-	-	-	-	-	-	9,545
310 Parks & Trails Capital Fund	544,740	1,237,500	2,456,000	-	1,237,500	2,381,000	-	619,740
320 Street Capital Fund	826,206	6,709,520	4,010,700	-	7,679,245	2,711,700	-	1,155,481
325 Facilities Capital Fund	183,773	26,200,000	276,000	-	15,700,000	956,000	-	10,003,773
401 Water	13,477,844	11,104,747	1,025,000	-	15,719,366	2,703,290	-	7,184,934
402 Wastewater	20,996,349	15,706,582	591,050	-	18,404,296	2,983,246	-	15,906,438
403 Utility Bond Reserves	1,729,536	-	-	-	-	-	-	1,729,536
408 Stormwater	14,788,274	14,201,134	-	-	18,573,507	369,622	-	10,046,279
410 Cemetery Operations	31,493	1,352,800	-	-	1,358,895	2,260	-	23,138
415 Cemetery Development	-	-	160,000	-	-	155,000	-	5,000
440 Animal Control	12,239	1,496,319	121,184	-	1,460,055	114,855	-	54,832
501 Unemployment Insurance	43,989	-	-	-	3,055	-	-	40,934
550 Fleet Management	6,261	1,251,664	-	-	1,251,660	690	-	5,575
551 Information Technology	273,009	2,385,042	169,930	-	2,385,040	164,396	-	278,545
555 Equipment Reserve	1,013,749	1,297,245	315,000	-	790,000	373,000	-	1,462,994
601 Cemetery Endowment	1,472,385	60,000	-	-	-	-	-	1,532,385
603 Alder Ave Remediation	25,649	-	-	-	-	-	-	25,649
605 Development Impact Fees	7,026,351	700,000	-	-	3,397,200	835,000	-	3,494,151
611 Firemen's Pension	11,832	160,000	-	-	160,000	-	-	11,832
Total All Funds	$ 75,322,583	$ 122,356,289	$ 13,135,910	$ 39,000	$ 124,473,699	$ 20,843,217	$ 78,000	$ 65,458,866

CITY COUNCIL MEETING
DATE: August 1, 2022
AGENDA BILL: 22-2473

SUBJECT: Resolution No. 1632 - Employee Retention Payment Program

CATEGORY: Resolution

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: Yes

ATTACHMENTS:
1. Resolution No. 1632 Retention Payment Program

STAFF CONTACT: Jason Wilson, City Administrator

SUMMARY BACKGROUND:
Due to the continuing struggle to recruit and maintain employees in a tight labor market, as well as the current inflationary rates, the City is always exploring ways to retain our current staff. One of those ways is to create a one-time employee retention payment program. Funding for this one-time program is due to the number of vacancies and supplemented from the APRA. Employees would receive $1,500 gross and members of the Police Guild would receive $3,000. There are, of course, provisions which were thoroughly discussed in both the Finance and ARPA committees, including a repayment provision if employment ends before December 31, 2022.

COUNCIL COMMITTEE/STUDY SESSION: Finance Committee, ARPA Committee
MEETING/STUDY SESSION DATE: 7/19/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:
A motion to adopt Resolution No.1632 - Employee Retention Payment Program.

RESOLUTION NO. 1632

CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AUTHORIZING THE MAYOR TO CREATE A ONE-TIME EMPLOYEE RETENTION PAYMENT PROGRAM.

WHEREAS, Since 2019 over 30% of the employees at the City have separated; and

WHEREAS, the City is experiencing unprecedented challenges related to the recruitment and retention of qualified employees; and

WHEREAS, the effects of the Covid-19 pandemic have significantly impacted the labor market and increased the availability of remote work options; and

WHEREAS, retaining our current employees limits the number of recruitments the City must undertake, while maintaining service levels; and

WHEREAS, recruitment for Police Guild personnel is extremely competitive, with many surrounding jurisdictions offering lucrative hiring incentives in an attempt to hire qualified candidates from cities like Sumner; and

WHEREAS, the current inflationary rates are (CPI-U) is more than double what City employees received as a wage adjustment for 2022, and

WHEREAS, the anticipated wage increases for City employees for 2023 are projected to remain below the unprecedented inflationary (CPI-U); and

WHEREAS, the City providing significantly less than inflationary (CPI-U) increases is causing additional strain on employee's ability to afford the cost of living and thereby impacting the City's ability to retain qualified employees; and

WHEREAS, Due to the increased number of vacancies there is adequate budget allocations by fund to create a retention payment program.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:

Section 1. **Authorization.** That the City Council hereby authorizes the Mayor to create a one-time retention payment program under the provisions set forth in Section 2.

Section 2. **Retention Payment Program Provisions.**

1. The individual employee shall sign a "Retention Agreement" outlining the terms of the program and reasons for potential required repayment. The individual agreement does not eliminate the requirement to bargain the program with an employee's Union, including the development of supporting agreements between the City and Union.

2. The Retention Program shall only apply to employees who are employed by the City as of August 1, 2022.
3. The Retention Payment shall be $1,500 gross for all employees, with the exception of Police Guild personnel which shall receive $3,000 gross, and the funds shall come from general fund allocations to be supplemented by appropriations from ARPA remaining balance.
4. The employee must remain an active employee with the City of Sumner through December 31, 2022.
5. The employee shall, upon voluntary separation at any time prior to December 31, 2022, repay the Retention Payment in full.
6. Involuntary separation for an employee in good standing for reasons such as disability or other cause outside the control of the employee will not trigger the required repayment.
7. Separation resulting from an incident for which discipline could result, to include resignation in lieu of termination, shall require repayment in full, unless otherwise waived by the City Administrator.

Section 3. **Corrections by City Clerk or Code Reviser**. Upon approval of the City Attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 4. **Effective Date.** This resolution shall become effective immediately upon adoption.

ADOPTED AND APPROVED this 1st day of August, 2022.

Attest:

____
Kathy Hayden, Mayor

____
Michelle Converse, City Clerk

Approved as to form:

____
Andrea Marquez, City Attorney

AUGUST 2022

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6
6:00PM - **Regular Council Meeting** (Virtual/Chambers)	4:00 PM **Public Works Committee** (Virtual/FF Conf Room)	5:30PM **Finance Committee** (Virtual/FF Conf Room)	6:00PM **Planning Commission** (Virtual/Chambers)		
8	9	10	11	12	13
6:00PM **Study Session** (Virtual/Chambers)		5:30PM **American Rescue Plan Committee** (Virtual/FF Conf Room) ~~6:30PM~~ CANCELLED ~~**Design Commission**~~ ~~(Virtual/Chambers)~~	4:30PM **Forestry/Parks Commission** (Virtual/FF Conf Room)		
15	16	17	18	19	20
6:00PM **Regular Council Meeting** (Virtual/Chambers)		5:30PM **Public Safety** (Virtual/FF Conf Room)			
22	23	24	25	26	27
6:00PM **Study Session** (Virtual/Chambers)		5:00PM **CD Committee** (Virtual/FF Conf Room)	5:30PM **Arts Commission** (Virtual/FF Conf Room)		
29	30	31			

Meeting dates and times may change. Please contact City Hall to confirm this information prior to any meeting you plan to attend. ***These meetings are accessible to persons with disabilities.*** *For individuals who require special accommodations, please contact City Hall at (253) 299-5500, 24 hours in advance.*

Name: Michelle Converse, CMC

Title: City Clerk

City of Sumner
1104 Maple Street
Sumner, Washington 98390
Ph: (253) 299-5500 Fax: (253) 299-5509
Website: **www.sumnerwa.gov**