CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
October 17, 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/86084029847
Or One tap mobile: +12532158782,,86084029847# or +16694449171,,86084029847#
Or Telephone: : +1 253 215 8782
Webinar ID: 860 8402 9847

CALL TO ORDER

Pledge of Allegiance

Invocation

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

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. Stormwater Capacity Grant Acceptance
2. Sumner Springs Reservoir Recoat - Construction Contract Award
3. Town Center : Utility & Woonerf - PSE Agreement Schedule 74 Design Work
4. Town Center : Main and Wood PSE Agreement: Schedule 74 Design Work
5. Resolution No. 1639 - Setting Public Hearing Riverwalk Trail Vacation
6. Purchase & Sale Agreement - Nordyke Acquisition: 16602 64th ST E
7. Approval of the regular council meeting minutes from October 3, 2022, special study session of October 3, 2022 and October 10, 2022 study session

PUBLIC HEARING

1. Public Hearing: Resolution No. 1640 - Tax Year 2023 Ad Valorem Property Tax

REGULAR BUSINESS

1. **Unfinished Business**
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. Pierce County Regional Council Representative Selection
b. Council Committee Selection
c. Ordinance No. 2836 – 2023 Utility Rates
d. Ordinance No. 2837 - Amending the 2021/2022 Biennial Budget

e. Sumner Texaco Heritage Park Remediation - Consultant Services Amendment

4. **Reports**
   a. Council
   b. City Administrator
   c. Mayor
5. **Executive Session**
6. **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: October 17, 2022
AGENDA BILL: 22-2645

SUBJECT: Stormwater Capacity Grant Acceptance **CATEGORY:** Motion

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

ATTACHMENTS:
1. Grant Agreement

STAFF CONTACT: Robert Wright, Environmental & Sustainability Specialist

SUMMARY BACKGROUND:
The Department of Ecology issues a non-competitive grant to help cities implement their Municipal National Pollutant Discharge Elimination System Permits (NPDES). This grant can cover anything from staff costs to spill materials and is eligible for all expenses incurred after July 1, 2021. The grant is for $50,000 and will be amended immediately after to increase the total to $75,000.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion approving the acceptance of $75,000 in grant funds from the Department of Ecology for use in NPDES Implementation, and authorizing the Mayor to execute any and all documents necessary to accept the funds, substantially in a form as approved by the City Attorney.

Agreement No. WQSWCAP-2123-Sumner-00144

WATER QUALITY STORMWATER CAPACITY AGREEMENT

BETWEEN

THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

AND

CITY OF SUMNER

This is a binding Agreement entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and City of Sumner, hereinafter referred to as the "RECIPIENT," to carry out with the provided funds activities described herein.

GENERAL INFORMATION

Project Title:	2021-2023 Biennial Stormwater Capacity Grants
Total Cost:	$50,000.00
Total Eligible Cost:	$50,000.00
Ecology Share:	$50,000.00
Recipient Share:	$0.00
The Effective Date of this Agreement is:	07/01/2021
The Expiration Date of this Agreement is no later than:	03/31/2023
Project Type:	Capacity Grant

Project Short Description:
This project will assist Phase I and II Permittees in implementation or management of municipal stormwater programs.

Project Long Description:
N/A

Overall Goal:
This project will improve water quality in the State of Washington by reducing stormwater pollutants discharged to state water bodies.

RECIPIENT INFORMATION

Organization Name: City of Sumner

Federal Tax ID: 91-6001282
UEI Number: Q3ZKNC1EXZC9

Mailing Address: 1104 Maple St
Sumner, WA 98390

Physical Address: 1104 Maple St
Sumner, Washington 98390

Organization Email: kassandrar@sumnerwa.gov

Contacts

Project Manager	Robert Wright Local Source Control Specialist 1104 Maple St Suite 260 Sumner, Washington 98390 Email: robertw@sumnerwa.gov Phone: (253) 299-5708
Billing Contact	Robert Wright Local Source Control Specialist 1104 Maple St Suite 260 Sumner, Washington 98390 Email: robertw@sumnerwa.gov Phone: (253) 299-5708
Authorized Signatory	Kassandra Raymond Chief Financial Officer 1104 Maple Street Sumner, Washington 98390 Email: kassandrar@sumnerwa.gov Phone: (253) 299-5541

ECOLOGY INFORMATION

Mailing Address: Department of Ecology
Water Quality
PO BOX 47600
Olympia, WA 98504-7600

Physical Address: Water Quality
300 Desmond Drive SE
Lacey, WA 98503

Contacts

Project Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890
Financial Manager	Kyle Graunke PO Box 47600 Olympia, Washington 98504-7600 Email: kygr461@ecy.wa.gov Phone: (360) 628-3890

AUTHORIZING SIGNATURES

RECIPIENT agrees to furnish the necessary personnel, equipment, materials, services, and otherwise do all things necessary for or incidental to the performance of work as set forth in this Agreement.

RECIPIENT acknowledges that they had the opportunity to review the entire Agreement, including all the terms and conditions of this Agreement, Scope of Work, attachments, and incorporated or referenced documents, as well as all applicable laws, statutes, rules, regulations, and guidelines mentioned in this Agreement. Furthermore, the RECIPIENT has read, understood, and accepts all requirements contained within this Agreement.

This Agreement contains the entire understanding between the parties, and there are no other understandings or representations other than as set forth, or incorporated by reference, herein.

No subsequent modifications or amendments to this agreement will be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and ECOLOGY and made a part of this agreement. ECOLOGY and RECIPIENT may change their respective staff contacts without the concurrence of either party.

This Agreement shall be subject to the written approval of Ecology's authorized representative and shall not be binding until so approved.

The signatories to this Agreement represent that they have the authority to execute this Agreement and bind their respective organizations to this Agreement.

Washington State
Department of Ecology

By: _____

Vincent McGowan, P.E. Date

Water Quality

Program Manager

Template Approved to Form by
Attorney General's Office

City of Sumner

By: _____

Kassandra Raymond Date

Chief Financial Officer

Kathy Hayden

Mayor Date

SCOPE OF WORK

Task Number: 1 **Task Cost:** $0.00

Task Title: Project Administration/Management

Task Description:
A. The RECIPIENT shall carry out all work necessary to meet ECOLOGY grant or loan administration requirements. Responsibilities include, but are not limited to: maintenance of project records; submittal of requests for reimbursement and corresponding backup documentation; progress reports; and a recipient closeout report (including photos).

B. The RECIPIENT shall maintain documentation demonstrating compliance with applicable procurement, contracting, and interlocal agreement requirements; application for, receipt of, and compliance with all required permits, licenses, easements, or property rights necessary for the project; and submittal of required performance items.

C. The RECIPIENT shall manage the project. Efforts include, but are not limited to: conducting, coordinating, and scheduling project activities and assuring quality control. Every effort will be made to maintain effective communication with the RECIPIENT's designees; ECOLOGY; all affected local, state, or federal jurisdictions; and any interested individuals or groups. The RECIPIENT shall carry out this project in accordance with any completion dates outlined in this agreement.

Task Goal Statement:
Properly managed and fully documented project that meets ECOLOGY's grant and loan administrative requirements.

Task Expected Outcome:
* Timely and complete submittal of requests for reimbursement, quarterly progress reports, Recipient Closeout Report, and two-page Outcome Summary Report.
* Properly maintained project documentation.

Recipient Task Coordinator: Robert Wright

Project Administration/Management

Deliverables

Number	Description	Due Date
1.1	Progress Reports that include descriptions of work accomplished, project challenges, and changes in the project schedule. Submitted at least quarterly in EAGL.	
1.2	Recipient Closeout Report (EAGL Form).	
1.3	Two-page draft and Final Outcome Summary Reports.	

SCOPE OF WORK

Task Number: 2 **Task Cost:** $50,000.00

Task Title: Permit Implementation

Task Description:

Conduct work related to implementation of municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit requirements. If the RECIPIENT is out of compliance with the municipal stormwater National Pollutant Discharge Elimination System (NPDES) permit, the RECIPIENT will ensure funds are used to attain compliance where applicable. The following is a list of elements RECIPIENT's project may include.

1) Public education and outreach activities, including stewardship activities.
2) Public involvement and participation activities.
3) Illicit discharge detection and elimination (IDDE) program activities, including:
   a) Mapping of municipal separate storm sewer systems (MS4s).
   b) Staff training.
   c) Activities to identify and remove illicit stormwater discharges.
   d) Field screening procedures.
   e) Complaint hotline database or tracking system improvements.
4) Activities to support programs to control runoff from new development, redevelopment, and construction sites, including:
   a) Development of an ordinance and associated technical manual or update of applicable codes.
   b) Inspections before, during, and upon completion of construction, or for post-construction long-term maintenance.
   c) Training for plan review or inspection staff.
   d) Participation in applicable watershed planning effort.
5) Pollution prevention, good housekeeping, and operation and maintenance program activities, such as:
   a) Inspecting and/or maintaining the MS4 infrastructure.
   b) Developing and/or implementing policies, procedures, or stormwater pollution prevention plans at municipal properties or facilities.
6) Annual reporting activities.
7) Establishing and refining stormwater utilities, including stable rate structures.
8) Water quality monitoring to implement permit requirements for a Water Cleanup Plan (TMDL). Note that any monitoring funded by this program requires submittal of a Quality Assurance Project Plan (QAPP) that the DEPARMENT approves prior to awarding funding for monitoring.
Monitoring, including:
   a) Development of applicable QAPPs.
   b) Monitoring activities, in accordance with a DEPARTMENT- approved QAPP, to meet Phase I/II permit requirements.
9) Structural stormwater controls program activities (Phase I permit requirement)
10) Source control for existing development (Phase I permit requirement), including:
   a) Inventory and inspection program.
   b) Technical assistance and enforcement.
   c) Staff training.
11) Equipment purchases that result directly in improved permit compliance. Equipment purchases must be specific to implementing a permit requirement (such as a vactor truck) rather than general use (such as a pick-up truck). Equipment

purchases over $5,000 must be pre-approved by Ecology.

Documentation of all tasks completed is required. Documentation may include: field reports, dates and number of inspections conducted, dates of trainings held and participant lists, number of illicit discharges investigated and removed, summaries of planning, stormwater utility or procedural updates, annual reports, copies of approved QAPPs, summaries of structural or source control activities, summaries of how equipment purchases have increased or improved permit compliance. Capital construction projects, incentives or give-a-ways, grant application preparation, TAPE review for proprietary treatment systems, or tasks that do not support Municipal Stormwater Permit implementation are not eligible expenses.

Task Goal Statement:
This task will improve water quality in the State of Washington by reducing the pollutants delivered by stormwater to lakes, streams, and the Puget Sound by implementing measures required by Phase I and II NPDES permits.

Task Expected Outcome:
RECIPIENTS will implement measures required by Phase I and II NPDES permits.

Recipient Task Coordinator: Robert Wright

Permit Implementation

Deliverables

Number	Description	Due Date
2.1	Documentation of tasks completed	03/31/2023

BUDGET

Funding Distribution EG220376

NOTE: *The above funding distribution number is used to identify this specific agreement and budget on payment remittances and may be referenced on other communications from ECOLOGY. Your agreement may have multiple funding distribution numbers to identify each budget.*

Funding Title: 2021-23 capacity grant
Funding Type: Grant
Funding Effective Date: 07/01/2021
Funding Expiration Date: 03/31/2023

Funding Source:

Title: Model Toxics Control Operating Account (MTCOA)

Fund:
Type: State
Funding Source %: 100%
Description: MTCA

Approved Indirect Costs Rate: Approved State Indirect Rate: 30%
Recipient Match %: 0%
InKind Interlocal Allowed: No
InKind Other Allowed: No
Is this Funding Distribution used to match a federal grant? No

2021-23 capacity grant	Task Total
Permit Implementation	$ 50,000.00
	Total: $ 50,000.00

Funding Distribution Summary

Recipient / Ecology Share

Funding Distribution Name	Recipient Match %	Recipient Share	Ecology Share	Total
2021-23 capacity grant	0.00 %	$ 0.00	$ 50,000.00	$ 50,000.00
Total		**$ 0.00**	**$ 50,000.00**	**$ 50,000.00**

AGREEMENT SPECIFIC TERMS AND CONDITIONS

N/A

SPECIAL TERMS AND CONDITIONS

GENERAL FEDERAL CONDITIONS

If a portion or all of the funds for this agreement are provided through federal funding sources or this agreement is used to match a federal grant award, the following terms and conditions apply to you.

A. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION:

1. The RECIPIENT/CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the RECIPIENT/CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.
2. The RECIPIENT/CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the RECIPIENT/CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
3. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.
4. The RECIPIENT/CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.
5. The RECIPIENT/CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. Pursuant to 2CFR180.330, the RECIPIENT/CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.
7. RECIPIENT/CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal

Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

8. RECIPIENT/CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier recipients or contractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. RECIPIENT/CONTRACTOR must run a search in <http://www.sam.gov> and print a copy of completed searches to document proof of compliance.

B. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REPORTING REQUIREMENTS:

CONTRACTOR/RECIPIENT must complete the FFATA Data Collection Form (ECY 070-395) and return it with the signed agreement to ECOLOGY.

Any CONTRACTOR/RECIPIENT that meets each of the criteria below must report compensation for its five top executives using the FFATA Data Collection Form.

- Receives more than $30,000 in federal funds under this award.
- Receives more than 80 percent of its annual gross revenues from federal funds.
- Receives more than $25,000,000 in annual federal funds.

Ecology will not pay any invoices until it has received a completed and signed FFATA Data Collection Form. Ecology is required to report the FFATA information for federally funded agreements, including the required Unique Entity Identifier in www.sam.gov <http://www.sam.gov/> within 30 days of agreement signature. The FFATA information will be available to the public at www.usaspending.gov <http://www.usaspending.gov/>.

For more details on FFATA requirements, see www.fsrs.gov <http://www.fsrs.gov/>.

C. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT:

As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232 <https://www.govinfo.gov/content/pkg/PLAW-115publ232/pdf/PLAW-115publ232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (SAM) <https://sam.gov/SAM/> exclusion list.

GENERAL TERMS AND CONDITIONS

Pertaining to Grant and Loan Agreements With the state of Washington, Department of Ecology

GENERAL TERMS AND CONDITIONS
For DEPARTMENT OF ECOLOGY GRANTS and LOANS
06/24/2021 Version

1. ADMINISTRATIVE REQUIREMENTS

a) RECIPIENT shall follow the "Administrative Requirements for Recipients of Ecology Grants and Loans – EAGL Edition." (https://fortress.wa.gov/ecy/publications/SummaryPages/1701004.html)

b) RECIPIENT shall complete all activities funded by this Agreement and be fully responsible for the proper management of all funds and resources made available under this Agreement.

c) RECIPIENT agrees to take complete responsibility for all actions taken under this Agreement, including ensuring all subgrantees and contractors comply with the terms and conditions of this Agreement. ECOLOGY reserves the right to request proof of compliance by subgrantees and contractors.

d) RECIPIENT's activities under this Agreement shall be subject to the review and approval by ECOLOGY for the extent and character of all work and services.

2. AMENDMENTS AND MODIFICATIONS

This Agreement may be altered, amended, or waived only by a written amendment executed by both parties. No subsequent modification(s) or amendment(s) of this Agreement will be of any force or effect unless in writing and signed by authorized representatives of both parties. ECOLOGY and the RECIPIENT may change their respective staff contacts and administrative information without the concurrence of either party.

3. ACCESSIBILITY REQUIREMENTS FOR COVERED TECHNOLOGY

The RECIPIENT must comply with the Washington State Office of the Chief Information Officer, OCIO Policy no. 188, Accessibility (https://ocio.wa.gov/policy/accessibility) as it relates to "covered technology." This requirement applies to all products supplied under the Agreement, providing equal access to information technology by individuals with disabilities, including and not limited to web sites/pages, web-based applications, software systems, video and audio content, and electronic documents intended for publishing on Ecology's public web site.

4. ARCHAEOLOGICAL AND CULTURAL RESOURCES

RECIPIENT shall take all reasonable action to avoid, minimize, or mitigate adverse effects to archaeological and historic archaeological sites, historic buildings/structures, traditional cultural places, sacred sites, or other cultural resources, hereby referred to as Cultural Resources.

The RECIPIENT must agree to hold harmless ECOLOGY in relation to any claim related to Cultural Resources discovered, disturbed, or damaged due to the RECIPIENT's project funded under this Agreement.

RECIPIENT shall:

a) Contact the ECOLOGY Program issuing the grant or loan to discuss any Cultural Resources requirements for their project:

• Cultural Resource Consultation and Review should be initiated early in the project planning process and must be completed prior to expenditure of Agreement funds as required by applicable State and Federal requirements.

* For state funded construction, demolition, or land acquisitions, comply with Governor Executive Order 21-02, Archaeological and Cultural Resources.

• For projects with any federal involvement, comply with the National Historic Preservation Act of 1966 (Section 106).

b) If required by the ECOLOGY Program, submit an Inadvertent Discovery Plan (IDP) to ECOLOGY prior to implementing any project that involves field activities. ECOLOGY will provide the IDP form.

RECIPIENT shall:

• Keep the IDP at the project site.
• Make the IDP readily available to anyone working at the project site.
• Discuss the IDP with staff, volunteers, and contractors working at the project site.
• Implement the IDP when Cultural Resources or human remains are found at the project site.

c) If any Cultural Resources are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

• Immediately stop work and notify the ECOLOGY Program, who will notify the Department of Archaeology and Historic Preservation at (360) 586-3065, any affected Tribe, and the local government.

d) If any human remains are found while conducting work under this Agreement, follow the protocol outlined in the project IDP.

• Immediately stop work and notify the local Law Enforcement Agency or Medical Examiner/Coroner's Office, the Department of Archaeology and Historic Preservation at (360) 790-1633, and then the ECOLOGY Program.

e) Comply with RCW 27.53, RCW 27.44, and RCW 68.50.645, and all other applicable local, state, and federal laws protecting Cultural Resources and human remains.

5. ASSIGNMENT

No right or claim of the RECIPIENT arising under this Agreement shall be transferred or assigned by the RECIPIENT.

6. COMMUNICATION

RECIPIENT shall make every effort to maintain effective communications with the RECIPIENT's designees, ECOLOGY, all affected local, state, or federal jurisdictions, and any interested individuals or groups.

7. COMPENSATION

a) Any work performed prior to effective date of this Agreement will be at the sole expense and risk of the RECIPIENT. ECOLOGY must sign the Agreement before any payment requests can be submitted.

b) Payments will be made on a reimbursable basis for approved and completed work as specified in this Agreement.

c) RECIPIENT is responsible to determine if costs are eligible. Any questions regarding eligibility should be clarified with ECOLOGY prior to incurring costs. Costs that are conditionally eligible require approval by ECOLOGY prior to expenditure.

d) RECIPIENT shall not invoice more than once per month unless agreed on by ECOLOGY.

e) ECOLOGY will not process payment requests without the proper reimbursement forms, Progress Report and supporting documentation. ECOLOGY will provide instructions for submitting payment requests.

f) ECOLOGY will pay the RECIPIENT thirty (30) days after receipt of a properly completed request for payment.

g) RECIPIENT will receive payment through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment you must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, https://ofm.wa.gov/it-systems/statewide-vendorpayee-services. If you have questions about the vendor registration process, you can contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

h) ECOLOGY may, at its sole discretion, withhold payments claimed by the RECIPIENT if the RECIPIENT fails to satisfactorily comply with any term or condition of this Agreement.

i) Monies withheld by ECOLOGY may be paid to the RECIPIENT when the work described herein, or a portion thereof, has been completed if, at ECOLOGY's sole discretion, such payment is reasonable and approved according to this Agreement, as appropriate, or upon completion of an audit as specified herein.

j) RECIPIENT must submit within thirty (30) days after the expiration date of this Agreement, all financial, performance, and other reports required by this Agreement. Failure to comply may result in delayed reimbursement.

8. COMPLIANCE WITH ALL LAWS

RECIPIENT agrees to comply fully with all applicable federal, state and local laws, orders, regulations, and permits related to this Agreement, including but not limited to:

a) RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

b) RECIPIENT agrees to be bound by all applicable federal and state laws, regulations, and policies against discrimination.

c) RECIPIENT certifies full compliance with all applicable state industrial insurance requirements.

d) RECIPIENT agrees to secure and provide assurance to ECOLOGY that all the necessary approvals and permits required by authorities having jurisdiction over the project are obtained. RECIPIENT must include time in their project timeline for the permit and approval processes.

ECOLOGY shall have the right to immediately terminate for cause this Agreement as provided herein if the RECIPIENT fails to comply with above requirements.

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. CONFLICT OF INTEREST

RECIPIENT and ECOLOGY agree that any officer, member, agent, or employee, who exercises any function or responsibility in the review, approval, or carrying out of this Agreement, shall not have any personal or financial interest, direct or indirect, nor affect the interest of any corporation, partnership, or association in which he/she is a part, in this Agreement or the proceeds thereof.

10. CONTRACTING FOR GOODS AND SERVICES

RECIPIENT may contract to buy goods or services related to its performance under this Agreement. RECIPIENT shall award all contracts for construction, purchase of goods, equipment, services, and professional architectural and engineering services through a competitive process, if required by State law. RECIPIENT is required to follow procurement procedures that ensure legal, fair, and open competition.

RECIPIENT must have a standard procurement process or follow current state procurement procedures. RECIPIENT may be required to provide written certification that they have followed their standard procurement procedures and applicable state law in awarding contracts under this Agreement.

ECOLOGY reserves the right to inspect and request copies of all procurement documentation, and review procurement practices related to this Agreement. Any costs incurred as a result of procurement practices not in compliance with state procurement law or the RECIPIENT's normal procedures may be disallowed at ECOLOGY's sole discretion.

11. DISPUTES

When there is a dispute with regard to the extent and character of the work, or any other matter related to this Agreement the determination of ECOLOGY will govern, although the RECIPIENT shall have the right to appeal decisions as provided for below:

a) RECIPIENT notifies the funding program of an appeal request.

b) Appeal request must be in writing and state the disputed issue(s).

c) RECIPIENT has the opportunity to be heard and offer evidence in support of its appeal.

d) ECOLOGY reviews the RECIPIENT's appeal.

e) ECOLOGY sends a written answer within ten (10) business days, unless more time is needed, after concluding the review.

The decision of ECOLOGY from an appeal will be final and conclusive, unless within thirty (30) days from the date of such decision, the RECIPIENT furnishes to the Director of ECOLOGY a written appeal. The decision of the Director or duly authorized representative will be final and conclusive.
The parties agree that this dispute process will precede any action in a judicial or quasi-judicial tribunal.
Appeals of the Director's decision will be brought in the Superior Court of Thurston County. Review of the Director's decision will not be taken to Environmental and Land Use Hearings Office.
Pending final decision of a dispute, the RECIPIENT agrees to proceed diligently with the performance of this Agreement and in accordance with the decision rendered.
Nothing in this Agreement will be construed to limit the parties' choice of another mutually acceptable method, in addition to the dispute resolution procedure outlined above.

12. ENVIRONMENTAL DATA STANDARDS

a) RECIPIENT shall prepare a Quality Assurance Project Plan (QAPP) for a project that collects or uses environmental measurement data. RECIPIENTS unsure about whether a QAPP is required for their project shall contact the ECOLOGY Program issuing the grant or loan. If a QAPP is required, the RECIPIENT shall:

- Use ECOLOGY's QAPP Template/Checklist provided by the ECOLOGY, unless ECOLOGY Quality Assurance (QA) officer or the Program QA coordinator instructs otherwise.
- Follow ECOLOGY's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies, July 2004 (Ecology Publication No. 04-03-030).
- Submit the QAPP to ECOLOGY for review and approval before the start of the work.

b) RECIPIENT shall submit environmental data that was collected on a project to ECOLOGY using the Environmental Information Management system (EIM), unless the ECOLOGY Program instructs otherwise. The RECIPIENT must confirm with ECOLOGY that complete and correct data was successfully loaded into EIM, find instructions at: http://www.ecy.wa.gov/eim.
c) RECIPIENT shall follow ECOLOGY's data standards when Geographic Information System (GIS) data is collected and processed. Guidelines for Creating and Accessing GIS Data are available at: https://ecology.wa.gov/Research-Data/Data-resources/Geographic-Information-Systems-GIS/Standards. RECIPIENT, when requested by ECOLOGY, shall provide copies to ECOLOGY of all final GIS data layers, imagery, related tables, raw data collection files, map products, and all metadata and project documentation.

13. GOVERNING LAW

This Agreement will be governed by the laws of the State of Washington, and the venue of any action brought hereunder will be in the Superior Court of Thurston County.

14. INDEMNIFICATION

ECOLOGY will in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.
To the extent that the Constitution and laws of the State of Washington permit, each party will indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this Agreement.

15. INDEPENDENT STATUS

The employees, volunteers, or agents of each party who are engaged in the performance of this Agreement will continue to be employees, volunteers, or agents of that party and will not for any purpose be employees, volunteers, or agents of the other party.

16. KICKBACKS

RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this Agreement to give up any part of the compensation to which he/she is otherwise entitled to or receive any fee, commission, or gift in return for award of a subcontract hereunder.

17. MINORITY AND WOMEN'S BUSINESS ENTERPRISES (MWBE)

RECIPIENT is encouraged to solicit and recruit, to the extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated under this Agreement.

Contract awards or rejections cannot be made based on MWBE participation; however, the RECIPIENT is encouraged to take the following actions, when possible, in any procurement under this Agreement:

a) Include qualified minority and women's businesses on solicitation lists whenever they are potential sources of goods or services.

b) Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit maximum participation by qualified minority and women's businesses.

c) Establish delivery schedules, where work requirements permit, which will encourage participation of qualified minority and women's businesses.

d) Use the services and assistance of the Washington State Office of Minority and Women's Business Enterprises (OMWBE) (866-208-1064) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

18. ORDER OF PRECEDENCE

In the event of inconsistency in this Agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) The Agreement; (c) Scope of Work; (d) Special Terms and Conditions; (e) Any provisions or terms incorporated herein by reference, including the "Administrative Requirements for Recipients of Ecology Grants and Loans"; (f) Ecology Funding Program Guidelines; and (g) General Terms and Conditions.

19. PRESENTATION AND PROMOTIONAL MATERIALS

ECOLOGY reserves the right to approve RECIPIENT's communication documents and materials related to the fulfillment of this Agreement:

a) If requested, RECIPIENT shall provide a draft copy to ECOLOGY for review and approval ten (10) business days prior to production and distribution.

b) RECIPIENT shall include time for ECOLOGY's review and approval process in their project timeline.

c) If requested, RECIPIENT shall provide ECOLOGY two (2) final copies and an electronic copy of any tangible products developed.

Copies include any printed materials, and all tangible products developed such as brochures, manuals, pamphlets, videos, audio tapes, CDs, curriculum, posters, media announcements, or gadgets with a message, such as a refrigerator magnet, and any online communications, such as web pages, blogs, and twitter campaigns. If it is not practical to provide a copy, then the RECIPIENT shall provide a description (photographs, drawings, printouts, etc.) that best represents the item.

Any communications intended for public distribution that uses ECOLOGY's logo shall comply with ECOLOGY's graphic requirements and any additional requirements specified in this Agreement. Before the use of ECOLOGY's logo contact ECOLOGY for guidelines.

RECIPIENT shall acknowledge in the communications that funding was provided by ECOLOGY.

20. PROGRESS REPORTING

a) RECIPIENT must satisfactorily demonstrate the timely use of funds by submitting payment requests and progress reports to ECOLOGY. ECOLOGY reserves the right to amend or terminate this Agreement if the RECIPIENT does not document timely use of funds.
b) RECIPIENT must submit a progress report with each payment request. Payment requests will not be processed without a progress report. ECOLOGY will define the elements and frequency of progress reports.
c) RECIPIENT shall use ECOLOGY's provided progress report format.
d) Quarterly progress reports will cover the periods from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be submitted within thirty (30) days after the end of the quarter being reported.
e) RECIPIENT must submit within thirty (30) days of the expiration date of the project, unless an extension has been approved by ECOLOGY, all financial, performance, and other reports required by the Agreement and funding program guidelines. RECIPIENT shall use the ECOLOGY provided closeout report format.

21. PROPERTY RIGHTS

a) Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property under this Agreement, the RECIPIENT may copyright or patent the same but ECOLOGY retains a royalty free, nonexclusive, and irrevocable license to reproduce, publish, recover, or otherwise use the material(s) or property, and to authorize others to use the same for federal, state, or local government purposes.
b) Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish ECOLOGY information; present papers, lectures, or seminars involving information supplied by ECOLOGY; or use logos, reports, maps, or other data in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to ECOLOGY.
c) Presentation and Promotional Materials. ECOLOGY shall have the right to use or reproduce any printed or graphic materials produced in fulfillment of this Agreement, in any manner ECOLOGY deems appropriate. ECOLOGY shall acknowledge the RECIPIENT as the sole copyright owner in every use or reproduction of the materials.
d) Tangible Property Rights. ECOLOGY's current edition of "Administrative Requirements for Recipients of Ecology Grants and Loans," shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by ECOLOGY in the absence of state and federal statutes, regulations, or policies to the contrary, or upon specific instructions with respect thereto in this Agreement.
e) Personal Property Furnished by ECOLOGY. When ECOLOGY provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to ECOLOGY prior to final payment by ECOLOGY. If said property is lost, stolen, or damaged while in the RECIPIENT's possession, then ECOLOGY shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.
f) Acquisition Projects. The following provisions shall apply if the project covered by this Agreement includes funds for the acquisition of land or facilities:
1. RECIPIENT shall establish that the cost is fair value and reasonable prior to disbursement of funds provided for in this Agreement.
2. RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this Agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses intended by this Agreement.
g) Conversions. Regardless of the Agreement expiration date, the RECIPIENT shall not at any time convert any equipment, property, or facility acquired or developed under this Agreement to uses other than those for which assistance was originally approved without prior written approval of ECOLOGY. Such approval may be conditioned upon payment to ECOLOGY of that portion of the proceeds of the sale, lease, or other conversion or encumbrance which monies granted pursuant to this Agreement bear to the total acquisition, purchase, or construction costs of such property.

22. RECORDS, AUDITS, AND INSPECTIONS

RECIPIENT shall maintain complete program and financial records relating to this Agreement, including any engineering documentation and field inspection reports of all construction work accomplished.

All records shall:

a) Be kept in a manner which provides an audit trail for all expenditures.

b) Be kept in a common file to facilitate audits and inspections.

c) Clearly indicate total receipts and expenditures related to this Agreement.

d) Be open for audit or inspection by ECOLOGY, or by any duly authorized audit representative of the State of Washington, for a period of at least three (3) years after the final grant payment or loan repayment, or any dispute resolution hereunder.

RECIPIENT shall provide clarification and make necessary adjustments if any audits or inspections identify discrepancies in the records.

ECOLOGY reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing or inadequate records may be considered cause for termination.

All work performed under this Agreement and any property and equipment purchased shall be made available to ECOLOGY and to any authorized state, federal or local representative for inspection at any time during the course of this Agreement and for at least three (3) years following grant or loan termination or dispute resolution hereunder.

RECIPIENT shall provide right of access to ECOLOGY, or any other authorized representative, at all reasonable times, in order to monitor and evaluate performance, compliance, and any other conditions under this Agreement.

23. RECOVERY OF FUNDS

The right of the RECIPIENT to retain monies received as reimbursement payments is contingent upon satisfactory performance of this Agreement and completion of the work described in the Scope of Work.

All payments to the RECIPIENT are subject to approval and audit by ECOLOGY, and any unauthorized expenditure(s) or unallowable cost charged to this Agreement shall be refunded to ECOLOGY by the RECIPIENT.

RECIPIENT shall refund to ECOLOGY the full amount of any erroneous payment or overpayment under this Agreement.

RECIPIENT shall refund by check payable to ECOLOGY the amount of any such reduction of payments or repayments within thirty (30) days of a written notice. Interest will accrue at the rate of twelve percent (12%) per year from the time ECOLOGY demands repayment of funds.

Any property acquired under this Agreement, at the option of ECOLOGY, may become ECOLOGY's property and the RECIPIENT's liability to repay monies will be reduced by an amount reflecting the fair value of such property.

24. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, and to this end the provisions of this Agreement are declared to be severable.

25. STATE ENVIRONMENTAL POLICY ACT (SEPA)

RECIPIENT must demonstrate to ECOLOGY's satisfaction that compliance with the requirements of the State Environmental Policy Act (Chapter 43.21C RCW and Chapter 197-11 WAC) have been or will be met. Any reimbursements are subject to this provision.

26. SUSPENSION

When in the best interest of ECOLOGY, ECOLOGY may at any time, and without cause, suspend this Agreement or any portion thereof for a temporary period by written notice from ECOLOGY to the RECIPIENT. RECIPIENT shall resume performance on the next business day following the suspension period unless another day is specified by ECOLOGY.

27. SUSTAINABLE PRACTICES

In order to sustain Washington's natural resources and ecosystems, the RECIPIENT is fully encouraged to implement sustainable practices and to purchase environmentally preferable products under this Agreement.

a) Sustainable practices may include such activities as: use of clean energy, use of double-sided printing, hosting low impact meetings, and setting up recycling and composting programs.

b) Purchasing may include such items as: sustainably produced products and services, EPEAT registered computers and imaging equipment, independently certified green cleaning products, remanufactured toner cartridges, products with reduced packaging, office products that are refillable, rechargeable, and recyclable, 100% post-consumer recycled paper, and toxic free products.

For more suggestions visit ECOLOGY's web page, Green Purchasing, https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Sustainable-purchasing.

28. TERMINATION

a) For Cause

ECOLOGY may terminate for cause this Agreement with a seven (7) calendar days prior written notification to the RECIPIENT, at the sole discretion of ECOLOGY, for failing to perform an Agreement requirement or for a material breach of any term or condition. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Failure to Commence Work. ECOLOGY reserves the right to terminate this Agreement if RECIPIENT fails to commence work on the project funded within four (4) months after the effective date of this Agreement, or by any date mutually agreed upon in writing for commencement of work, or the time period defined within the Scope of Work.

Non-Performance. The obligation of ECOLOGY to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this Agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of ECOLOGY, to perform any obligation required of it by this Agreement, ECOLOGY may refuse to pay any further funds, terminate in whole or in part this Agreement, and exercise any other rights under this Agreement.

Despite the above, the RECIPIENT shall not be relieved of any liability to ECOLOGY for damages sustained by ECOLOGY and the State of Washington because of any breach of this Agreement by the RECIPIENT. ECOLOGY may withhold payments for the purpose of setoff until such time as the exact amount of damages due ECOLOGY from the RECIPIENT is determined.

b) For Convenience

ECOLOGY may terminate for convenience this Agreement, in whole or in part, for any reason when it is the best interest of ECOLOGY, with a thirty (30) calendar days prior written notification to the RECIPIENT, except as noted below. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

Non-Allocation of Funds. ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to the completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, or renegotiate the Agreement, subject to new funding limitations or conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification or restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the RECIPIENT through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the RECIPIENT. In no

event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the Agreement and any amendments. If payments have been discontinued by ECOLOGY due to unavailable funds, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination.
RECIPIENT's obligation to continue or complete the work described in this Agreement shall be contingent upon availability of funds by the RECIPIENT's governing body.

c) By Mutual Agreement
ECOLOGY and the RECIPIENT may terminate this Agreement, in whole or in part, at any time, by mutual written agreement.

d) In Event of Termination
All finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports or other materials prepared by the RECIPIENT under this Agreement, at the option of ECOLOGY, will become property of ECOLOGY and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
Nothing contained herein shall preclude ECOLOGY from demanding repayment of all funds paid to the RECIPIENT in accordance with Recovery of Funds, identified herein.

29. THIRD PARTY BENEFICIARY
RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this Agreement, the state of Washington is named as an express third party beneficiary of such subcontracts with full rights as such.

30. WAIVER
Waiver of a default or breach of any provision of this Agreement is not a waiver of any subsequent default or breach, and will not be construed as a modification of the terms of this Agreement unless stated as such in writing by the authorized representative of ECOLOGY.

End of General Terms and Conditions

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 21-1825

SUBJECT: Sumner Springs Reservoir Recoat - Construction Contract Award **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: $815,905.20 Within Budget Allocation: Yes

ATTACHMENTS:
1. Bid Tab
2. Public Works Contract

STAFF CONTACT: Andrew Leach, Public Works Manager, Michael Kosa, City Engineer

SUMMARY BACKGROUND:
The City's Sumner Springs Reservoir is a 1.0 million gallon water tank that was built in 1953. In October 2020, the City performed an investigation of the condition of the tank and determined the interior and exterior coatings have a limited remaining life span. This project will remove and replace the interior and exterior coatings of the tank.

Three (3) bids were received on September 22, 2022 for this project. The lowest responsible bidder was submitted by Coatings Unlimited, with a bid amount of $741,732.00. The engineer's estimate for this project was $1,018,459.30.

The Contractor will have one hundred and ten (110) days to complete the project.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Coatings Unlimited, in an amount not-to-exceed $741,732.00 for the Sumner Springs Reservoir Recoat (CIP 21-10), substantially in a form approved by the City Attorney.

Bid Tabulation

	Project Name:	Sumner Springs Reservior Recoat									
	CIP No.:	21-10									
	Bid Opening Date:	September 22, 2022									
	Notes:			**Engineer's Estimate**		**Bidder #1**		**Bidder #2**		**Bidder #3**	
	Indicates error corrected by PW dept	$X,XXX.XX				North Industrial, LLC dba Coatings Unlimited		T Bailey, Inc.		Purcell P&C, LLC	
	Indicates Bidder modified Proposal	$X,XXX.XX				5426 N. Rd 68, Ste D #330		9628 South Marchs Point Rd.		6456 South 144th St.	
	Indicates Revision Due to Duplication	*				Pasco, WA 99301		Anacortes, WA 98221		Tukwilla, WA 98168	
				Total	**$1,431,991.30**	**Total**	**$1,330,331.00**	**Total**	**$1,560,251.86**	**Total**	**$2,003,661.00**
Bid Item	**Bid Item Description**	**Unit**	**Quant**	**Unit Price**	**Amount**	**Unit Price**	**Amount**	**Unit Price**	**Amount**	**Unit Price**	**Amount**
	Base Bid										
1	Mobilization, Demobilization, Site Preparation, and Clean Up	LS	1	$114,450.00	$114,450.00	$18,000.00	$18,000.00	$74,500.00	$74,500.00	$37,500.00	$37,500.00
2	Reservoir Exterior Containment, Blast, and Recoat	LS	1	$374,850.00	$374,850.00	$308,000.00	$308,000.00	$415,000.00	$415,000.00	$713,250.00	$713,250.00
3	Force Account	FA	1	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00	$50,000.00
				Base Bid Subtotal	**$539,300.00**	**Base Bid**	**$376,000.00**	**Base Bid**	**$539,500.00**	**Base Bid**	**$800,750.00**
				9.4% Sales Tax	**$50,694.20**	**Tax**	**$35,344.00**	**Tax**	**$50,713.00**	**Tax**	**$75,270.50**
				Base Bid Total	**$589,994.20**	**Base Total**	**$411,344.00**	**Base Total**	**$590,213.00**	**Base Total**	**$876,020.50**
	Schedule A - Reservior Interior Blast and Recoat (Additive Alternative)										
A1	Reservoir Interior Blast and Re-Coat	LS	1	$391,650.00	$391,650.00	$302,000.00	$302,000.00	$390,690.00	$390,690.00	$634,250.00	$634,250.00
				Schedule A Subtotal	**$391,650.00**	**A Subtotal**	**$302,000.00**	**A Subtotal**	**$390,690.00**	**A Subtotal**	**$634,250.00**
				9.4% Sales Tax	**$36,815.10**	**A Tax**	**$28,388.00**	**A Tax**	**$36,724.86**	**A Tax**	**$59,619.50**
				Schedule A Total	**$428,465.10**	**A Total**	**$330,388.00**	**A Total**	**$427,414.86**	**A Total**	**$693,869.50**
	~~**Schedule B - Reservoir Roof and Rafter Full Seal Welding (Additive Alternative)**~~										
~~B1~~	~~Reservoir Roof and Rafter Full Seal Welding~~	~~LS~~	~~1~~	~~$378,000.00~~	~~$378,000.00~~	~~$538,024.68~~	~~$538,024.68~~	~~$496,000.00~~	~~$496,000.00~~	~~$396,500.00~~	~~$396,500.00~~
				~~**Schedule B Subtotal**~~	~~$378,000.00~~	~~**B Subtotal**~~	~~$538,024.68~~	~~**B Subtotal**~~	~~$496,000.00~~	~~**B Subtotal**~~	~~$396,500.00~~
				~~**9.4% Sales Tax**~~	~~$35,532.00~~	~~**B Tax**~~	~~$50,574.32~~	~~**B Tax**~~	~~$46,624.00~~	~~**B Tax**~~	~~$37,271.00~~
				~~**Schedule B Total**~~	~~**$413,532.00**~~	~~**B Total**~~	~~**$588,599.00**~~	~~**B Total**~~	~~**$542,624.00**~~	~~**B Total**~~	~~**$433,771.00**~~
	~~**Total Cost Base Bid + Schedule A+Schedule B =**~~				~~**$1,431,991.30**~~		~~**$1,330,331.00**~~		~~**$1,560,251.86**~~		~~**$2,003,661.00**~~
	Total Cost Base Bid + Schedule A =				**$1,018,459.30**		**$741,732.00**		**$1,017,627.86**		**$1,569,890.00**
	Prepared by:	Andrew Leach									
	Date:	9/22/2022									

PUBLIC WORKS CONTRACT
between City of Sumner and

North Industrial, LLC dba Coatings Unlimited

THIS AGREEMENT, made and entered into this day _____, between the City of Sumner under and by virtue of Title 35 RCW (Cities and towns) as amended and North Industrial, LLC dba Coatings Unlimited, hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials and equipment for

CIP 21-10 Sumner Springs Reservoir Recoat

in accordance with and as described in the (a) attached plans and specifications, (b) the standard specifications of the Washington State Department of Transportation, and (c) all other documents, specifications, provisions and required regulations contained in the Bid Document package provided at bid opening, all of which are considered the "Contract Documents" and are incorporated herein by this reference and made part hereof as if fully set forth in this contract, and, shall perform any changes in the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the City of Sumner.

II. The City of Sumner hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner upon the conditions provided for in this contract. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and kin, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

III. Contractor's Employees – Employment Eligibility Requirements (E-Verify).

The Contractor and any subcontractors shall comply with E-Verify as set forth in Sumner Municipal Code Chapter 3.30. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Contractor shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation in E-Verify throughout the course of the Contractor's contractual relationship with the City. If the Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. Upon execution of this Contract, the Contractor shall provide proof of compliance with this section by filling out and signing the attached Certification of Compliance with Sumner's Municipal Code 3.30 "E-Verify" attached hereto as Exhibit B.

IV. It is further provided that no liability shall attach to the City of Sumner by reason of entering into this contract except as provided herein.

V. Debarment. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

VI. Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), provisions (A)-(J) in Appendix II to Part 200 of the Uniform Guidance (2 CFR Ch. 11 (1-1-14 edition) are hereby incorporated, as applicable, as if fully set forth herein. *See* attached Exhibit C.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the Local Agency Approving Authority has caused this instrument to be executed by and in the name of said City of Sumner the day and year first above written.

CONTRACTOR:	**CITY OF SUMNER:**
By:_____ *(signature)*	By:_____ *(signature)*
Print Name:_____	Print Name: Kathy Hayden
Its_____ *(Title)*	Its Mayor *(Title)*
DATE:_____	DATE:_____

	By:_____ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:_____ Attest: Approved as to form: _____ _____ City Clerk City Attorney DATE:_____ DATE:_____
NOTICES TO BE SENT TO: **CONTRACTOR:** Matt North, President Coatings Unlimited 5426 N Rd 68, #330 Pasco, WA 99301 425-251-3268 mnorth@coatingsunlimited.com	**NOTICES TO BE SENT TO:** **CITY OF SUMNER:** Andrew Leach, Public Works Manager City of Sumner 1104 Maple Street Sumner, WA 98390 253-299-5711 andrewl@sumnerwa.gov

Sumner Springs Reservoir Recoat						
Item No.	**Estimated Quantity**	**Unit**	**Description of Item**	**Section**	**Unit Price**	**Amount**
Base Bid – Exterior Containment, Blast, and Recoat						
1	1	LS	Mobilization, Demobilization, Site Preparation, and Cleanup $ Eighteen Thousand and no/100 (Words) per Lump Sum	TS Div. 18	$ 18,000.00	$ 18,000.00
2	1	LS	Reservoir Exterior Containment, Blast, and Recoat $ Three Hundred Eight Thousand and no/100 (Words) per Lump Sum	TS Div. 18	$ 308,000.00	$ 308,000.00
3	1	LS	Force Account $Fifty Thousand (Words) per Lump Sum	TS Div. 18	$50,000.00	$50,000.00
Subtotal						$ 376,000.00
9.4% Sales Tax (Per W.S. Revenue Rule No. 171)						$ 35,344.00
Base Bid Total						$ 411,344.00

North Industrial, LLC dba Coatings Unlimited

Contractor's Name

Signature

Sumner Springs Reservoir Recoat						
Item No.	**Estimated Quantity**	**Unit**	**Description of Item**	**Section**	**Unit Price**	**Amount**
Schedule A – Reservoir Interior Blast and Recoat (Additive Alternative)						
A1	1	LS	Reservoir Interior Blast and Re-Coat $ Three Hundred Two Thousand and no/100 (Words) per Lump Sum	TS Div. 18	$ 302,000.00	$ 302,000.00
Subtotal						$ 302,000.00
9.4% Sales Tax (Per W.S. Revenue Rule No. 171)						$ 28,388.00
Schedule A Total						$ 330,388.00

North Industrial, LLC dba Coatings Unlimited

Contractor's Name

Signature

Sumner Springs Reservoir Recoat						
Item No.	Estimated Quantity	Unit	Description of Item	Section	Unit Price	Amount
Schedule B – Reservoir Roof and Rafter Full Seal Welding (Additive Alternative)						
B1	1	LS	Reservoir Roof and Rafter Full Seal Welding $ Five Hundred Thirty Eight Thousand Twenty (Words) per Lump Sum Four and 68/100	TS Div. 18	$538,024.68	$ 538,024.68
Subtotal						$ 538,024.68
9.4% Sales Tax (Per W.S. Revenue Rule No. 171)						$ 50,574.32
Schedule B Total						$ 588,599.00

North Industrial, LLC dba Coatings Unlimited

Contractor's Name

Signature

Base Bid, Schedule A, ~~and Schedule B~~ Total	$ ~~1,330,331.00~~ $741,732.00

Andrew Leach 2022.10.05 10:41:14-07'00'

EXHIBIT B

CITY OF SUMNER

CERTIFICATION OF COMPLIANCE WITH SUMNER MUNICIPAL CODE CHAPTER 3.30
"E-VERIFY"

As the person duly authorized to enter into such commitment for

_____,
North Industrial, LLC dba Coatings Unlimited

I hereby certify that the Company or Organization named herein will

(check one box below)

☐ Be in compliance with all of the requirements of City of Sumner Municipal Code Chapter 3.30 for the duration of the contract entered into between the City of Sumner and the Company or Organization.

OR

☐ Hire no employees for the term of the contract between the City and the Company or Organization.

NAME

TITLE

DATE

EXHIBIT C

APPENDIX II TO PART 200---CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the City of Sumner under federal award(s) are subject to the following provisions, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of " federally assisted construction con tract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-l.4(b), in accordance with Executive Order 11246, " Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S .C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the following language is hereby incorporated into the contract as if fully set forth therein:

Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), the following provisions (29 CFR, Subtitle A Part 5, Subpart A, § 5.5, subsections (a)(1) – (a)(10)) shall apply:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City of Sumner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying

number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of par ties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S .C. 7401-767lq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to

comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-767lq) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S .C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to par ties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the 0MB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), " Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or at tempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C . 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2666

SUBJECT: Town Center : Utility & Woonerf - PSE Agreement Schedule 74 Design Work

CATEGORY: Consent

BUDGET IMPACT:
Expenditure Required: $4,962.03

Within Budget Allocation: Yes

ATTACHMENTS:
1. TCUW PSE Design Agreement
2. TCUW PSE Design Cost
3. PSE Customer Trenching Agreement
4. PSE Electric Grade Agreement

STAFF CONTACT: Alisa O'Haver-Ayala , Associate City Engineer

SUMMARY BACKGROUND:
The Town Center: Utility & Woonerf project is a combination of the Alder Kincaid Utility and the Academy Street Bike Lanes projects. This contract provides for the installation of new water mains and services at Kincaid Avenue, Alder Avenue, Park Street and Maple Street. The project includes the trenching, excavation, and installation of the new water lines as well as the removal or abandonment of the existing water lines and the surface restoration associated with the work. Improvements also include replacement of non-conforming curb ramps, bulbouts, storm drainage and associated restoration along Academy Street.

During the development of this project, which is currently in construction, the City, designer, and PSE worked together to anticipate undergrounding and/or re-routing the overhead power lines that cross Heritage Park by converting 3 spans of overhead primary power to underground, which includes the removal/replacement of poles, relocating overhead services and re-framing existing poles. This agreement formalizes that effort.

COUNCIL COMMITTEE/STUDY SESSION: **Public Works Committee**
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Puget Sound Energy, Inc., in an amount not-to-exceed $4,962.03 for the engineering services necessary for the undergrounding and/or re-routing of overhead power lines that currently cross Kincaid Avenue, Heritage Park, and Cherry Avenue for the Town Center: Utility & Woonerf project (CIPs 19-05 & 20-08), substantially in a form approved by the City Attorney.

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: **CITY OF SUMNER TONW CENTER SCH 74 (HERITAGE PARK)**
Project Number: **101151162**

THIS Agreement, dated as of this **25TH** day of **July** , **2022**, is made by and between **CITY OF SUMNER** (the “Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the “Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.

2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.

3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates

specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.

5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.

6. Following the Company’s receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).

7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.

8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in nature and shall not include, without limitation, information required to be supplied by the Government

Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.

10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.

11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:

    (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.

    (b) Each estimate of the costs to be incurred by a party **shall**, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.

    (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.

    (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.

    (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground

Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

(f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following: (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

(a) notify the Company in writing that this Agreement is terminated; or

(b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
    (i) reasonable,
    (ii) consistent with the Scope of Work, and
    (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

(a) change the Scope of Work in accordance with paragraph 13, below, or

(b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or

(c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or

(d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work

prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.

    (b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.

14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.

15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a

reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

16. Dispute Resolution Procedures:

    (a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

    (b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.

    (c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.

    (d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

17. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party’s performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

18. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

19. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity: _____
_____
_____
Attn: _____
Fax: _____

If to the Company: Puget Sound Energy, Inc.
LUANNE YU
_____
Attn: _____
Fax: _____

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

20. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

21. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.

22. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:	Company:
_____	PUGET SOUND ENERGY, INC.
BY_____	BY_____
ITS_____	ITS_____
Date Signed_____	Date Signed_____

Approved as to form:

PUGET SOUND ENERGY

FACILITY CONVERSION/MODIFICATION BILLING DETAIL

Scope of Work

CONVERTING 3 SPANS OF 3 PH OVERHEAD PRIMARY TO UNDEGROUND THAT INCLUDES REMOVAL/REPLACEMENT OF POLES, RELOCATING OH SERVICES AND RE-FRAMING EXISTING POLES

To: CITY OF SUMNER
1104 Maple Street, Suite 260

SUMNER, WA 98390

Attn: MICHAEL KOSA

Project Description: CITY OF SUMNER TOWN CENTER SCH 74 CONVERSION
Location: CHERRY AVE & KINKAID AVE SUMNER
PSE Project Manager: LUANNE YU

Activity:	PSE Design Cost		PSE Construction Cost Estimate		Customer Installed Duct and Vault		Change Orders
PSE Order #:			101151162				
	Customer Cost	40%	Customer Cost	40%	PSE Cost Share	60%	
PSE Materials							
PSE Construction Labor							Customer Obligation $0.00
PSE Project Management		$11,460.00					PSE Obligation $0.00
PSE Inspection							
PSE Overheads							
Federal Income Tax		$945.07		$0.00			
Total Actual Costs:		$ 12,405.07		0		0	

TOTAL PROJECT VALUE:	$12,405.07
CITY OF SUMNER Obligation Incl/CO's:	$4,962.03
CITY OF SUMNER Credit for D+V:	$0.00
PSE Billable Amount to Customer	$4,962.03

Date: 4/5/2018

PUGET SOUND ENERGY

REQUIREMENTS FOR TRENCHING BY CUSTOMERS ON PUBLIC RIGHT-OF-WAYS AND/OR ON PUGET SOUND ENERGY, INC. EASEMENTS

The following outlines most local governmental guidelines and company standards for trenching on a public right-of-way or Puget Sound Energy, Inc. (PSE) easement. Any trenching performed by the customer, or their contractor, under a PSE permit or easement must comply with these requirements.

1. All trench construction must be performed by a Washington State licensed and bonded contractor.
2. Trench excavation, backfill, restoration, and facility placement must be coordinated with a PSE designated representative, and receive on-site approval by that representative, and local jurisdiction.
3. Right-of-way easement trenching and backfill must be performed during normal business hours, Monday through Friday. Same day excavation and backfill is required for all trenching. Job start notification to the local jurisdiction is the responsibility of Potelco, Inc. Customer shall notify Potelco Project Manager three working days prior to trenching. Penalties for failure to comply with this requirement will be borne by the customer.
4. If the job scope requires excavation beyond a single day, fencing and barricading must be installed around utility facilities exposed above the trench, if allowed, must be in accordance with local regulatory requirements.
5. PSE, all participating utilities, and One-Call Locate, must be notified a minimum of 72 hours in advance of the date and time for right-of-way trenching and facility placement. The One-Call Locate number is 1-800-424-5555. State law requires locating service notification.
6. Excavated material must remain clear of the roadway whenever possible. Excavation material, spoils, and debris shall be removed off-site each day, in accordance with local regulatory requirements. All erosion control requirements in accordance with local regulatory requirements are the responsibility of the customer.
7. Material excavated from the shoulder of the right-of-way shall be properly disposed, and replaced with select backfill material in accordance with local regulatory requirements.
8. Proper compaction is required to comply with local regulatory specifications. If the permit requires compaction testing, the cost of said testing is the responsibility of the customer.
9. All permit requirements, traffic control plans, traffic control and flagging shall meet local regulatory specifications and satisfaction.
10. In the event of failure to abide by the above requirements, PSE reserves the right, at its sole discretion, to assume trenching. In the event of delays due to equipment failure, PSE may assume trenching to meet regulatory and joint construction requirements. The customer is responsible for all trenching costs, and will reimburse the company for costs should PSE perform the trenching.

Customer Initials: _____

11. The customer agrees to indemnify, defend and hold harmless PSE from all liability (including reasonable attorneys' fees) arising out of, or in connection with, the above mentioned trenching activities.

Customer Initials: _____

I AGREE TO ADHERE TO THE ABOVE CONDITIONS

Service Address: CHERRY AVE & KINKAID AVE SUMN Work Order Number: 101151162

Signature: _____ Name: _____ Title: _____ Date: _____

PSE ELECTRICAL FACILITIES
EXCAVATION REQUIREMENTS AND FINAL GRADE CERTIFICATION

PURPOSE

This document is an agreement between Puget Sound Energy (PSE) and the **Owner/Developer** (Developer) who is providing excavation for the installation of PSE's facilities. This document **does not** provide an easement for operating rights. If PSE determines that a recordable easement on the Developer's property or other property is necessary, it shall be the Developer's responsibility to obtain such easements in a form acceptable to PSE prior to construction.

EXCAVATION REQUIREMENTS

The requirements and conditions outlined below apply when you provide the excavation for PSE's electrical facilities as a condition of receiving electrical service for your project. If you need additional information, please call the PSE contact person listed below.

1. Developer is responsible for acquiring utility locates by calling One-Call, 1-800-424-5555 at least 48 hours (two full working week days) prior to digging. The excavation must meet the requirements of the Washington Administrative Code and Safety Standards.

2. Developer shall call the PSE contact person noted below for trench and route approval prior to starting excavation.

3. The electrical primary trench shall be excavated to provide a minimum of 36 inches of facility coverage, to a maximum trench depth of 48 inches. The electric service trench shall be excavated to provide a minimum of 24 inches of facility coverage, to a maximum trench depth of 36 inches. A 12 inch horizontal separation is required between PSE electrical facilities and other utilities within a joint trench.

4. All back fill must be free of sharp objects and construction debris. Developer shall provide and install sand bedding and shading for electrical facility protection as directed by PSE's contact person. Developer is responsible for any damages caused by improper backfill or compaction.

5. Developer agrees to maintain a minimum of 2 feet of horizontal clearance between PSE conduit, pipe or conductors and any foundation on Developer's property.

6. The vault excavation shall be dug to the dimensions noted on the attached work sketch. Vault holes shall have a solid level bottom with a 6 inch deep layer of crushed rock bedding.

7. Developer shall provide the excavation for PSE electrical facilities within the designed location. Developer shall identify and provide final grade, property lines, and utility easements prior to installation of PSE's electrical facilities.

8. Developer will be financially liable for the relocation of PSE's facilities which are inadequately covered, located outside the area where PSE has adequate operating rights, improperly graded inhibiting standard access and/or any damages resulting from dig-ins due to changes or variations in grade that are made after the installation of PSE's facilities.

FINAL GRADE CERTIFICATION

By my signing below, I certify that the electrical facilities work area shall be at final grade prior to excavation. I assume full responsibility for my excavation work and the resulting location of these facilities. I also agree to indemnify, defend, and hold harmless Puget Sound Energy from all liability arising out of, or in connection with my work, including but not limited to all claims, losses, damages, and expenses, including reasonable attorney's fees, which result from my failure to excavate within easement areas or rights-of-way, or from digging without adequate rights on adjoining properties.

Service Address: CHERRY AVE & KINKAID AVE SUMNER Work Order Number: 101151162

Signature: _____ Name: _____ Title: _____ Date: _____

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2667

SUBJECT: Town Center : Main and Wood PSE Agreement: Schedule 74 Design Work **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: $5,662.60 Within Budget Allocation: Yes

ATTACHMENTS:
1. Design Agreement

STAFF CONTACT: Michael Kosa, City Engineer

SUMMARY BACKGROUND:
The Town Center: Main & Wood Intersection Improvements project consists of replacing the existing traffic signal with equipment meeting current standards, replacing the failing concrete roadway panels with new surface, completing curb ramp and sidewalk upgrades to meet current standards, and reconfiguring existing parking on the SW and SE corners to reduce pedestrian conflicts.

During the development of this project, which is about to advertise for construction, the City, designer, and PSE worked together to anticipate undergrounding of overhead power lines that run north and south of the intersection along Wood Avenue, including the removal/replacement of poles and wiring. This agreement formalizes and compensates PSE for the design effort. As Schedule 74 work, the City pays for 40% of the total cost to PSE for this undergrounding effort. Completing the PSE construction work will require a future agreement with the same percent cost share.

COUNCIL COMMITTEE/STUDY SESSION: **Public Works Committee**
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Puget Sound Energy, in an amount not-to-exceed $5,662.60 for the Town Center: Main and Wood Intersection Improvement (CIP19-02), substantially in a form approved by the City Attorney.

SCHEDULE 74 UNDERGROUND CONVERSION

Project Design Agreement

Project Name: **CITY OF SUMNER MAIN & WOOD SCH 74**
Project Number: **101152871**

THIS Agreement, dated as of this **30TH** day of **September**, **2022**, is made by and between **CITY OF SUMNER** (the “Government Entity"), and PUGET SOUND ENERGY, Inc., a Washington Corporation (the “Company").

RECITALS

A. The Company is a public service company engaged in the sale and distribution of electric energy and, pursuant to its franchise or other rights from the Government Entity, currently locates its electric distribution facilities within the jurisdictional boundaries of the Government Entity.

B. The Government Entity is considering conversion of the Company's existing overhead electric distribution system to a comparable underground electric distribution, as more specifically described in the Scope of Work (as defined in paragraph 2, below) furnished to the Company by the Government Entity (the "Conversion Project").

C. The Government Entity has requested that the Company perform certain engineering design services and otherwise work cooperatively with the Government Entity to develop a mutually acceptable Project Plan (as defined in paragraph 6, below) for the Conversion Project, in accordance with and subject to the terms and conditions of this Agreement (the "Design Work").

D. The Government Entity and the Company wish to execute this written contract in accordance with Schedule 74 of the Company's Electric Tariff G ("Schedule 74") to govern the Design Work for the Conversion Project.

AGREEMENT

The Government Entity and the Company therefore agree as follows:

1. Unless specifically defined otherwise herein, all terms defined in Schedule 74 shall have the same meanings when used in this Agreement.

2. The Government Entity shall, within ten (10) business days after the date of this Agreement, provide the Company with a written scope of work for the Conversion Project which includes, among other things, (a) a reasonably detailed description of the scope of the work required for the Conversion Project, (b) a list of the key milestone dates for the Conversion Project, (c) reasonably detailed drawings showing any associated planned improvements to the Public Thoroughfare, and (d) a statement as to whether the Government Entity desires to install the ducts and vaults for the Conversion Project (the "Scope of Work"). The Government Entity shall provide the Company two (2) hard copies of the Scope of Work and a copy of the relevant electronic file(s) in a mutually agreed electronic format.

3. Within ten (10) business days of its receipt of the Scope of Work, the Company shall prepare and submit to the Government Entity (a) a reasonably detailed, good faith estimate of the cost to perform the Design Work (the "Design Cost Estimate"), and (b) a proposed schedule for completion of the

Design Work which, to the extent reasonably practicable, reflects the applicable key milestone dates specified in the Scope of Work and provides for completion of the Design Work within ninety (90) business days from the date the Company receives the Government Entity's notice to proceed under paragraph 5, below (the "Design Schedule"). The proposed Design Cost Estimate and the proposed Design Schedule shall be based upon the then-current Scope of Work. Unless otherwise specified in the Scope of Work, the Design Work shall not include negotiation or acquisition of third party property rights but shall include preliminary planning between the Company and the Government Entity regarding their respective obligations for negotiating and acquiring third party property rights.

4. Within ten (10) business days after the Government Entity's receipt of the proposed Design Cost Estimate and the proposed Design Schedule from the Company, the Government Entity and the Company shall meet in order to (a) review the proposed Design Cost Estimate, (b) review the proposed Design Schedule; (c) review the Scope of Work, and (d) make any changes necessary to create a final Scope of Work, final Design Cost Estimate, and final Design Schedule that are reasonably acceptable to both parties. If the parties are unable to agree upon a final version of the Scope of Work, Design Cost Estimate, and/or Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The final Scope of Work, Design Cost Estimate and Design Schedule, once determined in accordance with this paragraph 4, may thereafter be changed or amended only in accordance with the change procedures set forth in paragraph 13, below.

5. The Government Entity shall, within ten (10) business days after determination of the final of the Scope of Work, Design Cost Estimate, and Design Schedule, issue (a) a written notice to proceed which shall delineate the final Scope of Work, Design Cost Estimate, and Design Schedule, or (b) a written notice to terminate this Agreement without cost to the Government Entity. If the Government Entity terminates this Agreement, the costs incurred by the Company in preparing and submitting the Design Cost Estimate and the Design Schedule shall not be reimbursable to the Company, and the rights and obligations of the parties under this Agreement shall be terminated in their entirety and without liability to either party.

6. Following the Company’s receipt of the notice to proceed, and within the applicable time period specified in the Design Schedule, the Company shall, with the cooperation and assistance of the Government Entity as outlined in this Agreement, prepare a project plan for the Conversion Project (the "Project Plan") which shall include, among other things, the following: (a) a detailed description of the work that is required to be performed by each party and any third party in connection with the Conversion Project (the "Construction Work"), (b) the applicable requirements, drawings, and specifications for the Construction Work, (c) a description of any operating and other property rights that are required to be obtained by each party for the Conversion Project (and the requirements and specifications with respect thereto), (d) a detailed estimate of the costs to be incurred by each party in its performance of the Construction Work, and (e) a detailed schedule for completing the Construction Work (including, without limitation, the dates for delivery of the ducts and vaults and other materials for use at the site of the Construction Work).

7. The Government Entity shall be responsible for coordinating the Design Work with all other design work to be performed in connection with the Conversion Project and any associated planned improvements to the Public Thoroughfare. The parties shall work together in an effort to mitigate the costs of the Conversion Project to each party, including, without limitation, identifying ways to accommodate the facilities of the Company to be installed as part of the Conversion Project within the Public Thoroughfare.

8. Within the applicable time period specified in the Design Schedule, the Company shall prepare and submit to the Government Entity a proposed initial draft of the Project Plan. The parties understand and acknowledge that the proposed Project Plan submitted by the Company shall be preliminary in

nature and shall not include, without limitation, information required to be supplied by the Government Entity (e.g., scope and estimate of the cost of the Construction Work to be performed by the Government Entity).

9. Within the applicable time period specified in the Design Schedule, the Government Entity shall (a) review the proposed Project Plan submitted by the Company, (b) complete any information required to be supplied by the Government Entity, (c) make any changes required to conform the proposed Project Plan to the Scope of Work and this Agreement, and (d) return the amended Project Plan to the Company.

10. Within the applicable time period specified in the Design Schedule, the Company shall review the amended Project Plan submitted by the Government Entity and notify the Government Entity in writing of either the Company's acceptance of, or the Company's specific objections to, the amended Project Plan. If the Company makes any objection to the amended Project Plan, and the parties are unable to resolve the objections and mutually agree upon the Project Plan prior to the final design date specified in the Design Schedule, then either party may, by written notice to the other party, submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. The Project Plan, as mutually agreed upon by the parties or established through the dispute resolution process, shall be attached to and incorporated in a Project Construction Agreement substantially in the form attached hereto as Exhibit A (the "Construction Agreement") which is to be signed by the parties prior to commencement of the Construction Work.

11. The parties intend and agree that the Design Work and the Project Plan in its final form shall conform to the following requirements:

    (a) The Project Plan shall, if requested by the Government Entity in its initial Scope of Work, specify that the Government Entity shall install the ducts and vaults for the Conversion Project; provided that (i) the parties mutually agree upon and set forth in the Project Plan (A) the costs of such installation work to be included in the Cost of Conversion, and (B) the specifications and standards applicable to such installation work, and (ii) such installation work is accomplished by the Government Entity in accordance with the applicable design and construction specifications provided by the Company and set forth in the Project Plan.

    (b) Each estimate of the costs to be incurred by a party **shall**, at a minimum, be broken down by (i) the design and engineering costs, (ii) property and related costs, including any costs of obtaining operating rights, and (iii) construction costs, including and listing separately inspection, labor, materials, and equipment.

    (c) All facilities of the Company installed as part of the Conversion Project shall be located, and all related property and operating rights shall be obtained, in the manner set forth in the applicable provisions of Schedule 74. The Project Plan shall describe in detail the location of such facilities, any related property and operating rights required to be obtained, and the relative responsibilities of the parties with respect thereto.

    (d) The schedule set forth in the Project Plan for completing the Construction Work shall include, at a minimum, milestone time periods for completion of the Trenching, installation of ducts and vaults, the construction and removal of any Temporary Service, and the removal of overhead facilities.

    (e) The Project Plan may include the specification of work and requirements for Government-Requested Upgrades and Company-Initiated Upgrades; provided, however, that the costs incurred by the Company with respect to the design and engineering of Company-Initiated Upgrades shall not be included in the costs reimbursable to the Company under this Agreement

or the Construction Agreement. For purposes of the foregoing, (i) the term "Government-Requested Upgrade" shall mean any feature of the Underground Distribution System which is requested by the Government Entity and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced, and (ii) the term "Company-Initiated Upgrade" shall mean any feature of the Underground Distribution System which is required by the Company and is not reasonably required to make the Underground Distribution System comparable to the overhead distribution system being replaced. For purposes of subparagraph (ii), above, a "comparable" system shall include, unless the parties otherwise agree, the number of empty ducts (not to exceed two (2), typically having a diameter of 6" or less) of such diameter and number as may be specified and agreed upon in the final Scope of Work necessary to replicate the load-carrying capacity (system amperage class) of the overhead system being replaced. For purposes of subparagraph (i), above, any empty ducts installed at the request of the Government Entity shall be a Government-Requested Upgrade.

(f) The Project Plan shall set forth all specifications, design standards and other requirements for the Construction Work and the Conversion Project, including, but not limited to, the following: (i) applicable federal and state safety and electric codes and standards, (ii) applicable construction and other standards of the Company, and (iii) applicable street design and other standards of the Government Entity which are in effect as of the commencement of the Conversion Project.

12. Upon request of the Government Entity, and in any event at the times specified in the Design Schedule, the Company shall provide periodic reports which compare the actual costs of the Design Work incurred to that point in time to the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below. Further, if at any time the Company reasonably expects that the actual cost of the Design Work will exceed the Design Cost Estimate, as changed or amended in accordance with paragraph 13, below, the Company shall notify the Government Entity immediately. Upon receipt of the Company's notice, the Government Entity may, at its option,

(a) notify the Company in writing that this Agreement is terminated; or

(b) request a reasonably detailed explanation supported by documentation (reasonably satisfactory to the Government Entity) to establish that the actual costs in excess of the Design Cost Estimate are:
    (i) reasonable,
    (ii) consistent with the Scope of Work, and
    (iii) consistent with sound engineering practices.

If the Government Entity requests an explanation, the Government Entity shall, within ten (10) business days after receipt of the explanation,

(a) change the Scope of Work in accordance with paragraph 13, below, or

(b) direct the Company to continue with the Design Work without a change in the Scope of Work, but reserving to the Government Entity the right to dispute the reasonableness of the costs to be paid the Company under paragraph 14, below, in accordance with the dispute resolution procedures in paragraph 16, below, or

(c) direct the Company to discontinue performing the Design Work pending resolution, pursuant to paragraph 16, below, of any dispute regarding the reasonableness of the costs, in which event the Design Schedule will be adjusted to reflect the delay, or

(d) notify the Company in writing that this Agreement is terminated.

In the event the Government Entity terminates this Agreement or discontinues the performance of the Design Work under subparagraph (c), above, for more than ninety (90) days, the Government Entity shall pay the Company for all costs incurred by the Company in its performance of the Design Work prior to the date the Company receives the Government Entity's notice of termination, plus any costs incurred by the Company for materials and other items ordered or procured by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. The foregoing payment obligation shall survive any termination of this Agreement.

13. (a) Either party may, at any time, by written notice thereof to the other party, request changes to the Scope of Work (a "Request for Change"). No Request for Change shall be effective and binding upon the parties unless signed by an authorized representative of each party. If any approved Request for Change would cause an increase in the cost of, or the time required for, the performance of any part of the Design Work, an equitable adjustment in the Design Cost Estimate and the Design Schedule shall be made to reflect such increase. The parties shall negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution procedures in paragraph 16, below. Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, each party shall, if requested by the other party, proceed with the Design Work in accordance with the Request for Change. Any such request to proceed must be accompanied by a written statement setting forth the requesting party's reasons for rejecting the proposed equitable adjustment of the other party.

(b) The Design Cost Estimate and/or the Design Schedule shall be equitably adjusted from time to time to reflect any change in the costs or time required to perform the Design Work to the extent such change is caused by: (i) any Force Majeure Event under paragraph 17, below, (ii) the discovery of any condition within the Conversion Area which affects the scope, cost, schedule or other aspect of the Design Work and was not known by or disclosed to the affected party prior to the date of this Agreement, or (iii) any change or inaccuracy in any assumptions regarding the scope, cost, schedule or other aspect of the Design Work which are expressly identified by the parties in the final Scope of Work. Upon the request of either party, the parties will negotiate in good faith with the objective of agreeing in writing on a mutually acceptable equitable adjustment. If, at any time thereafter, the parties are unable to agree upon the terms of the equitable adjustment, either party may submit the matter for resolution pursuant to the dispute resolution provisions in paragraph 16, below.

14. Upon completion of the Design Work (i.e., the date on which the Project Plan is final under paragraph 10, above, either by mutual agreement of the parties or as established through the dispute resolution procedures), the Government Entity shall pay the Company all actual, reasonable costs to the Company for the Design Work (which, if disputed in good faith by the Government Entity, may be submitted by either party for resolution pursuant to the dispute resolution provisions in paragraph 16, below), plus any costs incurred by the Company for materials and other items ordered by the Company with the prior authorization of the Government Entity in order to meet the schedule for the Conversion Project. If, thereafter, the Construction Agreement is executed by the parties and the Conversion Project is completed within five (5) years from the date of this Agreement, the full amount of the costs incurred by the Company in its performance of the Design Work shall be included in the "Shared Company Costs" under the Construction Agreement and any payment of such amounts under this Agreement shall be credited to the Government Entity in calculating the "Net Amount" payable under the Construction Agreement.

15. Within sixty (60) business days after completion of the Design Work, the Company shall issue to the Government Entity an itemized invoice for the amounts payable under this Agreement. Such invoice shall be in a form mutually agreed upon by the Company and the Government Entity and shall, at a minimum, itemize the design and engineering costs, including and listing separately inspection, labor, materials and equipment. In the event the Government Entity does not verify such invoice within ten (10) business days of receipt, the Government Entity shall provide a written request to the Company specifying the additional information needed to verify the invoice. The Company will provide, within a reasonable period after receipt of any request, such documentation and information as the Government Entity may reasonably request to verify such invoice. The Government Entity shall pay the Company all amounts payable under this Agreement within thirty (30) days after receipt of the Company's invoice. Payment as provided in this Agreement shall be full compensation for the Company's performance of the Design Work, including without limitation all services rendered and all materials, supplies, equipment, and incidentals necessary to complete the Design Work.

Dispute Resolution Procedures:

(a) Any dispute, disagreement or claim arising out of or concerning this Agreement must first be presented to and considered by the parties. A party who wishes dispute resolution shall notify the other party in writing as to the nature of the dispute. Each party shall appoint a representative who shall be responsible for representing the party's interests. The representatives shall exercise good faith efforts to resolve the dispute. Any dispute that is not resolved within ten (10) business days of the date the disagreement was first raised by written notice shall be referred by the parties' representatives in writing to the senior management of the parties for resolution. In the event the senior management are unable to resolve the dispute within twenty (20) business days (or such other period as the parties may agree upon), each party may pursue resolution of the dispute through other legal means consistent with the terms of this Agreement. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

(b) Any claim or dispute arising hereunder which relates to the Scope of Work, Design Cost Estimate, and Design Schedule under paragraph 4, above; the Project Plan under paragraph 10, above; or any Request for Change (including, without limitation, any associated equitable adjustment) under paragraph 13, above; and is not resolved by senior management within the time permitted under paragraph 16(a), above, shall be resolved by arbitration in Seattle, Washington, under the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The decision(s) of the arbitrator(s) shall be final, conclusive and binding upon the Parties. All other disputes shall be resolved by litigation in any court or governmental agency, as applicable, having jurisdiction over the Parties and the dispute.

(c) In connection with any arbitration under this paragraph 16, costs of the arbitrator(s), hearing rooms and other common costs shall be divided equally among the parties. Each party shall bear the cost and expense of preparing and presenting its own case (including, but not limited to, its own attorneys' fees); provided, that, in any arbitration, the arbitrator(s) may require, as part of his or her decision, reimbursement of all or a portion of the prevailing party's costs and expenses by the other party.

(d) Unless otherwise agreed by the parties in writing, the parties shall continue to perform their respective obligations under this Agreement during the pendency of any dispute.

16. In the event that either party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party; or any failure or delay in the performance by the other party, or a third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with the Work or this Agreement. Upon removal or termination of the Force Majeure Event, the party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement or procure a substitute for such obligation. The parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

17. This Agreement is subject to the General Rules and Provisions set forth in Tariff Schedule 80 of the Company's electric Tariff G and to Schedule 74 of such Tariff as approved by the Washington Utilities and Transportation Commission and in effect as of the date of this Agreement.

18. Any notice under this Agreement shall be in writing and shall be faxed (with a copy followed by mail or hand delivery), delivered in person, or mailed, properly addressed and stamped with the required postage, to the intended recipient as follows:

If to the Government Entity: _____
_____
_____
Attn: _____
Fax: _____

If to the Company: Puget Sound Energy, Inc.
LUANNE YU
_____
Attn: _____
Fax: _____

Either party may change its address specified in this paragraph by giving the other party notice of such change in accordance with this paragraph.

19. This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflict of laws), except to the extent such laws may be preempted by the laws of the United States of America.

20. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and all other agreements and understandings of the Parties, whether written or oral, with respect to the subject matter of this Agreement are hereby superseded in their entireties.

21. This Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, purchasers, and transferees of the parties, including but not limited to, any entity to which the rights or obligations of a party are assigned, delegated, or transferred in any corporate reorganization, change of organization, or purchase or transfer of assets by or to another corporation, partnership, association, or other business organization or division thereof.

Government Entity:	Company:
_____	PUGET SOUND ENERGY, INC.
BY_____	BY *LuanneYu*
ITS_____	ITS_____
Date Signed_____	Date Signed **09/30/2022**

Approved as to form:

FACILITY CONVERSION/MODIFICATION BILLING DETAIL

To: CITY OF SUMNER
1104 Maple Street, Suite 260

SUMNER, WA 98390

Attn: MICHAEL KOSA

Scope of Work

SCH 74 FEEDER CONVERSION OF 2 SPANS OF 3 PH PRIMARY INCLUDING POLE RELOCATIONS/REFRAME

Project Description: CITY OF SUMNER MAIN AND WOOD SCH 74 CONVERSION
Location: MAIN AVE & WOOD SUMNER
PSE Project Manager: LUANNE YU

Activity:	PSE Design Cost		PSE Construction Cost Estimate		Customer Installed Duct and Vault		Change Orders	
PSE Order #:			101152871					
	Customer Cost	40%	Customer Cost	40%	PSE Cost Share	60%		
PSE Materials								
PSE Construction Labor							Customer Obligation	$0.00
PSE Project Management		$13,078.00					PSE Obligation	$0.00
PSE Inspection								
PSE Overheads								
Federal Income Tax		$1,078.50		$0.00				
Total Actual Costs:		$ 14,156.50		0		0		

Date: 4/5/2018

TOTAL PROJECT VALUE:	$14,156.50
CITY OF SUMNER Obligation Incl/CO's:	$5,662.60
CITY OF SUMNER Credit for D+V:	$0.00
PSE Billable Amount to Customer	$5,662.60

REQUIREMENTS FOR TRENCHING BY CUSTOMERS ON PUBLIC RIGHT-OF-WAYS AND/OR ON PUGET SOUND ENERGY, INC. EASEMENTS

The following outlines most local governmental guidelines and company standards for trenching on a public right-of-way or Puget Sound Energy, Inc. (PSE) easement. Any trenching performed by the customer, or their contractor, under a PSE permit or easement must comply with these requirements.

1. All trench construction must be performed by a Washington State licensed and bonded contractor.
2. Trench excavation, backfill, restoration, and facility placement must be coordinated with a PSE designated representative, and receive on-site approval by that representative, and local jurisdiction.
3. Right-of-way easement trenching and backfill must be performed during normal business hours, Monday through Friday. Same day excavation and backfill is required for all trenching. Job start notification to the local jurisdiction is the responsibility of Potelco, Inc. Customer shall notify Potelco Project Manager three working days prior to trenching. Penalties for failure to comply with this requirement will be borne by the customer.
4. If the job scope requires excavation beyond a single day, fencing and barricading must be installed around utility facilities exposed above the trench, if allowed, must be in accordance with local regulatory requirements.
5. PSE, all participating utilities, and One-Call Locate, must be notified a minimum of 72 hours in advance of the date and time for right-of-way trenching and facility placement. The One-Call Locate number is 1-800-424-5555. State law requires locating service notification.
6. Excavated material must remain clear of the roadway whenever possible. Excavation material, spoils, and debris shall be removed off-site each day, in accordance with local regulatory requirements. All erosion control requirements in accordance with local regulatory requirements are the responsibility of the customer.
7. Material excavated from the shoulder of the right-of-way shall be properly disposed, and replaced with select backfill material in accordance with local regulatory requirements.
8. Proper compaction is required to comply with local regulatory specifications. If the permit requires compaction testing, the cost of said testing is the responsibility of the customer.
9. All permit requirements, traffic control plans, traffic control and flagging shall meet local regulatory specifications and satisfaction.
10. In the event of failure to abide by the above requirements, PSE reserves the right, at its sole discretion, to assume trenching. In the event of delays due to equipment failure, PSE may assume trenching to meet regulatory and joint construction requirements. The customer is responsible for all trenching costs, and will reimburse the company for costs should PSE perform the trenching.

Customer Initials: _____

11. The customer agrees to indemnify, defend and hold harmless PSE from all liability (including reasonable attorneys' fees) arising out of, or in connection with, the above mentioned trenching activities.

Customer Initials: _____

I AGREE TO ADHERE TO THE ABOVE CONDITIONS

Service Address: MAIN ST AND WOOD AVE SUMNER Work Order Number: 101152871

Signature: _____ Name: _____ Title: _____ Date: _____

PUGET SOUND ENERGY

PSE ELECTRICAL FACILITIES
EXCAVATION REQUIREMENTS AND FINAL GRADE CERTIFICATION

PURPOSE

This document is an agreement between Puget Sound Energy (PSE) and the **Owner/Developer** (Developer) who is providing excavation for the installation of PSE's facilities. This document **does not** provide an easement for operating rights. If PSE determines that a recordable easement on the Developer's property or other property is necessary, it shall be the Developer's responsibility to obtain such easements in a form acceptable to PSE prior to construction.

EXCAVATION REQUIREMENTS

The requirements and conditions outlined below apply when you provide the excavation for PSE's electrical facilities as a condition of receiving electrical service for your project. If you need additional information, please call the PSE contact person listed below.

1. Developer is responsible for acquiring utility locates by calling One-Call, 1-800-424-5555 at least 48 hours (two full working week days) prior to digging. The excavation must meet the requirements of the Washington Administrative Code and Safety Standards.

2. Developer shall call the PSE contact person noted below for trench and route approval prior to starting excavation.

3. The electrical primary trench shall be excavated to provide a minimum of 36 inches of facility coverage, to a maximum trench depth of 48 inches. The electric service trench shall be excavated to provide a minimum of 24 inches of facility coverage, to a maximum trench depth of 36 inches. A 12 inch horizontal separation is required between PSE electrical facilities and other utilities within a joint trench.

4. All back fill must be free of sharp objects and construction debris. Developer shall provide and install sand bedding and shading for electrical facility protection as directed by PSE's contact person. Developer is responsible for any damages caused by improper backfill or compaction.

5. Developer agrees to maintain a minimum of 2 feet of horizontal clearance between PSE conduit, pipe or conductors and any foundation on Developer's property.

6. The vault excavation shall be dug to the dimensions noted on the attached work sketch. Vault holes shall have a solid level bottom with a 6 inch deep layer of crushed rock bedding.

7. Developer shall provide the excavation for PSE electrical facilities within the designed location. Developer shall identify and provide final grade, property lines, and utility easements prior to installation of PSE's electrical facilities.

8. Developer will be financially liable for the relocation of PSE's facilities which are inadequately covered, located outside the area where PSE has adequate operating rights, improperly graded inhibiting standard access and/or any damages resulting from dig-ins due to changes or variations in grade that are made after the installation of PSE's facilities.

FINAL GRADE CERTIFICATION

By my signing below, I certify that the electrical facilities work area shall be at final grade prior to excavation. I assume full responsibility for my excavation work and the resulting location of these facilities. I also agree to indemnify, defend, and hold harmless Puget Sound Energy from all liability arising out of, or in connection with my work, including but not limited to all claims, losses, damages, and expenses, including reasonable attorney's fees, which result from my failure to excavate within easement areas or rights-of-way, or from digging without adequate rights on adjoining properties.

Service Address: MAIN ST & WOOD AVE SUMNER MAIN ST AND WOOD AVE SUMNER Work Order Number: 101151162 101152871

Signature: _____ Name: _____ Title: _____ Date: _____

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2580

SUBJECT: Resolution No. 1639 - Setting Public Hearing Riverwalk Trail Vacation **CATEGORY:** Resolution

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

ATTACHMENTS:
1. Resolution No. 1639 - Setting Public Hearing for Riverwalk Trail Vacation
2. Riverwalk Trail Easement Agreement
3. Riverwalk Native Growth Easement Agreement
4. Riverwalk Trail Section Map

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Back in 1993, a trail section adjacent to the Riverwalk Condominiums was dedicated to the City of Sumner as public right of way – please see attachment titled Trail Easement. Public right of way is essentially the granting of an exclusive easement to the public for so long as is necessary to serve a public purpose. The 'trail' sections that connect this stretch of right of way are all privately owned and/or are not open to the public given the nature of the underlying utility property (put another way, the City does not own or otherwise have a right to use any of the 'trail' sections that abut the one by Riverwalk Condominiums). In 2001, nearly a decade after this stretch of trail was dedicated to public use, the City and the Riverwalk Condominium Association entered into an agreement whereby the HOA took on the obligation to create an annual planting program and maintain responsibilities related to the landscaping and vegetation on and around the paved trail, and the City took on the responsibility to "maintain and repair paved walkway" in a condition that is safe for foot traffic. See attachment titled Riverwalk Native Growth Easement Agreement

Throughout the years since the 2001 agreement, in part due to turnover on both the HOA board/condominium ownership and changing City staff, there has been substantial confusion regarding each party's role and maintenance responsibilities. In 2010, the City's then Public Works Director wrote a letter to the HOA describing the City's intention to remove the paved surface due to unsafe conditions caused by the failure to maintain the root systems of the trail-adjacent trees. Also, "private property" and "no trespassing" signage was installed by the HOA at some point, leading the public to believe the trail section is not open for their free use. That is problematic, as the City has been expending public money to maintain the paved surface, but unfortunately it is not being utilized by the public – rather it appears to be more heavily used by occupants/owners of the Riverwalk Condos. In recent conversations related to the future of the City's trail system, the City determined that it is not the safest or most feasible option to continue the City's trail system through that location to HWY 162 like was once anticipated. Instead, the City has shifted its focus and resources to designing a safe connection between the Sumner Link Trail system that ends at Traffic Avenue, over the river, connecting to Puyallup's Riverwalk trail (to keep the trail systems contiguous, but also safe). The decision not to continue the trail system in your location leaves the City, and its users with an island of paved trail, without any public access to either side of it, leading to nowhere. The City, in communication with the HOA, has decided to vacate the landlocked trail section back to the HOA, reserving only a public access easement as required by the Shoreline Management Act (permit for HOA's development along the shoreline). The vacation will be free of charge given the complexities of the dual maintenance and management responsibilities outlined in the easement.

The first step in this process is to set a Public Hearing for November 7th. Between tonight and that date, notice will go out individually to all owners in the Riverwalk HOA, signs will be posted on the section of trail to be vacated, and notice signs will be published in the Courier Herald, emailed, and posted at the Sounder Station, Library and City Hall.

COUNCIL COMMITTEE/STUDY SESSION: Public Works

MEETING/STUDY SESSION DATE: 9/28/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Motion to approve Resolution No. 1639 setting a public hearing for November 7, 2022 at 6pm for purposes of hearing from the public regarding vacation of the Riverwalk Trail.

RESOLUTION NO. 1639

CITY OF SUMNER, WASHINGTON

A RESOLUTION declaring the intent of the City Council to fix the time and place for a public hearing to discuss vacating the public trail section running adjacent to the River Walk Condominium complex and along the Puyallup River, in the City of Sumner, Washington, as more particularly set forth herein.

WHEREAS, this is a Council-initiated effort to discuss the potential vacation of the public trail section described above; and

WHEREAS, the trail section is a dedicated public right-of-way, dedicated to the City by the Riverwalk Condominium Association at the time of development, but the section of trail does not connect to any other of the City's trail systems (landlocked from public access from either direction), and in an isolated section of paved trail that, due to its location, is not currently being accessed or utilized by the public as expected, and is no longer part of the City's future trail system expansions; and

WHEREAS, the City's maintenance of the paved trail section is expensive and is not providing the public as a whole with the benefit of that expenditure; and

WHEREAS, this trail section vacation is being pursued to enable the City to implement its trail system plan by expanding other sections of the trail adjacent to the River to provide a comparable, but more accessible and convenient trail system and access to the Puyallup River in another location in the City; and

WHEREAS, pursuant to RCW 35.79.030, the City Council now desires to set a time for discussing the option of vacating the unused trail section back to the River Walk Homeowners Association with reservation for a mandatory public access easement as required by the Shoreline Management Act;

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

Section 1. Intent to Vacate Trail Section. That it is the intent of the City Council to consider vacating the public trail section adjacent to the River Walk condominiums, and as depicted on the attached Exhibit A, which is attached hereto and made part hereof.

Section 2. Public Hearing Date/Time and Notice. That during the regular council meeting on November 7, 2022 at the hour of 6:00 p.m., at the City Hall, 1104 Maple Street, Sumner, Washington, is the time and place set for the public hearing regarding the above-described trail vacation, and that the City Clerk is hereby directed to post notices setting forth the time and place of said hearing as required by RCW 35.79.020, and as further required by RCW 35.79.035.

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

ADOPTED AND APPROVED this 17th day of October, 2022.

_____
Kathy Hayden, Mayor

Attest:

_____
Michelle Converse, City Clerk

Approved as to form:

_____
Andrea Marquez, City Attorney

9301250374

EASEMENT

THE GRANTOR, RIVERGROVE DEVELOPMENT, A GENERAL PARTNERSHIP, FOR A VALUABLE CONSIDERATION FROM THE CITY OF SUMNER, DOES HEREBY GRANT, SELL AND CONVEY TO THE CITY OF SUMNER, A MUNICIPAL CORPORATION, GRANTEE, ITS SUCCESSORS AND ASSIGNS, A PERMANENT EASEMENT AND RIGHT-OF-WAY, UNDER, THROUGH AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY SITUATED IN PIERCE COUNTY, WASHINGTON, TO-WIT:

BEGINNING AT THE SOUTHWEST CORNER OF A. H. WOOLERY DONATION LAND CLAIM SITUATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 20 NORTH, RANGE 4 EAST OF THE WILLAMETTE MERIDIAN; THENCE S 0° 45' 40" E AT A RIGHT ANGLE TO THE SOUTH LINE OF SAID DONATION LAND CLAIM, 869.15 FEET; THENCE S 63° 10' 14" E 6.00 FEET TO THE TRUE POINT OF BEGINNING OF A 15.00 FOOT EASEMENT, LYING 7.50 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE; THENCE N 63° 10' 14" W, 191.74 FEET; THENCE N 52° 55' 35" W, 195.78 FEET; THENCE N 51° 00' 04" W, 284.85 FEET; THENCE N 53° 30' 18" W, 397.80 FEET; THENCE N 54° 50' 46" W, 116.79 FEET; THENCE N 55° 04' 02" W, 105.60 FEET; THENCE N 52° 24' 57" W, 106.52 FEET; THENCE N 57° 47' 22" W, 10.56 FEET; THENCE N 60° 214' 27" W, 86.23 FEET; THENCE N 51° 40' 00" W, 54.31 FEET; THENCE N 46° 22' 15" W, 68.31 FEET; THENCE N 38° 07' 04" W, 62.00 FEET TO THE TERMINUS POINT OF THIS EASEMENT.

EXCEPT THEREFROM ANY PORTION LYING OUTSIDE OF THE FOLLOWING DESCRIBED PARCEL;
BEGINNING AT THE SOUTHWEST CORNER OF A. H. WOOLERY DONATION LAND CLAIM; THENCE S 0° 45' 40" E AT A RIGHT ANGLE TO THE SOUTH LINE OF SAID DONATION LAND CLAIM, 292.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF RIVERGROVE DRIVE, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE S 0° 45' 40" E, 588.28 FEET; THENCE N 62° 42' 53" W, 189.30 FEET; THENCE N 56° 32' 57" W, 200.79 FEET; THENCE N 52° 55' 06" W, 281.72 FEET; THENCE N 50° 07' 44" W, 416.40 FEET; THENCE 51° 37' 18" W, 581.76 FEET; THENCE N 47° 15' 07" E, 220.00 FEET; THENCE N 42° 44' 53" W, 27.50 FEET; THENCE N 47° 15' 07" E, 199.20 FEET; THENCE N 67° 12' 08" E, 137.39 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF RIVERGROVE DRIVE; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, S 32° 52' 55" E, 300.11 FEET; THENCE S 40° 52' 55" E, 565.45 FEET; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS POINT BEARING N 49° 07' 05" E 255.00 FEET AND THROUGH A CENTRAL ANGLE OF 49° 52' 45" FOR AN ARC DISTANCE OF 221.99 FEET; THENCE N 89° 14' 20" E 183.32 FEET TO THE TRUE POINT OF BEGINNING.

ALSO TOGETHER WITH THE FOLLOWING DESCRIBED EASEMENT;
BEGINNING AT THE SOUTHWEST CORNER OF A. H. WOOLERY DONATION LAND CLAIM; THENCE S 0° 45' 40" E AT A RIGHT ANGLE TO THE SOUTH LINE OF SAID DONATION LAND CLAIM, 292.00 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF RIVERGROVE DRIVE; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE, S 89° 14' 20" W 183.32 FEET; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS

EXCISE TAX EXEMPT: DATE 12-5-93
Pierce County
By _____ Auth. Sig

For reference only, not for re-sale.

POINT BEARING N 0° 45' 40" W 255.00 FEET AND THROUGH A CENTRAL ANGLE 48° 06' 11" FOR AN ARC DISTANCE OF 214.09 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1° 46' 34" FOR AN ARC DISTANCE OF 7.90 FEET; THENCE N 40° 52' 55" W 93.64 FEET; THENCE SOUTHERLY ALONG A CURVE CONCAVE TO THE WEST HAVING A RADIUS POINT BEARING S 49° 07' 05" W 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 78° 07' 05" FOR AN ARC DISTANCE OF 27.27 FEET; THENCE S 37° 14' 09" W 42.79 FEET; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH HAVING A RADIUS POINT BEARING N 52° 45' 51" W 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 93° 41' 45" FOR AN ARC DISTANCE OF 32.71 FEET; THENCE S 6° 46' 58" W 98.48 FEET; THENCE S 36° 29' 42" W 164.34 FEET; THENCE S 53° 30' 18" E 10.00 FEET; THENCE N 36° 29' 42" E 164.95 FEET; THENCE N 64° 36' 52" E 88.81 FEET; THENCE NORTHERLY ALONG A NON-TANGENT CURVE CONCAVE TO THE EAST HAVING A RADIUS POINT BEARING N 39° 47' 22" E 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 88° 26' 47" FOR AN ARC DISTANCE OF 30.87 FEET; THENCE N 37° 14' 09" E 27.16 FEET; THENCE EASTERLY ALONG A CURVE CONCAVE TO THE SOUTH HAVING A RADIUS POINT BEARING S 52° 45' 51" E 20.00 FEET AND THROUGH A CENTRAL ANGLE OF 100° 06' 22" FOR AN ARC DISTANCE OF 34.94 FEET TO THE POINT OF BEGINNING.

FOR THE CONSTRUCTION, OPERATION, MAINTENANCE AND/OR REPAIR, AND/OR REPLACEMENT OF A PUBLIC ACCESS EASEMENT UTILITIY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND FROM SAID EASEMENT AND RIGHT-OF-WAY, FOR ALL PURPOSES NECESSARY AND RELATED THERETO.

DATED THIS 22nd DAY OF January, 1993.

RIVERGROVE DEVELOPMENT,
A GENERAL PARTNERSHIP

BY: _____

93 JAN 25 PM 2:26
RECORDED
BRIAN SONNTAG
AUDITOR PIERCE CO. WASH.

9301250374

For reference only, not for re-sale.

STATE OF WASHINGTON)
COUNTY OF PIERCE)

On this 22ND day of JANUARY, 1993, before me personally appeared JAMES K. PEASE to me known to be the person who executed the foregoing instrument, and who being duly sworn by me, did depose and say that HE IS A partner in the general partnership known as RIVERGROVE DEVELOPMENT and that HE IS duly authorized to sign the same and duly acknowledged to me that HE executed the same as the free and voluntary act and deed of said partnership, for the uses and purposes mentioned therein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

JAMES A. REISS
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
8-22-95

NOTARY PUBLIC in and for the State of Washington, residing at: TACOMA
My Commission Expires: 8/22-95

For reference only, not for re-sale.

UNOFFICIAL DOCUMENT

200105311658 10 pg
5-31-2001 04:13pm $17.00
PIERCE COUNTY, WASHINGTON

Name & Return Address:

City of Sumner
1104 Maple St.
Sumner, WA. 98390

Please print legibly or type information.

Document Title (Or transaction contained therein)

Agreement to Maintain Native Growth Easement

Grantor(s) (Last name first, then first name, middle name)

Riverwalk Condominium Association

____ **Additional Names on Page** ____ **of Document**

EXCISE TAX EXEMPT DATE 5-31-2001
Pierce County
By _____ Auth. Sig

Grantee(s) (Last name first, then first name, middle name)

City of Sumner

____ **Additional Names on Page** ____ **of Document**

Legal Description (Abbreviated: i.e., lot, block & subdivision name or number OR section/township/range and quarter/quarter section

Section 25, Township 20 North, Range 05 East of the Willamette Meridian

Complete Legal Description on Page ____ **of Document**

Auditor's Reference Number(s)

Assessor's Property Tax Parcel/Account Number(s)

042025 4125, 042025 4109, 042025 4103, 042025 4114,
042025 4120, 042025 4102, 042025 4101, 042025 4116,
042025 4118

The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein. IF YOU REPRODUCE THIS FORM, BE SURE MARGINS REMAIN 3 INCHES AT THE TOP AND 1 INCH ON SIDES AND BOTTOM.

gpcovst.lst 2/98

For reference only, not for re-sale.

UPON RECORDING, PLEASE RETURN TO:

Community Development Department
City of Sumner
1104 Maple Street
Sumner, WA 98390-1423

TYPE OF DOCUMENT: Agreement to Maintain Native Growth Easement

LEGAL DESCRIPTION: Included in Exhibit "A" of this document

AGREEMENT TO MAINTAIN NATIVE GROWTH EASEMENT

THIS AGREEMENT is made and entered into this 27th day of April, 2001, by and between the CITY OF SUMNER, a municipal corporation (hereinafter referred to as "City"), and RIVERWALK CONDOMINIUM ASSOCIATION (hereinafter referred to as "Owner").

WHEREAS, Owner owns the following described real property situated in Pierce County, State of Washington, as set forth in Exhibit "A", which is attached hereto and made a part hereof; and

WHEREAS, Owner is responsible for maintenance of a "50-foot Native Growth Easement from the top of the bank of the Puyallup River to enhance area wildlife", as required by the Mitigated Determination of Nonsignificance issued to the Rivergrove Land Company on January 22, 1991; now, therefore,

For and in consideration of the mutual benefits to be derived therefrom, it is mutually agreed as follows:

A. City and Owner hereby agree that performance of the terms of this Agreement does provide for compliance with the aforementioned requirement of the Mitigated Determination of Nonsignificance issued to the Rivergrove Land Company on January 22, 1991 to maintain a native growth easement on the property described in Exhibit "A". After consultation with Owner and following procedures of due process, City and Owner agree that Owner's failure to perform the provisions of this agreement could constitute non-compliance with the aforementioned requirement, as determined by the City.

B. City and Owner agree that a portion of the property owned by the Riverwalk Condominium Association extending the length of Owner's property from east to west along the Puyallup River and from the south at

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the top of the river bank to a point north 50 feet as originally surveyed shall be referred to as the Native Growth Easement.

C. City and Owner agree that this easement contains a previously constructed pathway running from the easternmost portion of Owner's property to beyond the westernmost portion of Owner's property. The pathway is to be maintained by the City of Sumner in safe condition for foot traffic. The City will trim any planting impeding foot traffic on the path.

D. City and Owner agree that Owner may remove any tree deemed hazardous to person or property by the Riverwalk Condominium Association Board of Directors. Any tree removed shall be replaced by Owner by planting a suitable replacement tree from the list in Exhibit "B". E

L.B. JMB

E. Together with the above duties, the further responsibilities of each party ot this Agreement are identified below:

1. Owner shall:

   a. Implement the Native Growth Easement maintenance program included herein as Exhibit "B".

   b. Implement the annual planting program for each of five sections of the Native Growth Easement included herein as Exhibit "C", as developed in consultation with the City and the Washington State Cooperative Extension Service, so that the entire planting program is completed within five years of the date of this agreement.

   c. Notify the City in writing upon completion of each of the five sections as described in the annual planting program (Exhibit "C") so that the City may verify the completion of each section.

   d. Provide all funding and labor for maintenance of the Native Growth Easement and completion of the five-year planting program.

2. City shall:

   a. Provide technical assistance to Owner in support of its maintenance and planting activities conducted pursuant to this Agreement. Said assistance shall be provided upon request, at no charge to Owner.

   b. Review the implementation of the annual planting program upon written notice from Owner.

   c. Upon completion by Owner of the five-year planting program described in Exhibit "C", provide written

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acknowledgement of its completion in accordance with this Agreement.

d. Maintain and repair paved walkway extending the length of the Native Growth Easement, as needed.

F. Amendments

This Agreement may be amended upon mutual agreement by both parties. Amendments must be in writing and signed by the highest-ranking official of both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

OWNER SIGNATURE:

James M Broderick 4/27/01

President, Riverwalk Condominium Association Date

JAMES BRODERICK

Printed Name

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

On this 27 day of APRIL, 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JAMES BRODERICK to me proven to be the individual described in and who executed the forgoing instrument for himself and acknowledged that he signed the same as his free and voluntary act and deed for himself and also as his free and voluntary act and deed as of said CORPORATION, for uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

VICKI L. PFAU NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES SEPT. 9, 2001

Vicki PFau

Printed Name: VICKI PFAU

NOTARY PUBLIC in and for the State of Washington

Residing at TACOMA

My commission expires: 9-09-01

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Unofficial Document

CITY OF SUMNER:

BY: Barbara Skinner 5/1/01
Barbara Skinner, Mayor Date

ATTEST: Susan R. Clary 5/1/01
Susan Clary, City Clerk Date

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

On this 1st day of May, 2001, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Barbara Skinner and Susan Clary representing themselves as Mayor and City Clerk, respectively, of the City of Sumner, the municipal corporation that executed the forgoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said municipal corporation, for uses and purposes therein mentioned, and on oath stated that they were authorized to execute the said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

ANGELA SLOAN CLACK NOTARY PUBLIC STATE OF WASHINGTON 2-11-2002

Angela Sloan Clack
Printed Name: ANGELA SLOAN CLACK
NOTARY PUBLIC in and for the State of Washington
Residing at Puyallup WA
My commission expires: 2-11-02

APPROVED AS TO FORM:

By: Pat Bosmans 5/1/01
Patricia Bosmans, City Attorney Date

For reference only, not for re-sale.

Unofficial Document

EXHIBIT "A"
NATIVE GROWTH EASEMENT MAINTENANCE AGREEMENT

Legal Description

Beginning at the Southwest corner of A. H. Woolery Conation Land Claim situated in the southeast quarter of Section 25, Township 20 North, Range 4 East of the Willamette Meridian; thence S 0 degrees 45' 40" E at a right angle to the south line of said Donation Land Claim, 889.15 feet to the true point of beginning of a natural growth easement described as follows: thence continuing S 0 degrees 45' 40" E 56.65 feet; thence N 62 degrees 42' 53" W 189.30 feet; thence N 56 degrees 32' 57" W 200.79 feet; thence N 52 degrees 55' 05" 281.72 feet; thence N 50 degrees 07' 44" W 416.40 feet' thence N 51 degrees 37' 18" W 581.76 feet; thence N 47 degrees 15' 07" E 32.02 feet; thence S 44degrees 19' 07" E 51.93 feet; thence S 41 degrees 45' 15" E 27.78 feet; thence S 49 degrees 35' 45" E 37.09 feet; thence S 52 degrees 19' 30" E 50.94 feet; thence S 60 degrees 16' 03" E 95.49 feet; thence S 55 degrees 22' 04" E 13.27 feet; thence S 51 degrees 19' 17" E 104.96 feet; thence S 56 degrees 06' 59" E 105.19 feet; thence S 55 degrees 07' 51" E 118.97 feet; thence S 50 degrees 18' 59" E 399.96 feet; thence S 52 degrees 55' 06" E 279.00 feet; thence S 56 degrees 32' 56" E 196.51 feet; thence S 62 degrees 42' 53" E 159.97 feet to the point of beginning.

City and Owner agree that a portion of the property owned by the Riverwalk Condominium Association extending the length of Owner's property from east to west along the Puyallup River and from the south at the top of the river bank to a point north 50 feet as originally surveyed shall be referred to as the Native Growth Easement.

City and Owner agree that this easement contains a previously constructed pathway running from the easternmost portion of Owner's property to beyond the westernmost portion of Owner's property. The pathway is to be maintained by the City of Sumner in safe condition for foot traffic. The City will trim any planting impeding foot traffic on the path.

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Unofficial Document

EXHIBIT "B"

NATIVE GROWTH EASEMENT MAINTENANCE PROGRAM

1. An annual inspection of the Native Growth Easement will be completed to determine plant health and trimming needs to maintain a viewing window of low growth shrubs not to exceed three feet in height and trees, both coniferous and deciduous, which would be limbed up to ten (10) feet to provide a seven (7) foot window for general viewing of the Puyallup River.
2. No chemical, herbicide or other agent which is considered an environmental hazard if leached into the river shall be used upon any portion of the easement.
3. The portion of the easement from the north edge of the path to any point 50 feet north of the riverbank, as originally surveyed, shall be maintained in a park-like setting.
4. The portion of the easement from the south edge of the path to the top of the riverbank shall be re-landscaped and maintained by the Owner to the mutually agreed upon conditions set forth in Exhibit "C".

For reference only, not for re-sale.

Unofficial Document

EXHIBIT "C"

NATIVE GROWTH EASEMENT PLANTING PROGRAM

The goal of the Native Growth Easement Planting Program will be to develop and coordinate landscaping: tree, shrub and ground cover planting of the portion of the easement south of the path that is able to accommodate such planting. A professional landscape plan is attached as Exhibit "D". This is a typical drawing and shall be modified to meet the conditions of the current status of the land and present plantings.

1. Divide the planting area into five sections to be planted one per year for five years.
2. Initiate planting of the first area south of the walkway in the spring or early summer 2001.
3. Plants will be chosen from a list of native species supplied by Dr. Rita Hummel of Washington State University extension program in Puyallup and Steve Vassey, landscape architect. See Exhibit "E".
4. Plants not surviving after one year since planting shall be replaced by Owner with plants from the list in Exhibit "E".
5. Horsetail, tall grass and blackberry along the top of the riverbank shall be removed in the most practicable and environmentally safe manner.
6. The grass, planted by the developer and not the Owner, shall be killed using Roundup. Roundup binds to soils and will not move in or on the soil to untreated areas. In soil, it breaks down with no residual impacts. It can be used near water bodies, but should not be sprayed directly in water. This method of ridding of the grass allows the grass to hold the top of the riverbank without any erosion and without any danger to the river. A minimum layer of sterile compost may be applied over the killed grass. Plantings may be made directly through the compost into the sand and existing soil which creates topsoil. A hardwood mulching may be necessary until such time as the ground cover takes hold.
7. The Owner has the right to remove and/or abate any condition caused by the planting which if left unattended could pose a hazard to the property or person.

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EXHIBIT "E"

PLANT LIST OF NATIVE SPECIES
For use on the Native Growth Easement, south of the walkway

Suggested by Dr. Rita Hummel, WSU Extension at Puyallup
Steve Vassey, Landscape Architect

Native Shrubs

Serviceberry
Redtwig Dogwood
Salal…can choose a dwarf variety
Oregon Grape
Nootka Rose
Currant
Elderberry
Douglas Spirea
Snowberry
Salmonberry

Ground Covers

Corniff Candifsous
Kinnikinnick
Beach Strawberry
Suggested by the Native Growth Easement Committee
St. John's Wort
Vinca – Major and Minor
Ajuga – many varieties are available

Evergreen Trees (4' to 6' @ 12' to 15' on center)

Douglas Fir
Western Red Cedar
Western Hemlock
Shore Pine

Deciduous Trees (4' to 6' @ 12' to 15' on center)

Vine Maple
Birch
Alder

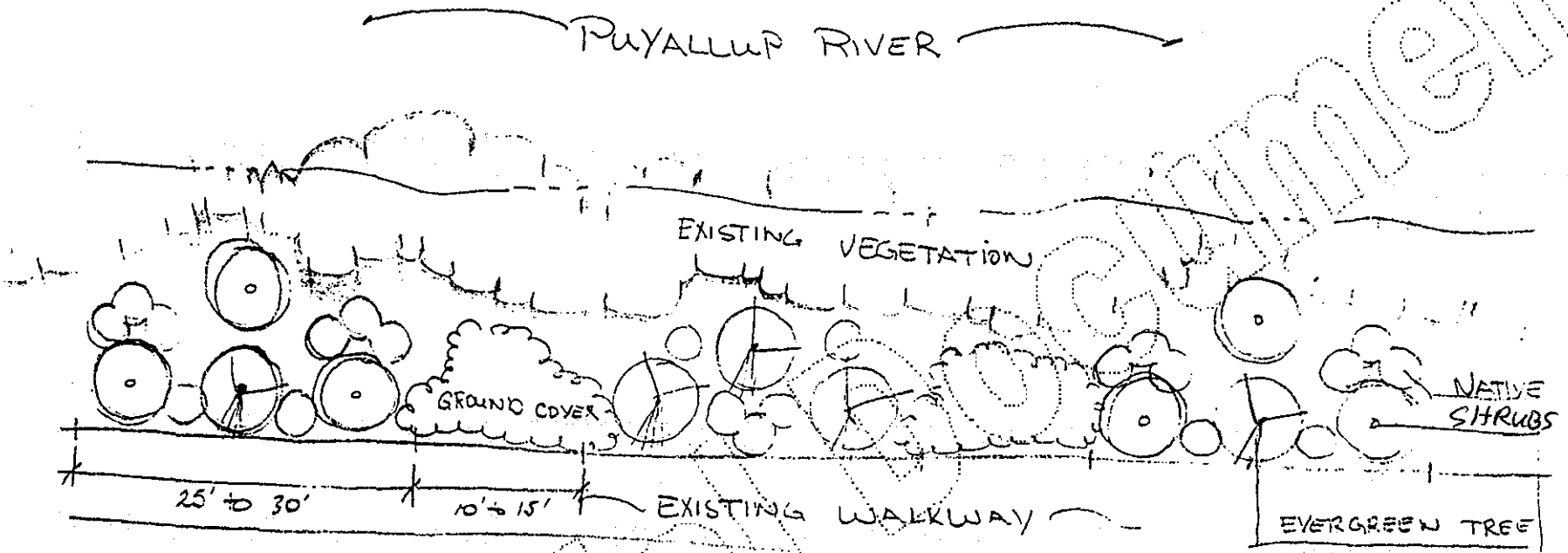


Exhibit "D"

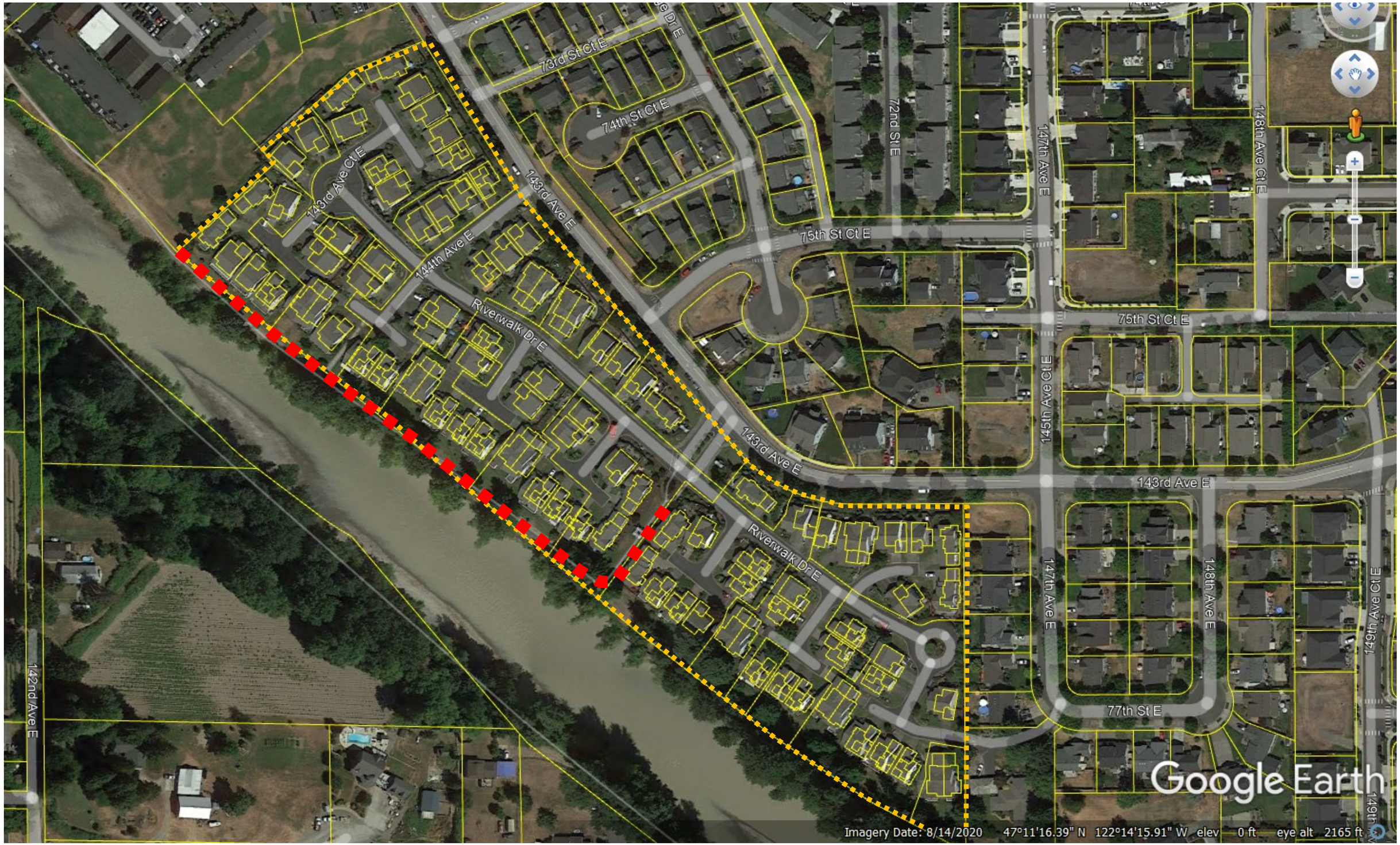
TYPICAL PLANTING

NOT TO SCALE

RIVER WALK

Unofficial Document

For reference only, not for re-sale.


73rd St Ct E
74th St Ct E
72nd St E
147th Ave E
148th Ave Ct E
75th St Ct E
143rd Ave Ct E
144th Ave E
Riverwalk Dr E
143rd Ave E
145th Ave Ct E
75th St Ct E
143rd Ave E
Riverwalk Dr E
147th Ave E
148th Ave E
149th Ave Ct E
77th St E
142nd Ave E
Google Earth
Imagery Date: 8/14/2020 47°11'16.39" N 122°14'15.91" W elev 0 ft eye alt 2165 ft

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2481

SUBJECT: Purchase & Sale Agreement - Nordyke Acquisition: 16602 64th ST E **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: $455,000 Within Budget Allocation: Yes

ATTACHMENTS:
1. Purchase and Sale Agreement

STAFF CONTACT: Michael Kosa, City Engineer

SUMMARY BACKGROUND:
166th Avenue East (Sumner-Tapps Highway) and the SR 410 westbound off-ramp experience severe traffic congestion at the SR 410 interchange and the intersection to the north at 64th Street East. Additionally, an undersized and failing corrugated metal pipe culvert that carries Salmon Creek runs diagonally underneath the intersection, creating an unsuitable environment for ESA-listed salmon species to thrive and spawn.

The property at 16602 64th St E, at the southeast corner of the intersection of 166th Avenue E and 64th St E, is projected to be impacted by the proposed widening/roundabout project. When the property owner was informed about the project concept and that the property would be likely be partially acquired in a few years, the property owner requested that the City purchase the full property as soon as possible. The property has contamination from underground storage tanks and a hydraulic lift. Acquiring the property at this time benefits the City, as it settles a future potential acquisition amicably and allows the City to begin remediation efforts soon.

The attached purchase and sale agreement is a willing buyer-willing seller agreement to purchase the entire parcel. The cost of the upcoming remediation was factored in to the sale price of the parcel. The property was appraised by a qualified appraiser, and a review appraisal was also completed to justify the property value.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion approving the acquisition of 16602 64th Street East for a total amount of $455,000 and authorizing the Mayor to execute any and all documents necessary to effectuate the purchase transaction.

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS REAL ESTATE PURCHASE AND SALE AGREEMENT (hereinafter "Agreement") is entered into by and between Jennifer April Nordyke, as Personal Representative of the Estate of Darrell Eugene Nordyke, deceased, pursuant to proceeding in King County Superior Court Probate Cause No. 22-4-04675-6, (hereinafter "Seller") and the **CITY OF SUMNER**, a municipal corporation and political subdivision of the state of Washington (hereinafter "Purchaser"). Seller and Purchaser may hereinafter collectively be referred to as "Parties" or individually as a "Party."

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and covenants contained herein, the sufficiency of which is unconditionally acknowledged by Seller and Purchaser, the Parties agree as follows:

1. **The Property.** Seller is the sole owner in fee simple of certain real property located in Pierce County, Washington identified by parcel number 052029-2009 and legally described on the attached **Exhibit A (the Property).**

2. **Purchase and Sale.** Seller shall sell and convey to Purchaser, and Purchaser shall purchase and accept from Seller, upon the terms, covenants, and conditions set forth in this Agreement, all of Seller's right, title, and interest in and to the Property, including all after-acquired property. Seller warrants that Seller has full right, title, authority, and capacity to execute this Agreement and sell the Property. Purchaser warrants that Purchaser has full right, title, authority, and capacity to execute this Agreement and purchase the Property.

3. **Purchase Price and Payment.** The total purchase price for the Property (hereinafter "Purchase Price") is **Four Hundred Fifty Five Thousand & 00/100 ($455,000.00)** and shall be paid by Purchaser to Seller by cashier's check, certified check, or wire transfer of immediately available funds to Seller at closing.

4. **Conveyance of Title.** Seller shall convey title to the Property legally described on the attached Exhibit A to Purchaser by Statutory Warranty Deed (hereinafter "Deed").

5. **Closing; Possession.** Closing shall occur upon payment of the Purchase Price to Seller from Purchaser and delivery of the executed Deed from Seller to Purchaser (hereinafter "Closing Date"), but in no event later than 120 days after City Council approval unless otherwise mutually agreed by the Parties. The Parties agree to execute any and all documents necessary to effectuate the intent of this Agreement. Purchaser shall be entitled to possession of the Property legally described on the attached Exhibit A as of the Closing Date.

6. **Approval by the Sumner City Council**. The Parties acknowledge that this Agreement shall not be deemed accepted by or binding on the Purchaser until approved by the Sumner City Council in an open public meeting, which approval was granted on October 17, 2022. Therefore, the foregoing condition was fully satisfied prior to the Parties execution of this Agreement.

7. **Risk of Loss.** Risk of loss of or damage to the Property shall be borne by Seller until the Closing Date. Thereafter, Purchaser shall bear the risk of loss. In the event of material loss of or damage to the Property prior to the Closing Date, Seller shall promptly notify Purchaser in writing and Seller shall not be obligated to restore the Property nor pay damages to Purchaser by reason of such loss or damage. Upon receipt of written notice pursuant to

Section 10 below, Purchaser may within five (5) business days terminate this Agreement by giving written notice of such termination to Seller and such termination shall be effective immediately; provided, however, that Purchaser may elect to purchase the Property in the condition then existing; provided that, Purchaser delivers notice of such election pursuant to Section 10 below within five (5) business days of receipt of Seller's notice of a material loss of or damage to the Property as provided for in this Section 8.

8. Closing Costs & Prorations. Seller shall pay its own attorney fees and its real estate agent's commission. Purchaser shall pay all escrow fees and recording costs, its own attorney fees, and all other costs and expenses allocated to Purchaser and Seller pursuant to the terms of this Agreement; excepting only the Seller's payment of its own attorney fees and commission as provided for above in this Section 8 and any prorations for which it is responsible pursuant to the following sentence. Any taxes, liens, assessments, insurance, or charges imposed by law upon the Property shall be prorated as of the Closing Date, with such prorations to be a final settlement between the Parties.

9. Notices. Except as specifically set forth herein, any demand, request or notice which either Party desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or when delivered by private courier service (such as Federal Express), or three days after being deposited in the United States Mail first class, postage prepaid and addressed as follows:

PURCHASER	SELLER
City Administrator City of Sumner 1104 Maple Street Sumner, WA 98390	Jennifer April Nordyke 1722 Tacoma Rd. Puyallup, WA 98371

The foregoing addresses may be changed by written notices to the other party as provided herein.

10. Time. Time is of the essence in every provision herein contained.

11. Binding Agreement. This Agreement shall inure to the benefit of and be binding upon the heirs, personal representative, successors, and assigns of the Parties.

12. Attorneys' Fees. In the event of any litigation regarding the rights and obligations of the parties under this Agreement, the prevailing party shall recover its costs and attorneys' fees, including such costs and attorneys' fees for appeals.

13. Negotiation and Construction. This Agreement was negotiated by the Parties and shall be construed according to its fair meaning and not strictly for or against either Party.

14. Entire Agreement. This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the Parties relating to the subject matter of this Agreement. No

amendment of, or supplement to, this Agreement shall be valid or effective unless made in writing and executed by the Parties.

15. **Counterparts.** This Agreement may be signed in two or more counterparts, which taken together shall constitute the complete Agreement.

16. **Invalid Provision.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from this Agreement.

[SIGNATURES & ACKNOWLEDGEMENTS APPEAR ON FOLLOWING PAGES]

PURCHASER'S SIGNATURE PAGE

Approved as to legal form only:

_____
Andrea Marquez Date
City Attorney

Final Action:

_____
Kathy Hayden Date
Mayor

STATE OF WASHINGTON)
) ss
COUNTY OF PIERCE)

On this ____ day of _____, 20__, before me, the undersigned, a notary public in and for the state of Washington, duly commissioned and sworn, personally appeared _____, known to me to be the Mayor of the City of Sumner, Washington, a municipal corporation and political subdivision of the state of Washington, who executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

_____
NOTARY SIGNATURE
PRINTED NAME: _____
NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,
RESIDING AT: _____
MY COMMISSION EXPIRES: _____

SELLER'S SIGNATURE PAGE

_____

Jennifer April Nordyke Date

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

On this day personally appeared before me _____, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

_____

Printed Name: _____

NOTARY PUBLIC in and for the State of Washington, residing at _____

My Commission Expires: _____

Exhibit A
Legal of Property

Legal Description

For APN/Parcel ID(s): 052029-2009

That portion of the following described premises lying Northeasterly of the Northeasterly line of Primary State Highway No. 5:

Beginning 40 feet South of the Northwest corner of Section 29, Township 20 North, Range 5 East of the W.M., in Pierce County, Washington;
thence East 195 feet;
thence South 264.5 feet;
thence West 195 feet;
thence North 264.5 feet, more or less, to point of beginning;
EXCEPT the West 30 feet for road; and
EXCEPT that portion thereof, if any, within Old Sumner-Buckley Highway.

EXHIBIT B
Statutory Warranty Deed

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2755

SUBJECT: Approval of the regular council meeting minutes from October 3, 2022, special study session of October 3, 2022 and October 10, 2022 study session

CATEGORY: Motion

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Minutes - October 3, 2022 Regular Council Meeting
2. Minutes - October 3. 2022 Special Study Session
3. Minutes - October 10, 2022 Study Session

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:
Minutes from the previous three council meetings.

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

STAFF RECOMMENDATIONS/MOTION:
Approve as presented.

CITY COUNCIL MEETING MINUTES
City Hall – 1104 Maple Street
October 3, 2022 6:00 PM

The city conducted this public meeting using a hybrid model both in person and ZOOM.

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

CALL TO ORDER

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

Pledge of Allegiance

Invocation

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

PROCLAMATION

1. Domestic Violence Awareness Month

Police Chief Brad Moericke read the Proclamation into the record. Legal Services Coordinator Noel Clark addressed the council on the services the City provides to our residents.

2. Bonney Lake / Sumner Little League

Mayor Hayden read the Proclamation into the record.

CONSENT AGENDA

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

1. Approval of electronic checks and payments in the amount of $1,123,969.18.
2. Approval of the minutes from the Regular Council Meeting of September 19, 2022, Special Study Session of September 19, 2022 and September 26, 2022 Study Session.

PASSED BY VOICE VOTE.

PUBLIC HEARING

There was none tonight.

DRAFT

REGULAR BUSINESS

1. **Unfinished Business**

a. **BusUp Master Services Agreement - MIC Transit**

MOVED BY BROWN SECONDED BY NEUMAN TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT SUBSTANTIALLY IN THE FORM OF THE ATTACHED, WITH BUSUP, INC. TO PROVIDE MICRO-TRANSIT SERVICE IN THE CITY OF SUMNER, TOGETHER WITH ANY OTHER AGREEMENTS REQUIRED TO BEGIN THE TRANSIT PILOT PROGRAM.

Community Development Director Ryan Windish addressed the Council.

DEPUTY MAYOR HOCHSTATTER MOVED TO TABLE IN ORDER TO DISCUSS THIS DURING THE BUDGET PROCESS. THERE ARE A SEVERAL ITEMS THAT ARE UNFUNDED NEEDS. SECONDED BY STUARD.

PASSED BY ROLL CALL VOTE.

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

Ken Nathe a rental property owner in Sumner voiced his concerns about Siegenthaler Park, including standing water, park improvements and potential dog park. *(comments are attached)*

3. **New Business**

a. **Written Reprimand - Councilmember Reed Conduct Violation**

MOVED BY HOCHSTATTER SECONDED BY COLE TO PURSUANT TO COUNCIL RULE 23.3, IMPOSE A WRITTEN REPRIMAND UPON COUNCILMEMBER REED FOR A VIOLATION OF THE COUNCIL RULES AND CODE OF CONDUCT.

City Attorney Andrea Marquez addressed the council.

DEPUTY MAYOR HOCHSTATTER, ON BEHALF OF THE COUNCIL READ A PREPARED STATEMENT INTO THE RECORD.

“DUE TO RECENT NEW REPORTS, WE BECAME AWARE OF A RACIST MEME SENT BY ONE OF OUR FELLOW COUNCILMEMBERS, MR. PATRICK REED, AT HIS PLACE OF EMPLOYMENT. THE MEME WAS VERY INAPPROPRIATE AND HURTFUL AND IN NO WAY REPRESENTS OUR VALUES AS A WELCOMING COMMUNITY AND THIS COUNCIL AS A WHOLE. WE ARE DISAPPOINTED AND DISAPPROVE OF THE COUNCILMEMBER’S ACTIONS WHETHER INTENTIONAL OR ACCIDENTAL.

INSTEAD OF SWEEPING THIS UNDER THE RUG, WE WANT TO SPEAK OUT SO THAT EVERYONE KNOWS RACIST OR DISCRIMINATORY BEHAVIOR, WORDS AND ATTITUDES ARE NOT ACCEPTABLE AND ARE NOT WHO WE STRIVE TO BE. ALL COUNCILMEMBERS CONTINUE TO PARTICIPATE IN TRAINING THAT INCLUDES TAKING ACTIONS TO BETTER UNDERSTAND PRINCIPLES OF DIVERSITY, EQUITY, AND INCLUSION.

SUMNER’S VISION IS TO BE A PROGRESSIVE SMALL CITY WHERE WE WELCOME ARTS, EVENTS AND ATTITUDES THAT BRING PEOPLE TOGETHER. WE ARE A CITY THAT CELEBRATES ONE ANOTHER, AND WE PROMISE TO UPHOLD THIS VIRTUE. IT IS OUR PRIORITY TO RESPECT ONE ANOTHER AND WORK THROUGH THIS TOGETHER.”

DRAFT

BASED ON THE BEHAVIOR, DEPUTY MAYOR HOCHSTATTER RECOMMENDS PROCEEDING BY ISSUING COUNCILMEMBER REED A WRITTEN REPRIMAND.

COUNCILMEMBER NEUMAN MOVED TO AMEND THE MOTION TO NOT JUST INCLUDE THE WRITTEN REPRIMAND BUT ALSO TO REMOVE HIM FROM CHAIR FROM ANY CITY COMMITTEES AS WELL AS THE PIERCE COUNTY REGIONAL COUNCIL.

SECONDED BY HOCHSTATTER.

COUNCILMEMBER STUARD PROPOSED A SECOND AMENDMENT TO ADD ON TO THE NEUMAN AMENDMENT AND REMOVE COUNCILMEMBER REED FROM ALL COMMITTEES AND ALL ASSIGNMENTS.

SECONDED BY COLE.

MAYOR HAYDEN ASKED THE CLERK TO READ ANY COMMENTS RECEIVED. THE CLERK READ TWO LETTERS FROM CHRISTINA COOPER AND TRAVIS BUTCHER (both are attached as part of the record).

COUNCILMEMBER NEUMAN WITHDREW HER AMENDMENT.

DISCUSSION ENSUED.

COUNCILMEMBER STUARD ELABORATED ON HIS AMENDMENT TO INCLUDE A TIMEFRAME OF UNTIL THE END OF NEXT YEAR.

COUNCILMEMBER NEUMAN RETURNED HER MOTION TO THE FLOOR FOR CONSIDERATION.

DEPUTY MAYOR HOCHSTATTER CALLED FOR THE QUESTION.

THE COUNCIL THEN VOTED ON THE AMENDMENT MADE BY COUNCILMEMBER STUARD, TO ISSUE COUNCILMEMBER REED A WRITTEN REPRIMAND AND REMOVE HIM FROM ALL COMMITTEES UNTIL THE END OF HIS TERM.

VOTING ENDED IN A TIE, WITH COUNCILMEMBERS BROWN, BITETTO AND HOCHSTATTER VOTING NO AND COUNCILMEMBERS NEUMAN, COLE AND STUARD VOTING YES. MAYOR HAYDEN VOTED YES; AMENDMENT PASSED 4-3.

COUNCIL THEN VOTED ON THE MOTION AS AMENDED,

PASSED 4-2
COUNCIL VOTING YES – STUARD, HOCHSTATTER, COLE, NEUMAN
COUNCIL VOTING NO – BROWN AND BITETTO

DRAFT

Ordinance No. 2835 - ARPA Budget Amendment

MOVED BY NEUMAN SECONDED BY TO HOCHSTATTER TO APPROVE ORDINANCE NO. 2835 - AMENDING THE 2021/2022 BIENNIAL BUDGET ALLOCATING $50,000 TO BE USED FOR A RESTAURANT GRANT AND PARKLET.

Community Development Director Ryan Windish addressed the Council.

PASSED BY VOICE VOTE.

4. **Reports**

a. **Council**

Councilmembers Neuman, Brown, Bitetto, Stuard and Hochstatter has nothing to report this evening.

Councilmember Reed offered an apology

Councilmember Cole shared an update from the Rainier Cable Commission meeting from September 21, 2022. She was happy to report that Pierce County TV received a national programing award, and it included the Sumner Welcome In video. They will be holding a special meeting on October 19, 2022, discussion will include dissolving the Rainier Cable Commission and what that would look like to the local jurisdictions.

b. **City Administrator**

City Administrator Jason Wilson reported on the following:

Upcoming Policy Issues:

- October 10th Study Session:
  - 2023-24 Preliminary Budget Presentations:
    - Streets
      - General Fund (001) Street Operations
      - Sidewalk Capital (302) Fund
  - 2023 Ad Valorem Property Tax Discussion
  - Heritage Park Remediation Update

- October 17th Regular Council Meeting
  - Public Hearing for the 2023 Ad Valorem Property Tax
  - Resolution – Setting a public hearing for Riverwalk Trail ROW Vacation
  - Purchase and Sale Agreement (Nordyke property)
  - Consultant Contract Agreement - 2024 Comprehensive Plan Update
  - Sumner Springs Reservoir Recoat - Construction Contract Award
  - Town Center: Utility & Woonerf - PSE Agreement for Design Work
  - Town Center: Main and Wood PSE Agreement for Design Work
  - Stormwater Capacity Grant Acceptance
  - Ordinance establishing the 2023 Utility Rates
  - Ordinance amending the Budget for Heritage Park Remediation
  - Consultant Services Agreement Amendment – Heritage Park Remediation

DRAFT

- October 17th Special Study Session
    - 2023-24 Preliminary Budget Internal Service Fund Presentations:
        - Fleet
            - Fleet Operations & Maintenance (550)
            - Fleet Replacement (555)
        - Information Technology (551)

c. **Mayor**

There was so much pink on Saturday in Sumner! This is one of the largest walks in the region now and it helps to keep breast health services and support local. A big thank you to the hosts of this event: MultiCare Foundation, The Old Cannery and all the teams and talkers. A bigger thank you to all the Sumner business and residents for your patience as we held a 5k through our streets. The City's team ended up raising $16,000 this year – not bad.

5. **Executive Session**

6. **Adjournment**

With no additional business before the council, Mayor Hayden adjourned the meeting at 7:10pm. Councilmembers concurred.

DRAFT

Attest:

_____

Kathy Hayden, Mayor

_____

Michelle Converse, CMC
City Clerk

Sept. 6, 2022

Derek Berry

City of Sumner

1104 Maple Street

Sumner Wa. 98390

Re: Seibenthaler Park, Letter dated June 30, 2022

Derek,

We disagree with Beau Lacrosse where he says water is not flowing from the street onto our property. It has been flowing onto our property for many years carrying a lot of sediment along with it. See photos 1,2 and 3.

Our three parking lot catch basins are cleaned on a regular basis and there is no lack of maintenance as indicated by Beau Lacrosse.

The large catch basin at the top of the drive has an elevation that was set by the City Engineer at the time of construction. That catch basin was not intended to collect surface water but rather to collect the sediment from the water flowing from the storm drain before going to the City Storm Sewer. Beau Lacrosse indicated we should lower our catch Basin to accommodate the surface water from the City Street. It is not our responsibility to deal with runoff from the City Street. Beau Lacrosse indicated the overflow was full of sediment which it is not . It is a number of inches from the top.

There is a City Catch Basin to the left of the driveway that should be lowered to collect more of the water from the street.

We are concerned with the dog run being so close to our rental buildings. We believe it will create a huge nuisance and a negative impact to the desirability to the prospective tenants including rents and future purchasers.

As we understand the hedge that is to be planted along the property line adjacent to our rentals will be 6 feet tall which will leave a closed in feeling for the renters and negatively impact the desirability and the rents.

Seibenthaler Park

Surface Water concerns from the City Park

The Park was more or less flat with low areas that held a lot of water when the rental buildings were constructed. The City decided to import fill materials that was undesirable or substandard for the intended purpose in order to drain the low areas and change the flow of the surface water all to one direction towards our property to a new drain and catch basins that were installed along our property line which has negatively impacted our property in particular the one adjacent to the patio of 1719 which has caused settling and cracking to where it will have to be replaced and possibly the middle patio also. Request the Catch Basin adjacent to the patio be moved down line further away from the building in order to reduce the impact from the surface water.

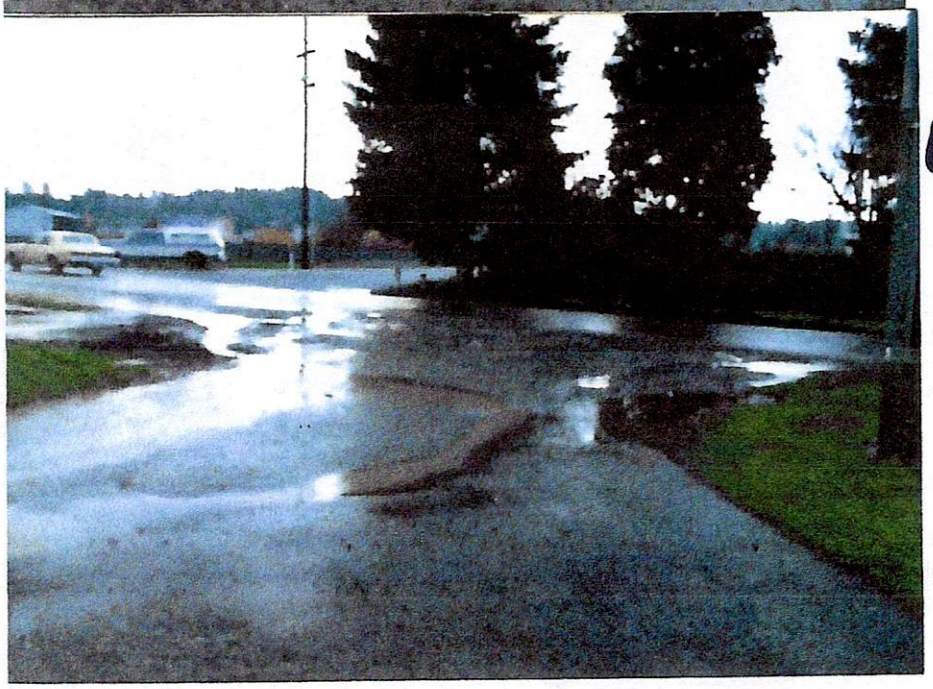
A better solution would be to re-grade the park so all the water does not drain in one direction but rather maintains all the water in the park and install drainage throughout the park to handle all the surface water. By adding the inferior import fill materials the City changed the flow of the water from the park to adjacent property. See photos 1 thru 6.

We kindly request you address these issues.

Regards,

Sumner Park Investments, LLC

1



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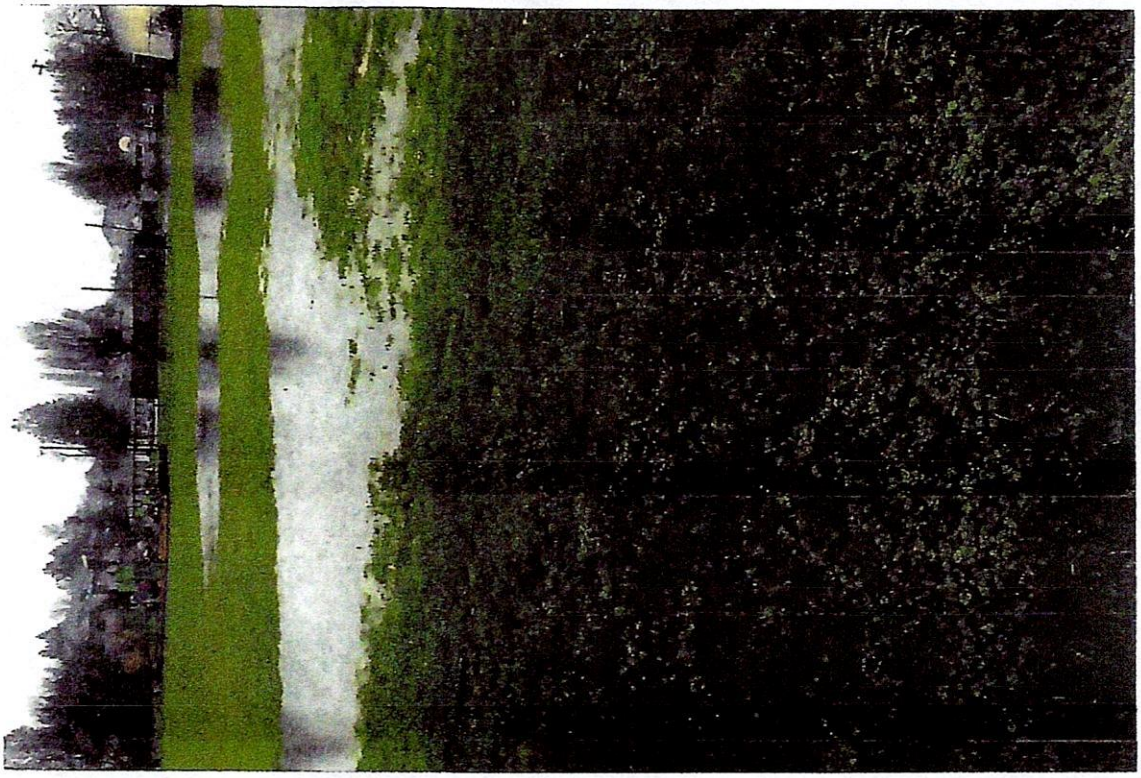

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Michelle Converse

From: Earle Stuard
Sent: Monday, October 3, 2022 2:34 PM
To: Michelle Converse
Cc: Andrea Marquez
Subject: Fw: Patrick Reed - Vote for Censure or Removal from Appointed Council Committees

Hi Michelle,
I received an email today which the sender consented to have read at the council meeting tonight. The email is the first item in this string, and the most recent is his consent to have it read. Please contact me if you have any questions.

Thank you for your help,
Earle Stuard

From: Travis Butcher [redacted]
Sent: Monday, October 3, 2022 1:39 PM
To: Earle Stuard <estuard@sumnerwa.gov>
Cc: Andrea Marquez <AndreaM@sumnerwa.gov>; Kathy Hayden <KHayden@sumnerwa.gov>; Jason Wilson <jasonw@sumnerwa.gov>
Subject: Re: Patrick Reed - Vote for Censure or Removal from Appointed Council Committees

****EXTERNAL EMAIL****

Yes I consent to you forwarding it to the city clerk so it can be read during public comment tonight and made public record.

Thank you Councilmember Stuard

On Mon, Oct 3, 2022 at 1:33 PM Earle Stuard <estuard@sumnerwa.gov> wrote:

> Travis,
> Thank you for your email and the information you have provided. In order for your email to be made a matter of public record, would you consent to my forwarding it to the city clerk so it can be read during public comment tonight?
>
> While I cannot speak for other Councilmembers, I am very concerned by the actions of Councilmember Reed and will take all public comments into consideration as we discuss this issue during tonight's meeting.
>
> Best regards,
> Earle Stuard
> Sumner City Councilmember
>
> Get Outlook for iOS

From: Travis Butcher [redacted]
Sent: Monday, October 3, 2022 1:07:30 PM
To: Earle Stuard <estuard@sumnerwa.gov>
Subject: Patrick Reed - Vote for Censure or Removal from Appointed Council Committees

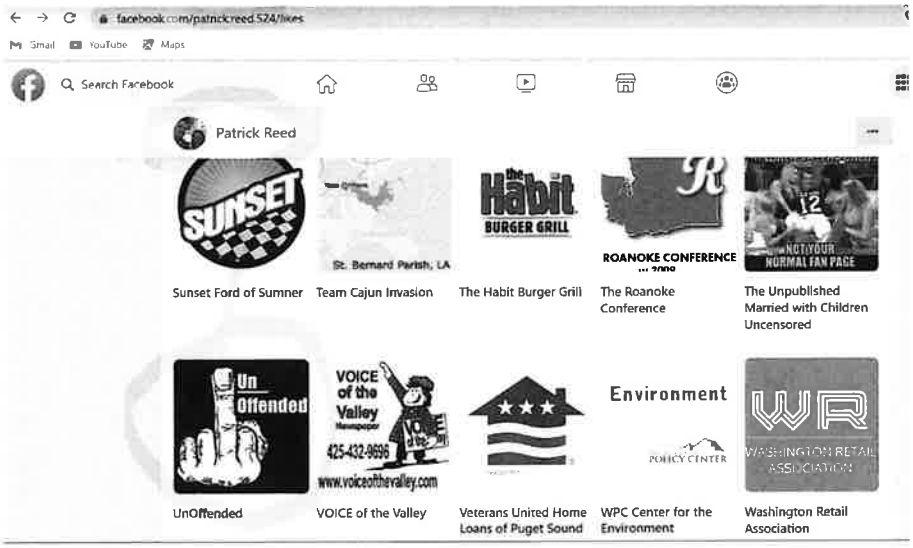
****EXTERNAL EMAIL****

Hello Councilmember Stuard,

I am writing as a Sumner resident and voter to ask that you vote for a verbal admonition, a written reprimand, censure, and removal from appointed council committees of Patrick Reed.

Patrick Reeds use of a racist meme cannot go unpunished. Racism should have no home here in Sumner, especially in a City Council position that has the power to make decisions that can disproportionately impact minorities.

Furthermore Patricks Reeds apology is not genuine. His public facebook page shows that he still follows a facebook page called "Unoffended" this page is a cespool of racist, homophobic, and transphobic memes. The fact that Patrick Reed is still consuming this racist material shows that he is not apologetic and has not learned from his "mistake". Here is the proof that he is still consuming racist memes.



Please let me know as a Council Member the actions you will be taking. Thank you

Travis Butcher
Sumner Resident

From: [redacted]
To: Andrea Marquez; Michelle Converse
Subject: Fwd: Suggested Motion for Councilmember Reed
Date: Saturday, October 1, 2022 12:40:14 PM

****EXTERNAL EMAIL****

Please ensure this is filed as public written comment for Monday's meeting.

---------- Forwarded message ---------
From: **Christina Cooper** <[redacted]
Date: Sat, Oct 1, 2022 at 10:31 AM
Subject: Suggested Motion for Councilmember Reed
To: <bbitetto@sumnerwa.gov>, <cbrown@sumnerwa.gov>, <pcole@sumnerwa.gov>, <chochstatter@sumnerwa.gov>, <cneuman@sumnerwa.gov>, <preed@sumnerwa.gov>, <estuard@sumnerwa.gov>, <khayden@sumnerwa.gov>

My name is Christina Cooper and I reside in Sumner off of Washington Street. The recent racist incident of Councilmember Reed has caught the attention of many concerned residents, including myself. In reviewing the agenda from the council's study session on September 26th, I was relieved to see the council taking action on the incident. However, I noticed that the motion is for Councilmember Reed to receive a written reprimand. While I understand that this is a serious disciplinary action, I don't feel it's enough. Councilmember Reed's responsibility as an elected official is to represent ALL residents of Sumner and also represent the City of Sumner. Is this how the City of Sumner wants to be represented?

I am requesting that Councilmember Reed be removed from the council completely. I have noticed he's on the Public Safety committee as well. If the council is not willing to vote to remove him, at the very least, he should be removed from the Public Safety committee as he has demonstrated a strong bias against the BIPOC community.

I have seen Councilmember Reed's apology and have tried to give him the benefit of the doubt in the scenario he provided of "sending the wrong meme", but there are a few things that keep getting in the way of this incident being a mistaken meme.

1. What meme bank was he pulling from that he had readily available on an official search engine?
2. Even if the meme omitted the racial components, does Councilmember Reed believe that anyone that ends up in court is presumed guilty? Isn't it presumed innocent until proven guilty by the court?
3. Who sends memes in official emails?

I believe that Councilmember Reed knew what he sent and has become so relaxed with his

racist and biased views, that he slipped up. If the people he sent that meme to knew that was out of character for him, they would have likely dismissed it and brought it to his attention but that's not what happened. It was reported to HR, which should tell us all that at least one of the recipients was finally able to provide evidence of who Councilmember Reed really is and took it to HR.

Over the last several months, I've noticed the City of Sumner taking meaningful steps towards creating space for the marginalized members of our community, such as the Pride bench at Loyalty Park, the murals in town, and City staff joining the Sumner Bonney Lake School District's Equity Advisory Council. I believe allowing Councilmember Reed to remain on the council sends the opposite message of what the City's recently been working towards: Sumner is inclusive and EVERYONE is welcome.

I don't think it's appropriate for the council to wait and see how Councilmember Reed's employer handles this. How this council handles this incident will be reflective of what this council truly believes and wants for ALL the residents of Sumner.

In solidarity,
Christina Cooper
[redacted]

You can't be neutral on a moving train - Howard Zinn

SPECIAL STUDY SESSION MINUTES
Sumner City Hall
1104 Maple Street
October 3, 2022 6:015PM

Mayor Hayden called to order the Sumner City Council Special Study Session of October 3, 2022, at 7:19pm.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community Development Director Ryan Windish, Communications Director Carmen Palmer, Public Works Director Mike Dahlem, Development Services Director Doug Beagle, Police Chief Moericke, Administrative Services Director Jeff Steffens, Chief Financial Officer Kassandra Raymond, Community Services Manager Derek Barry and Deputy City Attorney Maili Barber

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

SPECIAL STUDY SESSION BUSINESS

1. Department Budget Presentations

ADJOURNMENT
With no further business before the Council, Mayor Hayden adjourned the meeting at 8:42pm. Councilmembers concurred.

Kathy Hayden, Mayor

Attest:

Michelle Converse, City Clerk

CITY OF SUMNER WASHINGTON

STUDY SESSION MINUTES
City Hall – 1104 Maple Street
October 10, 2022 6:00PM

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

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Public Works Director Mike Dahlem, City Engineer Michael Kosa, Administrative Services Director Jeff Steffens, Deputy City Attorney Maili Barber, Associate City Engineer Alisa O'Haver-Ayala, Chief Financial Officer Kassandra Raymond and Joe Fessler, Associate City Engineer

Mayor Hayden called to order the Sumner City Council Study Session of October 10, 2022, at 6pm.

Mayor Hayden announced the order of Regular Business item would change items one and two would switch.

DRAFT

CALL TO ORDER

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

REGULAR BUSINESS

1. ~~2023-24 Departmental Budget Discussions~~ Heritage Park Remediation Update
2. ~~Heritage Park Remediation Update~~ 2023-24 Departmental Budget Discussions
3. Resolution No. 1640 – Tax Year 2023 Ad Valorem Property Tax

CITY ADMINISTRATOR REPORT

AGENDA SETTING

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

EXECUTIVE SESSION

ADJOURNMENT
With no additional business before the Council, Mayor Hayden adjourned the meeting at 8:08pm, Councilmembers concurred.

Attest:

_____
Michelle Converse, CMC City Clerk

_____
Kathy Hayden, Mayor

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2759

SUBJECT: Public Hearing: Resolution No. 1640 - Tax Year 2023 Ad Valorem Property Tax

CATEGORY: Public Hearings

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Resolution No. 1640 - Tax Year 2023 Ad Valorem Property Tax Levy

STAFF CONTACT: Kassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:
RCW 84.55.120 mandates a public hearing on revenue sources for the upcoming year's budget, including consideration of any potential increases in property tax revenues. The hearing process provides Sumner residents with the opportunity to voice their opinions prior to the adoption of the property tax levy. The required hearing about the 2023 property tax levy is scheduled for October 17, 2022.

This public hearing presents a total levy of $4,661,530, which includes a 9.5% increase over the prior year's collections as authorized by RCW, plus revenues resulting from new construction and improvements ($165,081), and administrative refunds ($5,883).

The 2022 levy rate of $0.99 (rounded) per $1,000 of assessed valuation was based on an overall City assessed valuation of $4,283,202,012. Based on the 2022 preliminary certification from Pierce County for tax year 2023, the 2022 assessed valuation for 2023 taxes is estimated at $4,973,477,995, resulting in a preliminary levy rate for tax year 2023 of $0.97165 (rounded) per $1,000 of assessed valuation.

1. Of the effective levy rate, $0.066352 per $1,000 of assessed valuation shall be committed to leveraging funding opportunities (e.g. grants) for street/transportation projects, in an amount equal to $330,000.
2. Of the effective levy rate, $0.070373 per $1,000 of assessed valuation, in an amount equal to $350,000, shall be reserved for Council appropriation in a future biennial budget cycle.

The final setting of the 2023 levy will be determined by City Council, with a resolution scheduled for Council action on November 7, 2022.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
Study Session
MEETING/STUDY SESSION DATE: 10/10/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:
Conduct public hearing for the tax year 2023 ad valorem property tax levy.

RESOLUTION NO. 1640
CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, RELATING TO AD VALOREM PROPERTY TAXES; ESTABLISHING THE AMOUNT TO BE COLLECTED IN 2023 BY TAXATION ON THE ASSESSED VALUATION OF THE PROPERTY OF THE CITY; AND SETTING THE LEVY FOR THE YEAR 2023.

WHEREAS, the Sumner City Council attests that the City of Sumner population is 10,500; and

WHEREAS, the Sumner City Council has properly given notice of the public hearing held October 17, 2022, to consider the City of Sumner's ad valorem property tax for the 2023 budget, pursuant to RCW 84.55.120; and

WHEREAS, the City of Sumner's highest lawful levy is $4,840,979.26 with the actual levy amount from the previous year being $4,258,173; and

WHEREAS, the City Council, after conducting the required public hearing and after duly considering all relevant evidence and testimony presented, determined that the City of Sumner requires a regular levy of $4,832,497, which includes an increase in property tax revenue from the previous year, amounts resulting from the addition of new construction and improvements to property, administrative refunds, and an increase in the value of state-assessed property, and amounts authorized by law as a result of any annexations that have occurred and refunds made; and

WHEREAS, the City Council is hereby establishing a policy that approximately $0.066352/$1,000 of this property tax levy, for a dollar amount equal to amount established in the 2022 property tax levy, shall be used only for street improvements and further directs staff to establish a committed reserve account in the appropriate fund to segregate these funds from any other general fund dollars and that these funds are restricted from any other purpose without city council approval; and

WHEREAS, the City Council hereby establishing a policy that approximately $0.070373/$1,000 of this property tax levy, for a dollar amount equal to $350,000, shall be reserved for Council appropriation in a future biennial budget cycle, and further directs staff to establish a committed reserve account in the appropriate fund to segregate these funds from any other general fund dollars and that these funds are restricted from any other purpose without city council approval; and

WHEREAS, the Sumner City Council finds that to best protect the public health, safety, and welfare, to best protect the City's future property tax levy capacity, to best serve the citizens of Sumner by maintaining an appropriate level of service throughout the City, to appropriately discharge the City's expected expenditures and obligations, and to best serve the citizens of Sumner through a continued commitment throughout the city, substantial needs exists to increase its tax levy authority over last year.

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

Section 1. Property Tax Levy. The City Council adopts the substantial need findings above, and further finds that in light of substantial increases in costs to maintain and operate basic infrastructure, including streets, realized and anticipated loss of state shared revenues, as well as inflationary impacts

on the cost to provide essential public safety services, parks and recreation programs, information technology, planning, building services, and administration services, the City Council finds that there is in fact a substantial need for additional revenue, great enough to justify an increase in property taxes.

The legally maximum authorized levy is $4,840,979.26. The required regular property tax levy needed by the City of Sumner of $4,661,530 is hereby authorized for the levy to be collected in the 2023 tax year. The dollar amount of the increase of the actual levy amount from the previous year is $403,357. This is a 9.5% increase from the previous year. This increase is exclusive of additional revenue resulting from new construction, improvements to property, newly constructed wind turbines, any increase in the value of state assessed property, any annexations that have occurred and refunds made.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this legislation.

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. This resolution shall become effective immediately upon adoption.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 7th day of November, 2022.

_____
Mayor Kathy Hayden

ATTEST:

_____
City Clerk Michelle Converse, CMC

APPROVED AS TO FORM:

_____
City Attorney Andrea Marquez

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2746

SUBJECT: Pierce County Regional Council Representative Selection **CATEGORY:** Motion

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

ATTACHMENTS:
1. Pierce County Regional Council Member Cities

STAFF CONTACT: Jason Wilson, City Administrator

SUMMARY BACKGROUND:
On October 3, 2022 pursuant to Council Rule 23.3, Councilmember Reed was removed from his commitee responsibilities, which included representing the City at the Pierce County Regional Council (PCRC).

Councilmember Neuman currently serves as the alternate. Per the Council Rules, the Council should discuss the regional appointment and confirm through a majority vote of the Council.

Council Rules Section 21 – Appointments to Regional Organizations (below), Council can appoint representatives to regional organizations.

21.1(d) When the Council has the authority to make direct appointment to a regional committee, discussion shall take place with the full Council to determine interest. The Mayor or Councilmember receiving a majority vote will represent the City on that regional body.

21.1(e) Changes in representation to regional committees where the Council has the authority to make a direct appointment shall also be determined through full Council discussion and majority vote of the Council.

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

STAFF RECOMMENDATIONS/MOTION:
Select a Sumner representative and alternate(s) (if necessary) for the Pierce County Regional Council.

PIERCE COUNTY REGIONAL COUNCIL

Current Sumner representative - Councilmember Reed / Alt. Councilmember Neuman

City of Auburn
City of Bonney Lake
City of Buckley
Town of Carbonado
City of Dupont
Town of Eatonville
City of Edgewood
City of Fife
City of Fircrest
City of Gig Harbor
City of Lakewood
City of Milton
City of Orting
City of Pacific
Pierce County
Port of Tacoma
City of Puyallup
City of Roy
Town of Ruston
Town of South Prairie
Town of Steilacoom
City of Sumner
City of Tacoma
City of University Place
Town of Wilkeson

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2747

SUBJECT: Council Committee Selection **CATEGORY:** Information Only

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

ATTACHMENTS:
1. Committee Descriptions
2. Tally Sheet

STAFF CONTACT: Jason Wilson, City Administrator

SUMMARY BACKGROUND:
On October 3, 2022 pursuant to Council Rule 23.3, Councilmember Reed was removed from his commitee responsibilities.

Committee vacancies created by the removal of Councilmember Reed: American Rescue Plan Act, Finance & Personnel, Public Safety, Lodging Tax (Alt.). Eligible members of these committees are listed below. If an alternate is moved to a standing committee member, then a new alternate would need to be selected.

ARPA (2nd Wed)	**Finance & Personnel (1st Wed)**	**Public Safety (3rd Wed)**	**Lodging Tax (Annually)**
Bitetto (Alt)	Brown	Brown (Alt)	Bitetto
Brown	Hochstatter	Hochstatter	Brown
Cole	Neuman	Neuman	Cole
Stuard	Stuard (Alt)	Stuard	Neuman
			Stuard

Historically, committees have been selected by seniority. Seniority is as indicated below and current 2022-23 committee selections are listed below:

Councilmember	**Took Office**	**2022-23 Committees**
Curt Brown	2004	Community Development, Public Works, Public Safety (Alt.)
Cindi Hochstatter	2008	American Rescue Plan, Community Development, Lodging Tax
Patrick Reed	2016	
Barbara Bitetto	2018	Finance & Personnel, Public Safety, American Rescue Plan (Alt.), Public Works (Alt.)
Charla Neuman	2020	American Rescue Plan, Community Development, Public Works
Earl Stuard	2022	Public Works, Finance & Personnel (Alt.)
Pat Cole	2022	Finance & Personnel, Public Safety, Community Development (Alt.)

The counci

l may choose to select committee replacements by seniority or other method as determined by the council.

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

STAFF RECOMMENDATIONS/MOTION:
Choose replacement committee assignments for the remainder of the 2022-2023 term.

The **Finance and Personnel Committee** considers appropriations, finances, taxation, revenues, technology systems, labor relations, personnel, and other benefits, insurance, audits and city budget and other ad hoc matters as assigned.

2022 Meeting Schedule: 1st Wednesday at 5:30pm

The **Community Development Committee** considers matters relating to community development, planning and land use, annexations, code enforcement, block grants, business improvement districts, emerging business enterprises, and other ad hoc matters as assigned.

2022 Meeting Schedule: 4th Wednesday at 5:00pm

The **Public Works Committee** is responsible for physical services provided by the city such as street and alley maintenance, sewer, water and flood control projects, shop facilities, fleet and other ad hoc matters as assigned.

2022 Meeting Schedule: 1st Tuesday at 4:00pm

The **Public Safety Committee** will provide policy recommendations on legislative matters relating to police, fire, emergency services, public safety facilities, animal control and other ad hoc matters as assigned.

2022 Meeting Schedule: 3rd Wednesday at 5:00pm

The City **Lodging Tax Advisory Committee** is established by law to review applications for funding from lodging taxes collected by the city, and to make recommendations to the county on those applications and related lodging tax issues. *Per State Law this committee has only one elected official who serves as the chair. An alternate may be appointed.*

2022 Meeting Schedule: As needed 1-2 times a year

The **American Plan Rescue Committee** was developed to formulate a strategic funding plan that establishes community priorities and aligns with eligible uses of both the direct allocations and potential funding from other federal agencies.

2022 Meeting Schedule: 2nd Tuesday at 5:30pm

Council Committee Assignments

Committee Name	Member	Member	Member	Alternate
American Rescue Plan	(Chair)	Hochstatter	Neuman	Bitetto
Finance & Personnel	(Chair)	Bitetto	Cole	Stuard
Public Works	Stuard (Chair)	Neuman	Brown	Bitetto
Community Development	Hochstatter (Chair)	Brown	Neuman	Cole
Public Safety	Bitetto (Chair)	Cole		Brown
City Lodging Tax Advisory Committee	Hochstatter	XXX	XXX	

Councilmember	Took Office
Curt Brown	2004
Cindi Hochstatter	2008
Patrick Reed	2016
Barbara Bitetto	2018
Charla Neuman	2020
Patricia Cole	2022
Earle Stuard	2022

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2756

SUBJECT: Ordinance No. 2836 – 2023 Utility Rates **CATEGORY:** Ordinance

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

ATTACHMENTS:
1. Ordinance No. 2836 - 2023 Utility Rates

STAFF CONTACT: Mike Dahlem, Public Works Director

SUMMARY BACKGROUND:
The City of Sumner manages three utilities: water, sewer, and stormwater. The operations of the utilities are supported in large part by rate payers and system development changes. The City typically utilizes a consultant to conduct a rate study during the biennial budget process. Due to limited staff time and the challenge of incorporating the study simultaneously with the budget cycle, it was decided to change to conducting the study on the off years from the budget cycle.

The last rate study was completed in 2020 and recommended utility rate adjustments in 2023 to maintain the financial health of the City's utilities. Due to hyperinflation, the cost of labor and materials, and construction costs, it is vital that the utility rates are adjusted in 2023 to adequately fund the operations, maintenance, and capital of each utility.

Rate increases, as recommended by the staff and discussed at the September 26, 2022, study session, are as follows:

Effective January 1, 2023, the rate for the water utility is increased by 6%; the rate for the sewer utility is increased by 6.0% and the rate for the stormwater utility is increased by 3%.

COUNCIL COMMITTEE/STUDY SESSION: Study Session
MEETING/STUDY SESSION DATE: 9/26/2022
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Adopt Ordinance No. 2836 - 2023 Water, Sewer, and Stormwater Utility Rate Adjustments and authorize staff to update the Sumner Utility Rate and Fee Schedule accordingly.

ORDINANCE NO. 2836

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON AMENDING THE CITY OF SUMNER UTILITY RATE AND FEE SCHEDULE BY ADJUSTING THE WATER, SEWER, AND STORMWATER UTILITY RATES FOR 2023.

WHEREAS, the Sumner City Council agreed with delaying the biennial utility rate study until 2023 to coincide with off-cycle years of the biennial budget and no rate study was done with the biennial budget process this year; and

WHEREAS, the 2020 utility rate study update determined the water sewer and stormwater utilities were generating insufficient revenues to cover the annual operating and capital costs and recommended a rate adjustment; and

WHEREAS, due to hyperinflation, the cost labor and materials, and construction costs it is vital to adjust the utility rates prior to the next rate study to adequately fund the operations, maintenance, and capital of each utility; and

WHEREAS, the Sumner City Council has determined that increases in these utility rates are necessary in order to maintain the financial health of the City of Sumner's utility operations.

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

Section 1. Fee Schedule Amended. The City's Utility Rates as set forth in the Sumner Utility Rate and Fee Schedule are hereby amended to reflect effective January 1, 2023, an increase in rates for the water utility of 6.0%, for the sewer utility of 6.0% and for the stormwater utility 3.0%. The Table attached as Exhibit A reflects the proposed rates.

Section 2. Severability – Construction. 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. If the provisions of this ordinance are found to be inconsistent with other provisions of the Sumner Municipal Code, the provisions of this ordinance shall control.

Section 3. Effective Date. This ordinance shall take effect five days after its publication, or publication of a summary thereof, in the City's official newspaper, or as otherwise 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 resolution, including but not limited to the correction of clerical errors; 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 17th day of October 2022.

_____
Kathy Hayden
Mayor, City of Sumner

Approved as to form:

_____
Andrea Marquez
City Attorney

Attest:

_____
Michelle Converse
City Clerk

Exhibit "A"

Sumner Utility Rate and Fee Schedule

Monthly Utility Rates	SMC Title 13- Public Services		
		Effective 1/1/2022	Effective 1/1/2023
		Tax included	Tax included
		2022	2023
Water (15% Surcharge for outside city limits)			
BASED ON METER SIZE AND FLOW IN 100 CU FT (7.48 gal = 1 cu ft)			
per ea 100cf	1 - 1000 cu ft	$ 2.22	$ 2.35
	1,000 - 2,000 cu ft	2.92	$ 3.10
	2,000 cu ft & above	3.49	$ 3.70
Base Rates	3/4"	25.40	$ 26.92
Irrigation meters pay 50% base rates	1"	61.51	$ 65.20
	1 1/2"	123.01	$ 130.39
	2"	196.75	$ 208.56
	3"	368.97	$ 391.11
	4"	614.88	$ 651.77
	6"	1,261.46	$ 1,337.15
	8"	1,967.65	$ 2,085.71
Storm	1.5% Tax		
BASED ON SQ. FT OF IMPERVIOUS AREA (1 ESU = 2400 sq ft)			
	Per ESU	$ 16.82	$ 17.32
Sewer (25% Surcharge for outside city limits)	8.53% Tax		
BASED ON WATER FLOW (minimum includes 500 cu ft)			
per ea 100cf	Flow >500 cu ft	$ 8.68	$ 9.20
Minimum	Single family residential	58.90	$ 62.43
	Multi-family (per unit)	50.24	$ 53.25
	All other customers	58.90	$ 62.43
Fire Flow			
BASED ON SQ. FT. OF BUILDING (for all buildings 5,000 sq. ft. or more)			
SMC 13.24.360 (D)	**Per 1000 sq ft**	$ 1.69	$ 1.79

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2757

SUBJECT: Ordinance No. 2837 - Amending the 2021/2022 Biennial Budget **CATEGORY:** Ordinance

BUDGET IMPACT:
Expenditure Required: $122,222 Within Budget Allocation: Yes, as approved.

ATTACHMENTS:
1. Ordinance No. 2837 - Amending the 2021/2022 Biennial Budget

STAFF CONTACT: Kassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:
Ordinance No. 2837 amends the 2021/2022 Biennial Budget to appropriate the funding for the Heritage Park Remediation action/consultant supplemental agreement to add funding to complete a pilot test study and provide a Pilot Test Report.

Ord No. 2837

	BA 10/17/2022	
	Revenues	*Expenditures*
General Fund	$ -	-
Reserve Funds	-	-
Special Revenue Funds	-	-
Debt Service Funds	-	-
Capital Funds	-	122,222
Utility Funds	-	-
Other Enterprise Funds	-	-
Internal Service Funds	-	-
Fiduciary Funds	-	-
	$ -	$ 122,222

COUNCIL COMMITTEE/STUDY SESSION: **Finance and Personnel Committee**
MEETING/STUDY SESSION DATE: 10/5/2022
COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:
Approve Ordinance No. 2837 amending the 2021/2022 Biennial Budget.

ORDINANCE NO. 2837
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, ORDINANCE 2820, APPROVED JUNE 21, 2022, ORDINANCE 2831, APPROVED AUGUST 1, 2022, ORDINANCE 2833, APPROVED SEPTEMBER 19, 2022, AND ORDINANCE 2834, APPROVED SEPTEMBER 19, 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, The Sumner City Council approved Ordinance No. 2831 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2833 which amended the 2021-2022 biennial budget for fiscal years 2021-2022; and

WHEREAS, The Sumner City Council approved Ordinance No. 2834 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 17th day of October, 2022.

Mayor Kathy Hayden

ATTEST:

City Clerk Michelle Converse, CMC

APPROVED AS TO FORM:

City Attorney Andrea Marquez

Funds	Beginning Fund Balance *Adopted*	Revenues *Adopted*	Revenues *Previous*	Revenues *10/17/22*	Expenditures *Adopted*	Expenditures *Previous*	Expenditures *10/17/22*	Ending Fund Balance *Revised*
001 General	$ 5,978,542	$ 31,643,467	$ 624,370	$ -	$ 31,919,065	1,793,835	$ -	$ 4,533,479
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	-	-	3,581,000	-	129,676
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	122,222	497,518
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	2,815,421	-	7,072,803
402 Wastewater	20,996,349	15,706,582	591,050	-	18,404,296	3,207,508	-	15,682,176
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	13,260	-	12,138
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	7,200	-	1,251,660	7,890	-	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	407,700	-	1,428,294
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	$ 13,182,110	$ -	$ 124,473,699	$ 21,489,841	$ 122,222	$ 64,775,220

CITY COUNCIL MEETING
DATE: October 17, 2022
AGENDA BILL: 22-2581

SUBJECT: Sumner Texaco Heritage Park Remediation - Consultant Services Amendment

CATEGORY: Motion

BUDGET IMPACT:
Expenditure Required: $122,222

Within Budget Allocation: Yes

ATTACHMENTS:
1. Amendment with Scope & Fee

STAFF CONTACT: Alisa O'Haver-Ayala , Associate City Engineer

SUMMARY BACKGROUND:
The City of Sumner owns the property at 914 Kincaid Avenue, Sumner WA known as the "Former Sumner Texaco Property". The site is on the Department of Ecology's Confirmed Contaminated Sites List under Site ID 8200. The City desires to undertake a voluntary cleanup for the subject property with the intent to obtain a No Further Action letter from the Washington State Department of Ecology.

The City contracted with PBS Engineering and Environmental, Inc. through a qualification-based selection process. PBS completed the Remedial Investigation in September and is further contracted to complete a Feasibility Study. To better inform PBS and the City about the preferred remediation method (remedial injections), a pilot test needs to be completed. This amendment adds funding for the consultant to complete a pilot test study and provide a Pilot Test Report. The original contract amount was $104,773 and the supplement adds $122,222 for a total contract cost of $226,995.

Future actions are anticipated to include the following:

1. An amendment for PBS to design the remediation, following approval of the method by Department of Ecology (DOE) and Tacoma Pierce County Health Department (TPCHD).
2. A construction contract to implement PBS's design.
3. An amendment for PBS to continue to monitor the site and coordinate with DOE and TPCHD to obtain a No Further Action Letter.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 10/4/2022
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion approving an amendment to PBS's Consultant Services Contract for the Sumner Texaco Heritage Park Remediation (CIP 22-04), increasing the contract amount by $122,222 to a total authorized amount not-to-exceed $226,995, and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the amendment, substantially in a form as approved by the City Attorney.

CITY OF SUMNER WASHINGTON

AMENDMENT NO. 1

NAME OF CONSULTANT, CONTRACTOR OR VENDOR: **PBS Engineering and Environmental**

CONTRACT NAME & PROJECT NUMBER: **Sumner Texaco Remediation (CIP 22-04)**

ORIGINAL AGREEMENT DATE: **July 6, 2022**

This Amendment is made between the City and the above-referenced Consultant, Contractor or Vendor and amends the original Contract/Agreement and all prior Amendments. All other provisions of the original Contract/Agreement or prior Amendments not inconsistent with this Amendment shall remain in full force and effect. For valuable consideration and by mutual consent of the parties, Consultant, Contractor or Vendor's work is modified as follows:

1. Section I of the Agreement, entitled "Description of Work," is hereby modified to add additional work or revise existing work as follows:

In addition to work required under the original Agreement and any prior Amendments, the Consultant, Contractor or Vendor shall:

See Exhibit A

2. The contract amount and time for performance provisions of Section II "Time of Completion," and Section III, "Compensation," are modified as follows:

Original Contract Sum, *including applicable WSST*	**$104,773.00**
Net Change by Previous Amendments *including applicable WSST*	**$N/A**
Current Contract Amount *including all previous amendments*	**$104,773.00**

Current Amendment Sum	**$67,088.00**
Applicable WSST Tax on this Amendment	**$N/A**
Revised Contract Sum	**$171,861.00**

Original Time for Completion *(insert date)*	**12/31/2026**
Revised Time for Completion under prior Amendments *(insert date)*	**N/A**
Add'l Days Required (±) for this Amendment	**N/A** calendar days
Revised Time for Completion *(insert date)*	**N/A**

In accordance with Section XIV E of the Contract/Agreement, the Contractor, Consultant or Vendor accepts all requirements of this Amendment by signing below, by its signature waives any protest or claim it may have regarding this Amendment, and acknowledges and accepts that this Amendment constitutes full payment and final settlement of all claims of any kind or nature arising from or connected with any work either covered or affected by this Amendment, including, without limitation, claims related to contract time, contract acceleration, onsite or home office overhead, or lost profits. This Amendment, unless otherwise provided, does not relieve the Contractor, Consultant or Vendor from strict compliance with the guarantee and warranty provisions of the original Agreement.

All acts consistent with the authority of the Agreement, previous Amendments (if any), and this Amendment, prior to the effective date of this Amendment, are hereby ratified and affirmed, and the terms of the Agreement, previous Amendments (if any), and this Amendment shall be deemed to have applied.

The parties whose names appear below swear under penalty of perjury that they are authorized to enter into this Amendment, which is binding on the parties of this contract.

IN WITNESS, the parties below have executed this Amendment, which will become effective on the last date written below.

CONSULTANT, CONTRACTOR OR VENDOR:	**CITY OF SUMNER:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Kathy Hayden Its Mayor *(Title)* DATE:_____
CITY OF SUMNER:	**APPROVED AS TO FORM:**
By:_____ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:_____	_____ Sumner City Attorney

EXHIBIT A

September 26, 2022

Alisa O'Haver-Ayala, PE, CCM
Associate City Engineer
City of Sumner
1104 Maple Street, Suite 260
Sumner, Washington 98390

alisao@sumnerwa.gov

Regarding: **Proposal for Remedial Injection Pilot Test**
Sumner Texaco Heritage Park Remediation
914 Kincaid Avenue, Sumner, Washington
PBS Proposal No.: PR41825

Dear Alisa:

PBS Engineering and Environmental (PBS) is pleased to provide this cost proposal to the City of Sumner (City) to perform a remedial injection pilot test at Reuben A. Knoblauch Heritage Park located at 914 Kincaid Avenue in Sumner, Washington (project site).

BACKGROUND

The Site was operated as a gasoline service station from approximately 1944 to 1990. In 1990 the underground storage tanks (USTs) storing fuel at the site were decommissioned by removal, and the site was later redeveloped as a municipal park. The site is currently listed on the Washington State Department of Ecology's (Ecology) Confirmed and Suspected Contaminated Sites List (CSCSL) under Facility Site ID 18295642, Cleanup Site ID 8200. The listing is due to the confirmed presence of gasoline and fuel additives in site soil and groundwater at concentrations exceeding state cleanup levels established by Ecology.

PBS performed a Remedial Investigation (RI) at the site in July and August, 2022. The draft RI report is pending and expected to be complete by end of month September 2022. However, based on the proposed construction schedule for the Site, PBS understands that the City is interested in performing a remedial injection pilot test prior to end of calendar year 2022. The purpose of the pilot test is to evaluate the performance of in-situ remedial injections at the Site as an interim or cleanup action.

PROJECT UNDERSTANDING AND APPROACH

PBS' understanding of site conditions is based on our current RI process. General site conditions based on preliminary findings of the RI are summarized below:

- The site is underlain by loose silty sand with fine grained sand.
- Depth to groundwater at the site is approximately 15 feet below ground surface.
- Groundwater flow direction is to the south southwest.
- The identified contaminants of concern in soil and groundwater at the Site are total petroleum hydrocarbons as gasoline and associated constituents.

- Gasoline was detected in grab groundwater samples at concentrations up to 61,000 micrograms per liter (µg/L).
- Gasoline was detected in groundwater samples collected from permanent monitoring wells at concentrations up to 2,000 µg/L.
- Gasoline was detected in soil samples at concentrations up to 7,900 milligrams per kilogram (mg/kg).
- The highest concentrations of contaminants have been encountered on the west side of Heritage Park near monitoring well MW2.

SCOPE OF WORK

PBS proposes the following scope of work for pilot testing of likely remedial technologies applicable to the Site.

Task 1: Project Management and Work Plan

This task includes preparation of a Remedial Injection Pilot Test Work Plan (work plan) as well as project management time to facilitate project completion across tasks. The work plan will detail approach for the remedial injection pilot test and will be provided to the City for review and comment prior to implementation.

This task also includes registration of the remedial injection points (See Task 2) as Underground Injection Control (UIC) wells in accordance with WAC Chapter 173-218: UIC Program. Based on discussions with Ecology on similar projects, the injection points are considered wells and will be registered using the paperwork for UIC for groundwater cleanup as an Independent Cleanup under MTCA regulations.

Task 2: Remedial Injection Pilot Test

An in situ remedial action pilot test will be conducted, for the purpose of evaluating the effectiveness of remedial injections as a cleanup action at the Site. It is also considered an interim action and is designed to minimize the ability for onsite contamination to migrate in the south southwesterly direction. The pilot test will include injecting a solution through up to 12 injection points in the source area surrounding existing monitoring well MW2. MW2 was selected because it has the highest measured concentrations of gasoline on-site and is located near the center of the gasoline plume.

The solution selected for the pilot test is Remediation Products Inc.'s (RPI) Trap & Treat® remedial technology called BOS 200®. BOS 200® was selected based on its safety and known effectiveness. It is designed to degrade petroleum hydrocarbons through accelerated biodegradation. It uses a carbon platform and includes facultative organisms, nutrients and timed release of electron acceptors. It is non-corrosive and is not considered to be a concern to subsurface utilities. Toxic by-products are not created.

PBS has seen case studies presented (WA Hydrogeology Symposium 2019) for sites using BOS 200®. Based on conversations with Ecology's UIC manager and various drilling outfits in the region, BOS 200® is currently being widely used in Washington to cleanup petroleum contaminated sites.

To assist with the pilot test PBS will contract with BB&A Environmental (BB&A) to utilize one of their custom injection platforms. The platform is equipped with a positive displacement pump capable of injecting up to 30 gallons per minute paired with a pressure activated injection tool. BB&A will provide a track mounted Geoprobe brand DPT drill rig (7822DT or similar).

The pilot test design will be provided in the work plan, but a general approach is outlined below:

1. Prior to beginning work, a public utility clearance request will be filed. A health and safety plan will be updated and reviewed with the drilling contractor prior to beginning site work. A copy of the UIC approval (Task 1) will be with onsite PBS personnel. All work will be completed or supervised by a Washington Licensed Geologist/Hydrogeologist.

2. Through 12 injection points, an estimated total of 1,600 pounds of BOS 200® will be injected into the subsurface. Assuming eight injection intervals per boring (96 total injections) beginning two feet above the seasonal high-water table elevation and extending into the water table, each injection will include the following:
    - 25-gallons of water
    - 17-pounds of BOSS 200®
    - 0.04-gallons bacteria concentrate

    The intervals will generally be spaced 2-feet apart vertically. Therefore, each boring location would receive a total of approximately 136-pounds of BOS 200® mixed into approximately 200 gallons of injection solution.
3. 1.75" diameter injection rods equipped with a pressure activated discreate lateral injection tool will be advanced in a top down method using the Geoprobe DPT drill rig to the required interval depths.
4. It is assumed water for the pilot test can be sourced on-site from source provided by the City.
5. BOS 200® solution will be mixed inside BB&A's custom injection platform to the proper ratios per the above design and recirculated to keep the reagent suspended during injection activities.
6. Injection points will have a dedicated pressure gauge, flow/totalizer meter and a pressure relief valve to ensure proper amendment application.
7. Injection points will be alternated spatially to help reduce the risk of surfacing when appropriate.
8. After an injection point is completed, the borehole will be abandoned per state regulations, and the surface will be patched to match the surrounding conditions.

A grab groundwater sample will be collected from MW2 and MW4 immediately before injections begin, and immediately following completion of injections. The grab groundwater samples will be submitted to the laboratory for analysis of gasoline by Method NWTPH-Gx and benzene, toluene, ethylbenzene and xylenes (BTEX) by EPA Method 8260.

Task 3: Groundwater Monitoring

In addition to the grab groundwater samples collected from MW2 and MW4 immediately before and after the pilot test, low flow groundwater samples will be collected from MW2 and MW4 as follows:

- One week after completion of the injection pilot test
- Two weeks after completion of the injection pilot test
- Four weeks after completion of the injection pilot test

The purpose of groundwater monitoring is to evaluate the effect of the pilot test on contaminant concentrations over time. Groundwater samples collected from MW2 and MW4 will be submitted to an Ecology certified laboratory for analysis of gasoline by Method NWTPH-Gx and BTEX by EPA Method 8260.

Task 4: Remedial Injection Pilot Test Report

Following completion of pilot test and groundwater monitoring as detailed in Tasks 1 through 5, PBS will prepare a Remedial Injection Pilot Test Report (report). The report will include:

- Figures depicting locations of pilot test features
- Groundwater concentrations over time in tabular and graphical format throughout the duration of the pilot test
- A summary the results of the pilot test
- An evaluation of the effectiveness of remedial injections as an interim and/or cleanup action for the site.

The report will later be useful in informing remedial action design and/or evaluation of remedial action alternatives during the future follow-on feasibility study (FS) for the Site, if needed.

Task 5: Disposal of Investigation Derived Waste (IDW)

Wastewater generated from remedial injections will be containerized in sealed drums and left on site pending disposal. It is assumed that wastewater can be disposed of based on a general profile for petroleum contaminated groundwater and the material safety datasheet (MSDS) for BOS 200®. Upon completion of the pilot test, PBS will work with a waste disposal vendor to profile the waste. They will then remove, transport, and dispose of the waste at an approved facility.

COMPENSATION

PBS proposes to provide the scope of work on a not to exceed estimate, apportioned as follows:

Task 1: Project Management and Work Plan Preparation	
Principal Hydrogeologist (6 hours at $210/hr)	$1,260
Senior Engineer – Engineer VII (24 hours at $190/hr)	$4,560
Senior Hydrogeologist II (40 hours at $160/hr)	$6,400
CAD Drafter (4 hours at $105/hr)	$420
Project Administrator I (2 hours at $85/hr)	$170
Estimated Subtotal	**$12,810**
Task 2: Remedial Injection Pilot Test	
Senior Hydrogeologist II (24 hours at $160/hr)	$3,840
Drilling Contractor (Drill Rig, Injection Platform + Remedial Solution)	$32,670
Private Utility Locator	$440
Laboratory Analysis (4 grab samples for Gx / BTEX)	$345
Reimbursables (mileage, equipment, consumables)	$609
Estimated Subtotal	**$37,904**
Task 3: Groundwater Monitoring	
Staff Geologist I (36 hours at $105/hr)	$3,780
Laboratory Analysis (6 groundwater samples for Gx / BTEX)	$518
Reimbursables (mileage, equipment, consumables)	$1,396
Estimated Subtotal	**$5,694**
Task 4: Remedial Injection Pilot Test Report	
Principal Hydrogeologist (4 hours at $210/hr)	$840
Senior Engineer-Engineer VII (8 hours at $190/hr)	$1,520
Senior Hydrogeologist II (36 hours at $160/hr)	$5,760
Drafting – CAD/GIS Tech II (4 hours at $105/hr)	$420
Estimated Subtotal	**$8,540**
Task 5: IDW Disposal	
Senior Hydrogeologist II (6 hours at $160/hr)	$960
IDW Disposal Vendor	$1,180
Estimated Subtotal	**$2,140**
Estimated Total	**$67,088**

Costs for this project will be based on actual accrued time and expenses. PBS will not exceed cost limits stated in the proposal without client authorization. You will be notified of any conditions that would require an increase in the services and/or associated costs. Additional project management services would be charged at the hourly rate of $190.

ASSUMPTIONS

- PBS endeavors to avoid damage to subsurface utilities during drilling and site work by filing a public one call 'call before you dig' ticket, and subcontracting a private utility locator to mark subsurface utilities on the site. Damage to subsurface utilities due to subsurface investigation and site work are ultimately the liability of the client. PBS can conduct non-destructive digging methods (i.e., air knife) at the request of the client for an additional fee.
- A water source will be available on-site for use by PBS and its subcontractors.
- Analytical testing for IDW disposal is not expected to be required. If additional analytical testing is required, it can be provided for an additional fee to that included in this cost estimate.
- No more than four (4) 55-gallon drums of IDW will require disposal.

SCHEDULE

PBS can begin preparation of the work plan and permit applications and schedule the driller/remedial injection subcontractor as soon as notice to proceed (NTP) is received to proceed with the scope of work presented in this proposal. It is estimated that permits could be obtained within 4 weeks of NTP, and that the pilot test could be scheduled within 8 weeks of NTP. The final groundwater monitoring event is tentatively scheduled for 4 weeks after the injection pilot test, or by end of calendar year 2022 assuming receipt of NTP by end of September 2022.

Analytical results are expected from the laboratory within 2 weeks of sampling. As such, final analytical data from the pilot test scope is expected to be received by the second week of January 2023. PBS aims to deliver the Remedial Injection Pilot Test Report by end of January 2023.

APPROVAL

Please indicate acceptance of this Agreement by returning a signed copy of this Agreement or a purchase order incorporating the terms and conditions of this Agreement.

PBS appreciates this opportunity to submit our proposal and looks forward to working with you on this important project. Please feel free to contact Melanie Young at 206.760.7640 or melanie.young@pbsusa.com with any questions or comments.

Sincerely,
PBS Engineering and Environmental Inc.

James Welles, LHG
Senior Hydrogeologist

Signature of Authorized Representative

Name (Please Print)

Title Date

Reviewed by: Melanie Young, PE

Attachments: PBS General Terms and Conditions for Professional Services (Rev. 10/2018)

October 2022

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1
3 6:00PM **Regular Council Meeting** (Hybrid/Chambers) 6:15PM **Special Study Session** (Hybrid/Chambers)	4 4:00 PM **Public Works Committee** (Hybrid/FF Conf Room)	5 5:30PM **Finance Committee** (Hybrid/FF Conf Room)	6 ~~6:00PM~~ **CANCELLED** ~~**Planning Commission**~~ ~~(Hybrid/Chambers)~~	7	8
10 6:00PM **Study Session** (Hybrid/Chambers)	11	12 6:00 PM **CANCELLED** ~~**American Rescue Plan Comm.**~~ ~~(Hybrid/FF Conf Room)~~ 6:30PM **CANCELLED** ~~**Design Commission**~~ ~~(Hybrid/Chambers)~~	13 4:30PM **CANCELLED** ~~**Forestry/Parks Commission**~~ ~~(Hybrid/FF Conf Room)~~	14	15
17 6:00PM **Regular Council Meeting** (Hybrid/Chambers) 6:15PM **Special Study Session** (Hybrid/Chambers)	18	19 5:30PM **Public Safety Committee** (Hybrid/FF Conf Room)	20	21	22
24 6:00PM **Study Session** (Hybrid/Chambers)	25	26 5:00PM **CD Committee** (Hybrid/FF Conf Room)	27 5:30PM **Cultural Arts Commission** (Hybrid/FF Conf Room)	28	29
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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

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Website: **www.sumnerwa.gov**