



CITY COUNCIL MEETING AGENDA

City Hall – 1104 Maple Street

March 20, 2023 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/87668532792>

Or One tap mobile :

US: +12532050468,,87668532792# or +12532158782,,87668532792#

Or Telephone: +1 253 205 0468 or +1 253 215 8782

Webinar ID: 876 6853 2792

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. Main & Wood Intersection Improvements - Consultant Agreement Supplement
2. Town Center: Utility & Woonerf project - Consultant Agreement Amendment
3. Approval of the minutes from the regular council meeting of March 6, 2023 and the study session of March 13, 2023.

PUBLIC HEARING

1. Public Hearing 24th Street East Right-Of-Way Vacation

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. Forestry & Parks Commissoin Reappointment - Bridges
 - b. Ordinance No. 2849 - Amending the 2023/2024 Biennial Budget
 - c. Ordinance No. 2847 - Franchise Agreement with Fatbeam (1st Reading)
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.

SUBJECT: Main & Wood Intersection Improvements - Consultant Agreement Supplement

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$47,352.25

Within Budget Allocation: Yes

ATTACHMENTS:

1. Supplement with Scope and Fee

STAFF CONTACT: Courtney Littrell, Engineering Assistant, Alisa O'Haver-Ayala , Associate City Engineer

SUMMARY BACKGROUND:

The Main and Wood intersection is the oldest intersection within the City of Sumner. This intersection needs major improvements to allow for improved pedestrian access as well as vehicle traffic improvements. With this intersection upgrade, overhead utilities will be relocated underground, and the intersection will be raised to provide additional safety to pedestrians. Bike lanes will also be constructed along Wood Avenue just north and south of the Main Street crossing, as well as the addition of significant ADA upgrades to the intersection with new sidewalks and curb ramps.

BCRA, Inc. was selected to provide consulting services through a qualification-based selection process. The consultant has completed the intersection design, right-of-way acquisition, and is continuing to assist through the construction process with the review of submittals from the contractor.

The original agreement amount for the design of the intersection was for \$202,484.56 and was executed in October 2019. Supplement #1 was to add an additional \$56,943.05 executed in September 2020, to perform the right-of-way acquisition and relocation services for the four affected parcels adjacent to the intersection, and to extend the completion date to December 31, 2023. This is Supplement #2 of the design agreement to continue to assist through the construction phase of the project.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee MEETING/STUDY SESSION DATE: 3/7/2023 COMMITTEE RECOMMENDATION: Do Pass
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STAFF RECOMMENDATIONS/MOTION:

A motion approving a supplement to BCRA Inc.'s Consultant Services Contract for the Main and Wood Intersection Improvements (CIP 19-02), increasing the contract amount by \$47,352.25 to a total authorized amount not-to-exceed \$306,779.86, and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the supplement, substantially in a form as approved by the City Attorney.



**Washington State
Department of Transportation**

Supplemental Agreement Number _____	Organization and Address	
Original Agreement Number		
Project Number	Phone:	
	Execution Date	Completion Date
Project Title	New Maximum Amount Payable	
Description of Work		

The Local Agency of _____
desires to supplement the agreement entered in to with _____
and executed on _____ and identified as Agreement No. _____
All provisions in the basic agreement remain in effect except as expressly modified by this supplement.
The changes to the agreement are described as follows:

I

Section 1, SCOPE OF WORK, is hereby changed to read:

II

Section IV, TIME FOR BEGINNING AND COMPLETION, is amended to change the number of calendar days
for completion of the work to read: _____

III

Section V, PAYMENT, shall be amended as follows:

as set forth in the attached Exhibit A, and by this reference made a part of this supplement.

If you concur with this supplement and agree to the changes as stated above, please sign in the Appropriate
spaces below and return to this office for final action.

By: _____ By: _____

Consultant Signature

Approving Authority Signature

Date

2106 Pacific Avenue, Suite 300
Tacoma, WA 98402

December 2, 2022

Michael Kosa
City Engineer
City of Sumner
1104 Maple St, Suite 260
Sumner, WA 98390

Sent VIA Email: mkosa@sumnerwa.gov

RE: Main and Wood Intersection Improvements
CONTRACT SUPPLEMENT #2
BCRA Project No. 19076.00.00

Dear Michael:

BCRA is submitting this Additional Service Request due to the addition of scope to the Main and Wood Intersection Improvements project. It will extend the length of the contract and will result in an increase in fee.

Description of Change

Upon completing the design of the Main and Wood Intersection Improvements project, the City has requested the addition of construction administration services during the course of construction. The proposed services will include construction administration by BCRA with support from PH Consulting in support of construction management services provided by Consor.

Fees

The requested amount of \$47,352.25 be added as a new phase, Phase 50 – Construction Administration. This additional service is governed by our existing Consultant Services Contract dated November 14, 2019. Refer to the attached exhibits for more details and a breakdown of the additional fees.

Closing

Thank you for selecting BCRA and our team of subconsultants for this work. We are excited to see this project continue to move forward and are eager to see the impact it will have on the City of Sumner. Should you have any questions or concerns, please feel free to contact me.

Sincerely,



Andrew Cirillo, PE
Associate Engineer, BCRA

Approved:

Client Signature

Date

Attachment: Exhibit A – BCRA Scope of Work
Exhibit B – Supplement 4 Fee Table
Exhibit C - PH Consulting proposal dated 11/18/22
Exhibit D - PH Consulting Fee Summary dated 11/18/22

EXHIBIT A SCOPE OF WORK AND COMPENSATION

City of Sumner Main and Wood Intersection Improvements

PROJECT DESCRIPTION

BCRA will provide construction administration services to the City of Sumner during construction of the improvements described in the Main and Wood Intersection Improvements Scope of Services (19076.00.00) in support of the construction management, inspection, and materials testing services provided by Consor.

SCOPE OF SERVICES

Phase 50 – Construction Administration

Task C1 – Construction Administration Services

The following activities will be performed:

1. Prepare Subconsultant agreements and manage Subconsultants.
2. Attend pre-construction conference.
3. Attend up to six construction meetings, as needed.
4. Respond to RFIs submitted by the Contractor and routed through the Resident Engineer, as needed.
5. Evaluate substitution requests, as needed.
6. Monitor and control scope, schedule, and budget.
7. Prepare monthly invoices and progress reports.

Task XT1 – Construction Administration – Illumination

BCRA will contract with PH Consulting for construction management support. See attached proposal from PH Consulting for Scope of Services.

Meetings:

- *(1) Preconstruction conference (in person)*
- *(6) Construction meetings (in person)*

Assumptions:

- *Construction duration is assumed to be 100 working days as shown in the Contract Documents.*
- *Budget for Task C1 is based on approximately 200 hours of work.*
- *City of Sumner will provide responses and reviews of RFIs or submittals requiring the City's input.*
- *Consor will provide responses and reviews of RFIs or submittals for work not requiring the input from the Main and Wood Intersection Improvements Engineer of Record.*
- *All deliverables, unless otherwise noted, will be sent to Consor and the City of Sumner via electronic file exchange. Printing and delivery of hard copies will be billed as reimbursable expenses.*
- *Budget estimates are based on the durations noted within this scope. Additional fee may be necessary if project extends beyond these durations.*

Deliverables:

- *Monthly invoices and progress reports (pdf)*
- *RFI responses (pdf)*
- *Submittal reviews (pdf)*
- *Change orders, as needed (pdf)*
- *Electronic project records*

PROJECT ASSUMPTIONS

1. Refer to the project assumptions for the Main and Wood Intersection Improvements (19076.00.00) scope of work.

FEES

BCRA will bill for services on a monthly basis in accordance with the City of Sumner's Consultant Services Contract. Reimbursable expenses and Subconsultant fees will be billed at actual cost incurred plus 10%. Hourly rates will increase \$5/hour each year beginning January 1, 2023.

Phase	Task	Fee
50 – Construction Administration	C1 – Construction Administration Services	\$26,852.25
	XT1 – Construction Administration Illumination	\$20,000.00
90 – Reimbursable Expenses		\$500.00
Total		\$47,352.25

CLOSING

Thank you for the opportunity to provide construction administration support as you work to improve the pedestrian and vehicular experience within the Town Center and increase the resilience and capacity of the water system for the residents of the City of Sumner.

Sincerely,



Andrew Cirillo, PE
Associate, Civil Engineer



Ben Dort, PE
Principal, Civil Engineer



2106 Pacific Avenue, Suite 300
Tacoma, WA 98402

Main and Wood Improvements - Contract Supplement 2

Project No.: 19076.00.00

Date of Estimate: 11/30/2022

Prepared By: ACC

PAY RATES:

	Principal	PM/PE	Civil Eng. Designer	Civil Eng. Technician	Landscape Architect	Project Admin	Billing Specialist
<i>Staff Initials</i>	<i>JBD</i>	<i>ACC</i>	<i>MB</i>	<i>RJB</i>	<i>ES</i>	<i>AP</i>	<i>SC</i>
Direct Labor Cost (DLC)	\$63.46	\$47.16	\$30.77	\$34.67	\$41.10	\$36.50	\$39.61
Indirect Cost (ICR x DLC)	\$121.27	\$90.12	\$58.80	\$66.25	\$78.54	\$69.75	\$75.69
Fixed Fee (FFR x DLC)	\$19.04	\$14.15	\$9.23	\$10.40	\$12.33	\$10.95	\$11.88
Burdended Rate (DLC+IC+FF)/Hr	\$203.77	\$151.43	\$98.80	\$111.33	\$131.97	\$117.20	\$127.19
Indirect Cost Rate (ICR)	191.10%						
Fixed Fee Rate (FFR)	30.00%						

LABOR:

Phase/Task	Principal	PM/PE	Civil Eng. Designer	Civil Eng. Technician	Landscape Architect	Project Admin	Billing Specialist	Hours	Cost
<i>Staff Initials</i>	<i>JBD</i>	<i>ACC</i>	<i>MB</i>	<i>RJB</i>	<i>ES</i>	<i>AP</i>	<i>SC</i>		
50 Construction Administration									
C1 Construction Administration Services	11	87	66	10	16	9	5	204	\$26,852.25
								204	\$26,852.25
Total Hours	11	87	66	10	16	9	5	204	
Total Cost	\$2,241.47	\$13,174.41	\$6,520.80	\$1,113.30	\$2,111.52	\$1,054.80	\$635.95		\$26,852.25

SUBCONSULTANTS:

Firm	Cost
PH Consulting	\$20,000.00

REIMBURSABLE EXPENSES:

Item	Cost
Mileage	\$500.00
Printing	\$0.00
Misc.	\$0.00

TOTALS:

Total Prime Consultant	\$26,852.25
Total Subconsultants	\$20,000.00
Total Reimbursable Expenses	\$500.00
TOTAL FEE ESTIMATE	\$47,352.25

EXHIBIT C

SCOPE OF WORK

SUMNER MAIN & WOOD INTERSECTION

SUMNER, WASHINGTON

Construction Engineering Support

- 1) **Meetings & Administration:** PH will participate in up to eight project construction meetings during course of construction. PH will perform administrative duties including preparing invoices and reporting.
- 2) **Plan Submittal Reviews:** Review and comment on up to two (2) iterations of work plans submitted by the contractor.
- 3) **Materials Submittals:** Provide review and comment on PH scope related material submittals when requested by the City. The City will provide the submittals to Consultant and Consultant will respond back directly to the City. The City will coordinate with the contractor. Estimated effort is eight (8) material submittal reviews.
- 4) **Requests for Information:** Provide review support to Requests for Information (RFI) related to the PH scope submitted by the contractor. PH will provide responses to the City for review and the final responses to the contractor. Estimate effort is up to four (4) RFI's.
- 5) **Field Changes:** Provide design services for field changes requested by the City. Estimated effort is up to four (2) field changes.
- 6) **Change Orders:** Provide an independent change order cost estimate for PH scope related change orders when directed by the City. City will complete the change order form and compile the documentation for review and approval. City will provide the contractor with the change order documentation. Estimated effort is one (1) change order.
- 7) **Record Drawings:** Obtain completed redlined record drawings from City and annotate changes to the contract plans in AutoCAD.

Understanding

- The hours estimated are for budgeting purposes. The City may request additional services in total by amendment.
- PHC is not responsible for directing the contractor, nor has any authority to give verbal and/or written direction to the contractor.
- PHC is not responsible for job site safety or contractor compliance with safety regulations.

Deliverables

- As directed by the City.

END OF SCOPE OF WORK

Exhibit D
Consultant Fee Determination - Fee Summary
Sumner Main Wood

PH Consulting Staff Category	Hours	Direct Rate	Overhead (110%)	Fee (30%)	Total Hourly Rate	Total Fee
Principal	26	\$ 90.00	\$ 99.00	\$ 27.00	\$ 216.00	\$ 5,616.00
Senior Traffic Engineer	16	\$ 70.00	\$ 77.00	\$ 21.00	\$ 168.00	\$ 2,688.00
Project Engineer	64	\$ 57.00	\$ 62.70	\$ 17.10	\$ 136.80	\$ 8,755.20
CAD Designer II	20	\$ 44.00	\$ 48.40	\$ 13.20	\$ 105.60	\$ 2,112.00
Office Administrator	8	\$ 38.00	\$ 41.80	\$ 11.40	\$ 91.20	\$ 729.60
Total Hours	134					\$ 19,900.80

Direct Salary Cost **\$ 19,900.80**

Direct Expenses	Unit	Cost	Total
Traffic Counts	0	500	\$ -
Reproduction Costs			
Full Sized Copies (Bond)	0	100	\$ -
Full Sized (PVC)			\$ -
Reprographics	0	100	\$ -
Parking/Tolls			\$ -
2022 Mileage Rates	0	\$0.625/Mi	\$ 99.20
		0	
		0	

Sub-Total Direct Expenses **\$ 99.20**

Total Fee **\$ 20,000.00**

Exhibit D
Consultant Fee Determination - Task Budget Detail
Sumner - Main Wood

Task No.	Task Description	Principal	Senior Traffic Engineer	Project Engineer	CAD Designer II	Office Administrator	PH Total
	Direct Rate	\$ 90.00	\$ 70.00	\$ 57.00	\$ 44.00	\$ 38.00	
	Overhead (110%)	\$ 99.00	\$ 77.00	\$ 62.70	\$ 48.40	\$ 41.80	
	Fee (30%)	\$ 27.00	\$ 21.00	\$ 17.10	\$ 13.20	\$ 11.40	
	Full Burden	\$ 216.00	\$ 168.00	\$ 136.80	\$ 105.60	\$ 91.20	
	CM Support Services						
	Meetings (8) / Admin	12	8	16		8	
1	Plan Reviews (2)		4				4
2	Materials Submittals (8)	2	4	16			22
3	RFI's (4)	4		16			20
4	Field Changes (2)	4		8			12
	Change Orders (1)	2		4	8		14
	Record Drawings	2		4	12		18
	Task 5.0 Total Hours	26	16	64	20	8	90
	Subtotal Task 5.0	\$ 5,616.00	\$ 2,688.00	\$ 8,755.20	\$ 2,112.00	\$ 729.60	\$ 19,900.80
	PH TOTAL HOURS	26	16	64	20	8	90
	TOTAL ALL TASKS	\$ 5,616.00	\$ 2,688.00	\$ 8,755.20	\$ 2,112.00	\$ 729.60	\$ 19,900.80

ANTE Rate Schedule

PH Consulting LLC Summary of Direct Labor Costs Effective January 1, 2022-December 31, 2022

Job Classifications	Maximum Direct Labor Rate	Safe Harbor Overhead 110%	Fixed Fee 30%	Maximum Billing Rate
Quality Manager	\$ 95.00	\$ 104.50	\$ 28.50	\$ 228.00
Principal	\$ 90.00	\$ 99.00	\$ 27.00	\$ 216.00
Sr Project Manager	\$ 85.00	\$ 93.50	\$ 25.50	\$ 204.00
Project Manager	\$ 80.00	\$ 88.00	\$ 24.00	\$ 192.00
Senior Traffic Engineer	\$ 75.00	\$ 82.50	\$ 22.50	\$ 180.00
Project Engineer	\$ 70.00	\$ 77.00	\$ 21.00	\$ 168.00
Associate Engineer	\$ 55.00	\$ 60.50	\$ 16.50	\$ 132.00
Assistant Transportation Engineer	\$ 50.00	\$ 55.00	\$ 15.00	\$ 120.00
Senior Construction Manager	\$ 65.00	\$ 71.50	\$ 19.50	\$ 156.00
Construction Manager	\$ 55.00	\$ 60.50	\$ 16.50	\$ 132.00
Construction Inspector	\$ 50.00	\$ 55.00	\$ 15.00	\$ 120.00
Engineering Intern II	\$ 27.50	\$ 30.25	\$ 8.25	\$ 66.00
Engineering Intern I	\$ 22.50	\$ 24.75	\$ 6.75	\$ 54.00
CAD Designer III	\$ 55.00	\$ 60.50	\$ 16.50	\$ 132.00
CAD Designer II	\$ 50.00	\$ 55.00	\$ 15.00	\$ 120.00
CAD Designer I	\$ 45.00	\$ 49.50	\$ 13.50	\$ 108.00
CAD Technician II	\$ 40.00	\$ 44.00	\$ 12.00	\$ 96.00
CAD Technician I	\$ 35.00	\$ 38.50	\$ 10.50	\$ 84.00
Marketing Lead	\$ 40.00	\$ 44.00	\$ 12.00	\$ 96.00
Office Administrator	\$ 45.00	\$ 49.50	\$ 13.50	\$ 108.00
Office Assistant	\$ 35.00	\$ 38.50	\$ 10.50	\$ 84.00

Direct non-salary costs will be billed at actual costs.

Direct Mileage will be billed at current approved IRS mileage rate.

SUBJECT: Town Center: Utility & Woonerf project - Consultant Agreement Amendment

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$227,708

Within Budget Allocation: Yes

ATTACHMENTS:

1. Consultant Agreement Amendment w/ Scope & Fee

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 the stamped, colored concrete sidewalks and roadway that make up the woonerf around Heritage Park on Kincaid Avenue, Cherry Avenue, and the intersection with Main Street to the north. This project also replaces non-conforming curb ramps, installing bulbouts, storm drainage, bicycles lanes, and associated restoration along Academy Street.

The purpose of this amendment is to supplement the current contract for Construction Management Services with additional funds to complete the project. KPG-Psomas was previously selected to provide consulting services for this project through a qualification-based selection process. An hourly rate agreement supplement was previously negotiated for the Construction Management Services phase of this project and is being supplemented here for the following reasons:

- There have been RFI's and design questions that have been more extensive than were originally anticipated to manage.
 - 23 working days have been added to the contract, plus additional days that are currently being negotiated.
 - The original CM Services contract anticipated a 40 hour work week for inspection, but the Contractor typically works 50 hour work weeks and this requires inspection coverage. This was a 20% increase in workload.
 - There have been non-working days that required continued coordination and discussion with the contractor to keep everything moving forward. The original CM Services contract assumed 10 non-working days. To date, on the project there have been 24 non-working days.
-

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 3/7/2023
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COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion approving an amendment to KPG-Psomas's Consultant Services Contract for the Academy Street Bike Lanes (CIP 20-08), increasing the contract amount by \$227,708.00 to a total authorized amount not-to-exceed \$892,723.75, 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.



AMENDMENT NO. 3

NAME OF CONSULTANT, CONTRACTOR OR VENDOR: **KPG Psomas Inc.**

CONTRACT NAME & PROJECT NUMBER: **Academy Street Bike Lanes (CIP 20-08)**

ORIGINAL AGREEMENT DATE: **October 19, 2020**

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, <i>including applicable WSST</i>	\$34,821.00
Net Change by Previous Amendments <i>including applicable WSST</i>	\$630,194.75
Current Contract Amount <i>including all previous amendments</i>	\$665,015.75

Current Amendment Sum	\$227,708.00
Applicable WSST Tax on this Amendment	\$N/A
Revised Contract Sum	\$892,723.75

Original Time for Completion (insert date)	12/31/2023
Revised Time for Completion under prior Amendments (insert date)	12/31/2024
Add'l Days Required (±) for this Amendment	N/A
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: By: _____ (signature) Print Name: _____ Its _____ (Title) DATE: _____	CITY OF SUMNER: By: _____ (signature) Print Name: <u>Kathy Hayden</u> Its <u>Mayor</u> (Title) DATE: _____
CITY OF SUMNER: By: _____ (signature) Print Name: <u>Jason Wilson</u> Its <u>City Administrator</u> (Title) DATE: _____	APPROVED AS TO FORM: _____ Sumner City Attorney

EXHIBIT A

Project Scope of Work

Supplement

February 2023

Construction Services

This supplement will provide construction management services for the construction contract to complete the City of Sumner – Town Center Utility and Woonerf Project (hereinafter called “Project”). City of Sumner project number CIP 21-08. These services will include project management, inspection, and contract administration during the construction of the project, as detailed below KPG Psomas (“Consultant”) will provide to the City of Sumner, Washington (“City”) construction management for the project. A detailed scope for the Contract follows:

I. INTRODUCTION

Due to circumstances beyond the control of the Consultant, the project is not projected to be complete until June 7th, 2023. Additionally, the Consultant has required more level of effort than anticipated to manage the project due to various circumstances.

The following scope of services and associated costs are based upon the assumptions outlined below.

Assumptions:

- This supplement is for a part-time project manager, a part-time resident engineer at 32 hours/week, a part-time documentation specialist at 32 hours/week, and one full-time inspector during construction activities. The level of services is based on a projected completion date of June 7th, 2023. This scope covers **68 working days** from March 6th, 2023 to June 7th, 2023. It is anticipated that full time site observation will be required for the remainder of the duration of construction.
- Services will be performed in general accordance with the Local Agency Guidelines (LAG), the interlocal Agreements between (“Utilities”) (if applicable), the City, and the WSDOT Construction Manual.
- Services considered incidental to this work include management of temporary construction licenses secured by the City. The Consultant will also direct the work of the Contractor consistent with said licenses as well as the terms of any easements secured for project improvements.
- Hours of work. Work is anticipated to take place during daylight hours on a single shift of up to 10 hours per day, 5 days per week. No night shift work related to this project is included in this scope and budget. Any night shift work shall be negotiated as requested by the Project.

- Field office: No field office support is included in this agreement.

II. SCOPE OF WORK

TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

Provide overall project management, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements.

- Organize and layout work for project staff. Prepare project instructions on contract administration procedures to be used during construction.
- Review monthly expenditures, prepare invoice and submit project progress letter to the City.

TASK 2 – CONSTRUCTION MANAGEMENT AND ADMINISTRATION

Construction Management and Office Support Services:

Document Control. Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol.

Project Coordination: Liaison with the City on a regular basis to discuss project issues and status. Coordinate with utilities, and community outreach issues as requested by the City.

Plan Interpretations: Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with the City for resolution of issues involving scope, schedule, and/or budget changes.

Weekly Meetings: Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.

Initial Schedule Review: Perform detailed schedule review of contractor provided CPM for conformance with the contract documents.

Monthly Pay Requests: Prepare monthly requests for payment, review with the City and Contractor and approve, as permitted. Utilize City provided format for pay estimates, or Consultant format.

Submittals: Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Key submittals to be transmitted to the City for their review and approval. Submittals shall be logged and tracked.

Request for Information (RFI): Review and respond to RFI's. RFI's shall be logged and tracked.

Certified Payroll: City shall take lead on verification of subcontractors and tracking of Certified Payrolls.

Change Orders: Develop change orders, provide technical assistance to negotiate change orders, and assist in resolution of disputes which may occur during the course of the Project. It is recognized any change orders to the City's Contractor that extend time for the Contractor shall also be reflected in this agreement to extend time for the Consultant.

Community Communication: The City shall take lead on community Communications.

Cost Projections: Prepare up to two cost projections for the project. Projections to be based on the current

amount paid to date, pending change orders, quantity projections, and other information.

TASK 3 – FIELD INSPECTION

Field Inspection:

The Consultant shall provide the services of one full-time inspector to monitor the progress of the work. Construction staff shall oversee the following items of work, on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The presence of the Consultant's personnel at the construction site is for the purpose of providing to the City a greater degree of confidence that the completed work will generally conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. The Consultant's personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The Consultant will endeavor to protect all parties against defects and deficiencies in the work of the Contractor, but cannot guarantee the Contractor's performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the Contractor and any Subcontractors.

Field inspection staff will perform the following duties as a matter of their daily activities:

- i. Prepare daily construction reports detailing the Contractor's operations performed for each day the Contractor is on-site; measure the quantities of materials installed, log equipment and staff used, and other associated information necessary to develop monthly pay estimates.
- ii. Respond to questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the Contractor, including response to related questions from adjacent property owners and the general public.
- iii. Prepare field records and documents to help assure the project is administered in accordance with funding requirements.
- iv. Provide periodic photographs during the course of construction. Photographs will be in digital format and cataloged by date. A series of post construction photographs will also be provided to the City in digital format.
- v. Coordinate with the contractor-provided surveyor and verify general adequacy of surveying provided.
- vi. Coordinate with the City and/or WSDOT's utility and traffic signal operations and maintenance personnel as needed. Coordination with the railroad is NOT anticipated.

Materials Testing: Coordinate and manage materials testing sub-consultants for construction services,

who will provide materials testing services as required. Coordinate the work of the materials testing technicians and testing laboratories in the observation and testing of materials used in the construction; document and evaluate results of testing; and address deficiencies.

Substantial Completion: Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punchlist' of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City.

Verification Survey: The Contractor shall provide construction staking for the project. Control has been provided in the bid documents. No construction staking has been provided as part of this scope. If verification of Contractor survey is needed by KPG Survey crews a supplement will be negotiated with the City prior to authorization of survey work.

TASK 4 – PROJECT CLOSEOUT

Based on the level of effort needed for the project currently, project closeout is expected to require additional effort.

Record Drawings: This scope and budget does not include AutoCAD files. The Consultant shall review record drawings prepared by the Contractor for general information and pass the record drawings to the City.

Physical Completion Letter: The City shall issue Physical Completion.

Project Closeout: Transfer all project documents to the City for permanent storage.

MANAGEMENT RESERVE

The services described under this task, and any other additional services requested by the City, will be performed only when authorized by the City. Authorization to perform additional services will be in the form of a supplement to this agreement, specifying the work to be performed, and basis of payment.

- Produce traffic advisories and other news releases at project milestones.
- Provide any additional services resulting from changes in scope or design of the project. Changes include, but are not limited to, changes in size, complexity, the schedule, character of construction, or method of financing.
- Preparation of award submittal for APWA, ASCE, and other agencies.
- Provide claims analysis and assistance in resolving claims that are protracted in nature and beyond the scope of the change order process described herein.
- Ribbon Cutting Ceremony: Conduct a ribbon cutting ceremony that provides information

about the project elements and schedule, and that provides information about how to stay informed through the project. Handouts to be prepared for this task. Refreshments, tables, and other necessary items to be provided by the Consultant.

- Other activities deemed necessary by the City.

III. DELIVERABLES

- i. Preconstruction meeting agenda and minutes (Draft and Final)
- ii. Preconstruction Conference Minutes
- iii. Daily Reports
- iv. Test Reports
- v. Construction Photographs – 1 set, including preconstruction photographs
- vi. Weekly meeting minutes
- vii. Certificate of Substantial Completion with punchlist
- viii. Monthly Contractor pay requests
- ix. Cost Projections
- x. Physical completion letter and recommendation of final acceptance letter – BY CITY
- xi. All project records at the completion of the contract, including submittals, RFI's, change orders, correspondence, and other information.

EXHIBIT D
PRIME CONSULTANT COST COMPUTATIONS
Client: City of Sumner
Project Name: Academy Bike Lanes and Town Center CM
KPG Psomas Inc. Project Number:
68 working days from 3/6/23 - 6/7/23

Date: 2/24/23

Task No.	Task Description	Labor Hour Estimate							Hours	Total Hours and Labor Cost Computations by Task
		Project Engineer II	Construction Manager	Resident Engineer	Construction Observer II	Document Control Specialist I	Document Control Admin	Senior Admin		
		175	185	155	130	121	104	133		Totals
Task 1 - MANAGEMENT / COORDINATION / ADMINISTRATION										
1.1	Project Management and Administrative Services		20						20	\$ 3,700.00
1.2	Prepare, review and submit monthly expenditures							12	12	\$ 1,596.00
Task Total		0	20	0	0	0	0	12	32	\$ 5,296.00
Task 2 - Construction Management (CM) and Administrative Services.										
4.1	Construction Management and Office Support @32 hrs/wk			435		435			870	\$ 120,060.00
4.3	Certified Payrolls						28		28	\$ 2,912.00
Task Total		0	0	435	0	435	28	0	898	\$ 122,972.00
Task 3 - Field Inspection										
5.1	Construction Inspection @10 hrs/day				680				680	\$ 88,400.00
Task Total		0	0	0	680	0	0	0	680	\$ 88,400.00
Task 4 - Project Closeout										
6.1	Construction Management Office Support			40		40			80	\$ 11,040.00
Task Total		0	0	40	0	40	0	0	80	\$ 11,040.00
Total Labor Hours and Fee		0	3,700	73,625	88,400	57,475	2,912	1,596	1,690	\$ 227,708.00
Subconsultants										
									Subtotal	\$ -
									Administrative Charge (5%)	\$ -
									Total Subconsultant Expense	\$ -
Reimbursable Direct Non-Salary Costs										
									Mileage at current IRS rate	
									Reproduction Allowance	\$ -
									Total Reimbursable Expense	\$ -
									Total Estimated Budget	\$ 227,708.00

SUBJECT: Approval of the minutes from the regular council meeting of March 6, 2023 and the study session of March 13, 2023.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Minutes - March 6, 2023 Council Meeting
2. Minutes - March 13, 2023 Study Session

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:

Meeting minutes from the last two meetings.

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

COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve as presented.



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

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Development Services Director Doug Beagle, Economic & Community Development Director Ryan Windish, Public Works Director Mike Dahlem, Police Chief Brad Moericke, Administrative Services Director Jeff Steffens, Community Services Manager Derek Barry, Associate Planner Scott Waller and City Clerk Michelle Converse

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

CALL TO ORDER

Pledge of Allegiance

Invocation

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

CONSENT AGENDA

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

1. Resolution No. 1654 – Interlocal Agreement for Inmate Housing SCORE
2. Approval of the council minutes from the regular council minutes of February 21, 2023 and February 27, 2023.

PASSED BY VOICE VOTE.

PUBLIC HEARING

There was no Public Hearing tonight.

REGULAR BUSINESS

1. Unfinished Business

There was no Unfinished Business tonight.

2. Public Comment

Maren Clifton addressed the Council regarding her cat and the Sumner Animal Code, “Animals at Large”. (Ms. Clifton’s emailed her comments and those are attached)

3. New Business

a. Design Commission Reappointment (Cheryl Ebsworth)

MOVED BY NEUMAN, SECONDED BY HOCHSTATTER TO REAPPOINT CHERYL EBSWORTH TO THE DESIGN COMMISSION FOR A FOUR-YEAR TERM.

Associate Planner Scott Waller addressed the Council.

Ms. Ebsworth addressed the Council and thanked them to for the opportunity.

PASSED BY VOICE VOTE.

b. Design Commission Reappointment (Brian Franchini)

MOVED BY BROWN, SECONDED BY HOCHSTATTER TO REAPPOINT BRIAN FRANCHINI TO THE DESIGN COMMISSION FOR A FOUR-YEAR TERM.

Associate Planner Scott Waller addressed the Council.

Mr. Franchini addressed the Council.

Council thanked both Commissioners for their service.

PASSED BY VOICE VOTE.

c. Civil Service Commission Reappointment (Brian Anderson)

MOVED BY BITETTO, SECONDED BY NEUMAN TO REAPPOINT BRIAN ANDERSON TO A FOUR-YEAR TERM ON THE CIVIL SERVICE COMMISSION.

Administrative Services Director Jeff Steffens addressed the council.

Mr. Anderson also thanked the Council for the privilege of serving on the Commission.

PASSED BY VOICE VOTE.

d. Ordinance No. 2850 – Updating Sumner Municipal Code 8.04 Cemetery

MOVED BY COLE, SECONDED BY NEUMAN TO ADOPT ORDINANCE NO. 2850, REVISING SECTION 8.04 OF THE SUMNER MUNICIPAL CODE SUBSTANTIALLY IN A FORM AS APPROVED BY THE CITY ATTORNEY.

Community Services Manager Derek Barry addressed the Council.

Discussion ensued.

PASSED BY VOICE VOTE.

e. Resolution No. 1655 – Formation of a Library Capital Facilities Area

MOVED BY HOCHSTATTER SECONDED BY NEUMAN TO ADOPT RESOLUTION NO. 1655 – CREATING A SUMNER LIBRARY CAPITAL FACILITIES AREA AS DESCRIBED IN EXHIBIT A AND EXHIBIT B IN A FORM AS APPROVED TO BY THE CITY ATTORNEY.

City Administrator Jason Wilson addressed the Council.

Gretchen Caserotti, Pierce County Library System's Executive Director assisted Mr. Wilson in addressing questions from the Council.

Discussion ensued.

COUNCILMEMBER REED MADE AN AMENDMENT TO EXPAND THE BOUNDARIES OF THE PROPOSED LCFA TO INCLUDE PIERCE COUNTY ELECTION PRECINCTS 31-880, 31-810, 31-889, 25-381 AND 25-87 AND REQUEST THAT EXHIBITS A AND B BE UPDATED ACCORDINGLY.

SECONDED BY COUNCILMEMBER STUARD.

Before discussion began, Mr. Wilson made a clarification on precinct number 25-87, it should read 25-871.

COUNCILMEMBER REED CLARIFIED HIS AMENDMENT WITH THE CORRECTED PRECINCT NUMBER.

Discussion ensued.

DEPUTY MAYOR HOCHSTATTER CALLED FOR A POINT OF ORDER COUNCILMEMBER NEUMAN SECONDED.

THE COUNCIL THEN VOTED ON THE AMENDMENT MADE BY COUNCILMEMBER REED. AMENDMENT FAILED 3-4. COUNCILMEMBERS BROWN, REED AND STUARD VOTING YAY AND DEPUTY MAYOR HOCHSTATTER, AND COUNCILMEMBERS NEUMAN, BITETTO AND COLE VOTING NO.

SINCE THE AMENDMENT FAILED, AND THERE WAS NO FURTHER DISCUSSION, THE MAYOR THEN CALLED FOR THE VOTE ON THE ORIGINAL RESOLUTION.

PASSED 6-1 BY ROLE CALL VOTE WITH COUNCILMEMBER REED VOTING NO.

4. Reports

a. Council

Councilmembers Brown, Stuard, Neuman, Cole and Deputy Mayor Hochstatter had no comments tonight.

Councilmember Bitetto reported an unfortunate incident that happened at one of the City's hotels over the weekend. It was the theft of a vehicle which happens all too often.

Councilmember Reed thanked the Commissioners for their service – he started out on the Design Commission, so you never know where it might take you.

b. City Administrator

City Administrator Jason Wilson shared the following:

Upcoming Policy Issues:

- March 13, 2023 – Study Session
 - Dig Once Ordinance and Fiber Plan Update
 - 2022 Financial Report
- March 20, 2023 – Regular Council Meeting
 - Public Hearing regarding 24th St. E. Partial Right of Way Vacation
 - Stewart Road Bridge PSE Agreement
 - Resolution authorizing an Interlocal Agreement for changes to the Police Tactical Response Team
 - Main & Wood Intersection Improvements - Consultant Agreement Supplement
 - Town Center Utility Woonerf Project Consultant Agreement Supplement
 - Cultural Arts Commission Appointment (Nolan Bailey)
 - Two Cultural Arts Commission Reappointments (Donna Hardtke, Ben Haines)
 - Parks & Forestry Commission Reappointment (Ben Bridges)
 - Ordinance declaring Real Property South of 24th Street as surplus
 - Ordinance Approving Franchise Agreement with Fatbeam
 - Ordinance Vacating a Portion of 24th St. E. Right of Way
 - Ordinance Amending the 2023-24 Budget for Quarter

Commission Updates:

The Planning Commission completed their review of proposed changes to small subdivisions and pipestem lot code. These were priorities identified in the Housing Action Plan. Council will be reviewing the proposed changes on March 27th.

Policy Follow-Up:

- Last year Council approved a master settlement agreement that set forth the groundwork for future Opioid Settlements with manufacturers, distributors and resellers. The city is anticipated to receive approximately \$200,000 over the next 20 years. The master agreement restricts how funds can be used and encourages regional partnerships. The Mayor and staff are beginning discussions with regional partners including neighboring cities, Pierce County and the Tacoma Pierce County Health Department on the best use of these funds.

Miscellaneous:

- Well City Award: The City received its WellCity Status through AWC. Sumner is one of 112 cities that received recognition this year. The AWC Employee Benefit Trust's WellCity program recognizes members that achieve quality standards in employee health promotion. Importantly this designation entitles the City to a 2% premium savings on employee medical costs. I want to thank the entire wellness committee for championing this effort and a special thank you to Legal Coordinator Noel Clark for tracking all of our efforts and submitting the application.

c. Mayor

Mayor Hayden invited the public to a Town Hall meeting in the Council Chambers on Saturday, March 11th, at 2pm, where you can meet your state legislators Rep Drew Stokebary and Rep Eric Robertson.

5. Executive Session

There was no one tonight.

6. Adjournment

With no additional business before the council, Mayor Hayden adjourned the meeting at 6:34pm. Councilmembers concurred.

ATTEST:

Michelle Converse, CMC City Clerk

Kathy Hayden, Mayor

My name is Maren Clifton, this is my husband Kyle and our daughter, Freya.

I was born and raised in Sumner, graduated class of 2003, lived in Tacoma while Kyle was stationed at JBLM, and move back in 2018.

For the entirety of my experience in Sumner, cats getting some time outdoors has always been a cultural norm. Take a walk around any block on a sunny afternoon, and you'll see that it's still a cultural norm.

When our municipal code was written, I don't believe it was trying to suddenly change that cultural norm with a broad definition "Animals At Large." In fact, it appears to be a copy/paste of Tacoma's Code, and I know that that's not their intention, because they explicitly call out that cats are exempt from their leash laws on their complaint page.

Our ask this evening, is that Sumner simply mirror the same language to explicitly exempt cats from the leash law, and not designate a cat "At Large" for walking across a driveway past a Ring doorbell.

I'd like to provide some context for this ask.

For the past 2 years, we have endured ongoing harassment from a disgruntled neighbor. Not because she's seen our cats out, but because she has a misguided belief that ours are the only cats in the neighborhood, and she's become increasingly hostile about us "lying" when we've informed her when the videos and texts she sent are about other cats.

She has made numerous complaints to Metro Animal Services. And submitted 6 videos; four of which are decidedly NOT our cats. The 5th is hard to tell and frankly, I don't remember if he got out on February 7th.

It's bad enough to endure her angry texts and vague threats, her yelling at my husband, bringing our child to tears. But Metro Animal Services has been complicit and even a party to her harassment. In fact, an Animal Control Officer went so far as to warn her that I might throw poisoned hot dogs over her fence to kill her dogs. Pam threatened a restraining order and the Sumner Police came to MY door.

Our neighbor has a misplaced vendetta against us. And it seems Metro Animal Services does too. We did a public records request and found—exempting specific incidents and irresponsible animal husbandry—there were 56 records of "information only"—the 4 calls against us are the ONLY "Enforcement" for a cat AT LARGE.

But that's a small data set, so we asked Tacoma for their records as well. In more that 2600 calls to Metro Animal Services across Sumner and Tacoma, we are the ONLY infraction for a cat outdoors that was issued a \$513 ticket.

We've been amenable to requests and have—for the most part—tried to keep our cats indoors for the past two years. But cats do get out sometimes. And frankly, I think it's good for them when they do. Moreover, keeping my cats inside doesn't stop other neighborhood cats from walking past her doorbell. And I shouldn't have to take the blame.

I would like the harassment to stop. I would like to not stress that a cat will get out and make us late for school. I would like cats off leash to remain a cultural norm.

Luckily, the fix is easy. Please, mirror the language used on Tacoma's site, and direct Metro Animal Services to stand down.

Thank you.

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

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community Development and Economic Director Ryan Windish, Public Works Director Mike Dahlem, Administrative Services Director Jeff Steffens, Deputy City Attorney Maili Barber and Chief Operating Officer Kassandra Raymond.

Mayor Hayden called to order the Joint Study Session, at 6pm.

CALL TO ORDER

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

COUNCILMEMBERS NEUMAN, REED AND DEPUTY MAYOR HOCHSTATTER WERE ABSENT.

DEPUTY MAYOR HOCHSTATTER, NOTIFIED THE CITY ADMINISTRATOR PER SECTION 13 OF COUNCIL RULES. A MOTION TO EXCUSE THE DEPUTY MAYOR WAS MADE BY BITETTO SECONDED BY STUARD. MOTION PASSED 4-0.

REGULAR BUSINESS

1. Dig Once Ordinance. Mr. Paul Dunn of DunnCo Diversified Services LLC addressed the Council.
2. 2022 Financial Review

COUNCILMEMBER NEUMAN ARRIVED AT 6:16PM, COUNCILMEMBER REED ARRIVED AT 6:17PM.

CITY ADMINISTRATOR REPORT

ADJOURNMENT

With no additional business, Mayor Hayden adjourned the meeting at 7:22pm.

Attest:

Kathy Hayden, Mayor

Michelle Converse, City Clerk

SUBJECT: Public Hearing 24th Street East Right-Of-Way Vacation

CATEGORY: Public Hearings

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. 24th St. E Partial ROW Vacation Map

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Tonight's public hearing is to discuss vacating a portion of the public right of way on 24th Street East, in the City of Sumner, Washington. The right of way is known as 24th St. E. with the eastern boundary being the western boundary of Burlington Northern Santa Fe Railway (BNSF) property and the western boundary being 200' due west of the BNSF right-of-way.

The right of way is anticipated to be conveyed to BNSF for development into their proposed staging tracks, and upon vacation, the portion of the road would be equally absorbed by the City-owned parcel(s) to the north and south of the roadway. The City has no further need or use of this portion of the right of way, as the remainder of the road will be removed through the course of developing the White River Restoration Project. It is integral to the project that this portion of 24th St. E. be used in support of and in conjunction with the use for BNSF development. Additionally, there are City and private PSE utilities underneath the public right of way, for which the City will reserve an easement.

COUNCIL COMMITTEE/STUDY SESSION: February 21 RCM

MEETING/STUDY SESSION DATE: 2/21/2023

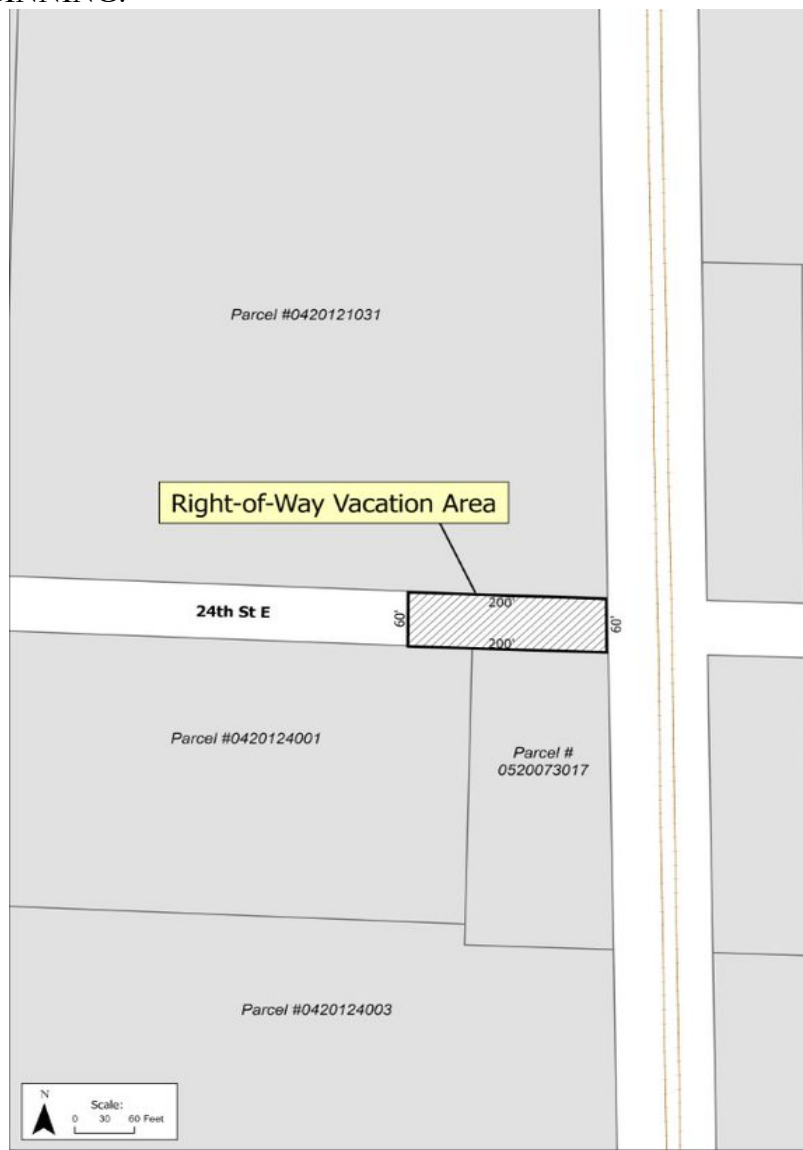
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Hold public hearing to hear from the public related to the proposed partial street vacation.

RIGHT OF WAY LEGAL DESCRIPTION AND DEPICTION

LOCATED IN THE EAST HALF OF SECTION 12 AND THE WEST HALF OF SECTION 7, TOWNSHIP 20 RANGE 05 EAST OF THE WILLAETTE MERIDIAN, BEGINNING AT THE INTERESECTION OF THE NORTH RIGHT-OF-WAY LINE OF 24TH STREET EAST AND THE WEST RIGHT-OF-WAY LINE OF THE BURLINGTON NORTHERN SANTA FE RAILROAD, THENCE WESTERLY ALONG THE SAID NORTH RIGHT-OF-WAY LINE TO A LINE 200.00 FEET WEST OF AND PARALLEL WITH THE SAID WEST RIGHT-OF-WAY LINE, THENCE SOUTHERLY ALONG A LINE A LINE 200.00- FEET WEST OF AND PARALLEL WITH THE SAID WEST RIGHT-OF-WAY LINE 60.00 FEET TO THE SOUTH RIGHT-OF WAY LINE OF 24TH STREET EAST, THENCE EASTERLY ALONG THE SAID SOUTH RIGHT-OF-WAY LINE 200.00 FEET TO THE SAID WEST RIGHT-OF-WAY LINE, THENCE NORTHERLY ALONG THE SAID WEST RIGHT-OF WAY LINE TO THE POINT OF BEGINNING.



SUBJECT: Forestry & Parks Commission Reappointment - Bridges

CATEGORY: Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

STAFF CONTACT: Derek Barry, Community Services Manager

SUMMARY BACKGROUND:

Mayor Hayden is seeking approval of her reappointment of Ben Bridges to the Forestry & Parks Commission for a term ending in April of 2027. Mr. Bridges has previously served on the Commission and brings fresh ideas and support for our urban forest, parks and cemetery.

The purpose of the Forestry & Parks Commission is to have input to the supervision of all parks, recreational facilities, cemetery, trails, trees and the planting strips in the City of Sumner.

COUNCIL COMMITTEE/STUDY SESSION:

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve the Mayor's recommendation to reappoint Mr. Bridges to a four-year term on the Forestry & Parks Commission.

SUBJECT: Ordinance No. 2849 - Amending the 2023/2024 Biennial Budget

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: Per Exhibit

Within Budget Allocation: As Amended

ATTACHMENTS:

1. Ordinance No. 2849 - Amending the 2023/2024 Biennial Budget

STAFF CONTACT: Cassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND: The 2023/2024 Biennial Budget was adopted on December 5, 2022 with Ordinance No. 2838. Staff regularly reviews the budget progress as well as any programmatic changes. Based on this review, staff presents the first quarter 2023 budget amendment for consideration.

This budget amendment:

- General Fund (001): Programs funding for a discounted training/conference package for the Tyler Technologies ERP software (Finance);
- Sidewalk Capital Fund (302): Recognizes grant revenue and associated expense for Elm Street Sidewalk project;
- Street Capital Fund (320): Transfers funding from Traffic Impact Fees to support the Main/Wood Intersection project. Transfers funding to Sidewalk Capital to support the Elm Street Sidewalk project;
- Facilities Capital Fund (325): Recognizes grant revenue and associated expense for Ryan House project;
- Stormwater Fund (408): Program carryover funding for the 24th and 142nd Ave Intersection project;
- Cemetery Fund (410): Programs funding to acquire a headstone lifting tool and fund a newly identified tree removal project;
- Animal Control Fund (440): Program expense for body cam/taser bundle;
- Information Technology Fund (551): Program carryover funding for NetMotion expenses;
- Development Impact Fee Fund (605): Program transfer out to support Main/Wood Intersection Improvement Project.

Ord No. 2849		
BA 03/20/2023		
	<i>Revenues</i>	<i>Expenditures</i>
	\$ -	
General Fund		11,025
Reserve Funds	-	-
Special Revenue Funds	-	-
Debt Service Funds	-	-
Capital Funds	2,433,200	2,627,200
Utility Funds	-	50,000
Other Enterprise Funds	-	15,800
Internal Service Funds	-	15,000
Fiduciary Funds	-	1,480,000
	\$ 2,433,200	\$ 4,199,025

COUNCIL COMMITTEE/STUDY SESSION: Finance & Personnel Committee

MEETING/STUDY SESSION DATE: 3/1/2023

COMMITTEE RECOMMENDATION: Approve Ordinance No. 2849 amending the 2023/2024 Biennial Budget.

STAFF RECOMMENDATIONS/MOTION:

Approve Ordinance No. 2849 amending the 2023/2024 Biennial Budget.

ORDINANCE NO. 2849
CITY OF SUMNER, WASHINGTON

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON,
AMENDING THE 2023-2024 BIENNIAL BUDGET AS ORIGINALLY ADOPTED IN
ORDINANCE NO. 2838, APPROVED DECEMBER 5, 2022.**

WHEREAS, The Sumner City Council approved Ordinance No. 2838 which adopted a biennial budget for fiscal years 2023-2024; 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, 2023, through December 31, 2024 as contained in the adopted 2023-2024 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 20th day of March, 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

City Clerk Michelle Converse, CMC

City Attorney Andrea Marquez

Funds	Beginning Fund	Revenues			Expenditures			Ending Fund
	Balance							Balance
	<i>Adopted</i>	<i>Adopted</i>	<i>Previous</i>	<i>03/20/23</i>	<i>Adopted</i>	<i>Previous</i>	<i>03/20/23</i>	<i>Revised</i>
001 General	11,300,000	\$ 41,287,140	\$ -	\$ -	\$ 40,975,513	\$ -	\$ 11,025	\$ 11,600,602
002 General Fund Reserves	980,824	-	-	-	-	-	-	980,824
003 Building Reserves	450,756	200,000	-	-	390,000	-	-	260,756
103 Complete Streets	-	-	-	-	-	-	-	-
105 Drug Enforcement	65,510	-	-	-	4,000	-	-	61,510
106 Hotel/Motel	262,600	205,000	-	-	338,156	-	-	129,444
115 ARPA Funding	680,624	-	-	-	50,100	-	-	630,524
200 Debt Service	2,570,000	465,800	-	-	496,100	-	-	2,539,700
221 LID Guarantee	691,569	-	-	-	-	-	-	691,569
302 Sidewalk	412,457	530,000	-	553,200	880,000	-	553,200	62,457
305 Real Estate Excise Tax	851,288	1,600,000	-	-	550,000	-	-	1,901,288
310 Parks & Trails Capital Fund	423,721	4,868,061	-	-	5,131,106	-	-	160,676
320 Street Capital Fund	7,709,379	17,364,200	-	1,480,000	24,625,588	-	1,674,000	253,991
325 Facilities Capital Fund	50,000	515,000	-	400,000	565,000	-	400,000	-
401 Water	13,219,995	10,189,150	-	-	20,279,605	-	-	3,129,540
402 Wastewater	9,286,248	15,566,163	-	-	21,270,227	-	-	3,582,184
403 Utility Bond Reserves	1,731,342	-	-	-	-	-	-	1,731,342
408 Stormwater	8,227,784	38,031,772	-	-	42,424,254	-	50,000	3,785,302
410 Cemetery Operations	74,238	1,498,200	-	-	1,425,316	-	8,500	138,622
415 Cemetery Development	208,994	300,000	-	-	300,000	-	-	208,994
440 Animal Control	94,087	2,093,628	-	-	2,062,680	-	7,300	117,735
501 Unemployment Insurance	9,351	-	-	-	3,991	-	-	5,360
550 Fleet Management	94,835	1,498,570	-	-	1,551,411	-	-	41,994
551 Information Technology	479,281	3,264,440	-	-	3,336,088	-	15,000	392,633
555 Equipment Reserve	1,942,959	2,126,935	-	-	1,770,000	-	-	2,299,894
601 Cemetery Endowment	1,545,873	33,000	-	-	-	-	-	1,578,873
605 Development Impact Fees	6,898,068	500,000	-	-	998,833	-	1,480,000	4,919,235
611 Firemen's Pension	29,798	164,000	-	-	160,000	-	-	33,798
Total All Funds	\$ 70,291,581	\$ 142,301,059	\$ -	\$ 2,433,200	\$ 169,587,969	\$ -	\$ 4,199,025	\$ 41,238,846

SUBJECT: Ordinance No. 2847 - Franchise Agreement with Fatbeam (1st Reading)

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2847 - Franchise Agreement with Fatbeam

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Fatbeam, a telecommunications company (voice, internet, data), approached the City with a request for a franchise agreement. A franchise agreement is a request to utilize City right of way for utility infrastructure. The agreement outlines the terms and conditions of locations, relocations and permits/construction generally. The term of this franchise is for 10 years.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 3/7/2023
--

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Proceed with two readings (as required by law) of Ordinance 2487, and approve.

ORDINANCE 2847
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF SUMNER ("CITY") TO FATBEAM, LLC, ("GRANTEE"). THE CITY AND GRANTEE ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES."

WHEREAS, Fatbeam, LLC, a limited liability company organized and existing under the laws of the State of Washington is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services, which desires to occupy the City of Sumner rights-of-way to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City; and

WHEREAS, the Grantee, Fatbeam, LLC, has represented to the City that it provides a business, and seek a non-exclusive franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair fiber optic facilities to offer and provide telecommunications service for hire, sale, or resale in the City; and

WHEREAS, the 1934 Communications Act, as amended relating to telecommunications providers recognizes and provides local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain telecommunication facilities within the boundaries of the City.

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

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways; and

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

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

WHEREAS, the City has the authority to grant, issue or deny franchises and use permits for the use of the right-of-way for telecommunications services subject to Chapter 12.90 of the Sumner Municipal Code ("SMC"); and

WHEREAS, the City and Grantee desire to enter into an agreement authorizing Grantee to use the Rights-of-Way throughout the City and specifying the terms and conditions under which said use may be made;

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY ORDAIN AND THE CITY AND THE GRANTEE AGREE AS FOLLOWS:

1. Authority Granted. The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for the Telecommunications Facilities defined in Section 4 below. The Grantee is authorized to place its telecommunications facilities in, under, on, across, through, along, or below the specific rights-of-way of the City described in Exhibit A.

2. Authority Limited to Occupation of Rights-of-Way. The authority granted herein is a limited and non-exclusive authorization to occupy and use the rights-of-way of the City for the purpose of providing those Telecommunications Facilities identified in Section 4 below. This Franchise does not and shall not convey any right to Grantee to install its facilities on, under, over, across or to otherwise use City owned or leased properties of any kind without a valid lease agreement with the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to the Grantee. No reference herein to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Franchise may only grant than those rights which the City may have the undisputed right and power to give.

3. Permits Required. Grantee must obtain a permit from the City prior to performing any work within the rights-of-way. All facilities must be installed and maintained within the public rights-of-way in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public safety and welfare.

4. Telecommunications Facilities.

4.1 The scope of this Franchise extends only to the wireline telecommunications facilities owned, operated or controlled by Grantee in the rights-of-way (the "Telecommunications Facilities"). This Franchise does not grant any rights in any easement granted for or in favor of any City or public utility facilities or operations.

4.2 This Franchise does not authorize the offering of Cable Services as defined in 47 U.S.C. § 522(6).

4.3 This Franchise does not authorize the installation of small wireless facilities as that term is defined in 47 USC 1.6002 or personal wireless facilities as that term is defined in RCW 35.99.010.

4.4 Unless the City and the Grantee have entered into a site-specific agreement or lease, this Franchise does not authorize Grantee to place new structures, including but not limited to poles and pedestals, in the rights-of-way regardless of height.

5. Terms, Conditions, and Provisions of SMC Chapter 12.90 Incorporated by Reference. The terms, conditions, and provisions of SMC Chapter 12.90 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of SMC Chapter 12.90, as such chapter now exists or is hereinafter amended. The terms of this Franchise shall supplement SMC Chapter 12.90. In the event of a conflict between this Franchise and SMC Chapter 12.90, the terms of this Franchise shall prevail.

6. Term of Franchise. The term of this Franchise shall be for a period of ten (10) years from the date the last party signs the Franchise, unless sooner terminated as provided herein.

7. Location of Facilities. Grantee may locate its Facilities anywhere within space described in Exhibit A, consistent the City's applicable Code requirements and the City's Design and Construction Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services beyond those described in Section 4.

8. Non-Exclusive Grant.

8.1 This Franchise shall not in any manner prevent the City from granting additional franchises or entering into other similar agreements or franchises in, under, on, across, over, through, along or below any rights-of-way of the City or other City-owned properties, nor from exercising such other powers and authorities granted to the City by law.

8.2 This Franchise shall in no way prevent or prohibit the City from using any of its rights-of-way or other City-owned properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and other City-owned properties of every type and description.

8.3 This Franchise does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the City and the facility therein removed at the cost of the Grantee in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

9. Relocation.

9.1 **Relocation Requirement.** The City may require Grantee, and Grantee covenants and agrees, to protect, support, temporarily disconnect, relocate, and remove, its Facilities within the City's rights-of-way when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic

conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any rights-of-way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 9.1 shall be considered a "Public Improvement Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 9.1 shall be borne by Grantee. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

9.2 Notice and Relocation Process. If the City determines that the Public Improvement Project necessitates the relocation of Grantee's existing Facilities, the City shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Grantee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Improvement Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City and at no charge or expense to the City, except as otherwise permitted by RCW 35.99.060. Such timeline may be extended by a mutual agreement.

9.3 Locate Facilities. Upon request of the City or of a third-party performing work on behalf of the City in the rights-of-way and in order to facilitate the design of the rights-of-way, Grantee agrees, at its sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. Grantee shall also locate its Facilities upon the request of a third party. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement Project shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

9.4 Third Party Requests for Relocation. The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public

Improvement Projects, provided that such arrangements do not unduly delay a City construction project.

9.5 Contractor Delay Claims. Grantee agrees to work cooperatively with the City, other franchisees and utilities and the City's third party contractor with respect to the Public Improvement Project. Upon a notification of a delay due to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues. If Grantee breaches its obligations under this Section 9 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

9.5.1 tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 9.6 and Section 19; or

9.5.2 require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

9.6 Indemnification. Grantee will indemnify, defend and hold harmless the City, in accordance with the provisions of Section 20, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects to the proportional extent caused by or arising out of the failure of Grantee to remove or relocate its Facilities in a timely manner as required under this Agreement.

9.7 City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as described in this Section 9, except for in Section 9.4, then the City may perform such work or cause it to be done, and the City's reasonable and direct costs shall be paid by Grantee pursuant to Section 12.

9.8 Survival. The provisions of this Section 9 shall survive the expiration or termination of this Franchise for so long as Grantee continues to have Facilities in the rights-of-way.

10. Undergrounding of Facilities.

10.1 The parties agree that this Franchise does not limit the City's authority under federal, law, or local laws, to require the undergrounding of utilities.

10.2 Whenever all new or existing telephone, cable television, and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground in the manner required by SMC

12.90.120 and/or specified by the City Engineer or designee at no expense or liability to the City. Grantee shall only be required to pay its proportionately fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

10.3 Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by RCW Chapter 19.122 (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

11. Facilities for City's Use.

Grantee shall inform the City with at least thirty (30) days' advance written notice, when feasible or reasonable, that it is constructing, relocating, or placing ducts or conduits in the rights-of-way and provide the City with an opportunity to request that Grantee provide the City with additional duct or conduit and related structures necessary to access the conduit at City's costs and expense pursuant to RCW 35.99.070 and SMC 12.90.120(E).

12. Recovery of Costs.

12.1 Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City.

12.2 Where the City incurs reasonable costs and expenses for which a fee is not established, Grantee shall reimburse the City the actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, and this Franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW. These fees may include reimbursement for time associated with attorneys, consultants, City Staff and City Attorney's Office review.

12.3 Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise. Grantee shall pay the reimbursements pursuant to this Section 12.3 upon acceptance of this Franchise. No permits shall be issued for the installation of Facilities until such time as the City has received payment of this fee. Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Grantee's Telecommunications Facilities.

12.4 Grantee shall reimburse the City for any costs incurred by the City in removing any Grantee Telecommunication Facilities upon abandonment, or in response to an emergency involving Grantee's Facilities.

12.5 Whenever necessary, after construction or maintaining any of Grantee's facilities within the rights-of-way, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface and subsurface disturbed by Grantee to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. Favorable weather conditions permitting, resulting from excavations made by the Grantee upon two business days' notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights of- way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving fourteen (14) business days prior written demand from the City, the Operator shall promptly remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public rights-of-way. Said removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Operator shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition satisfactory to the City. Any of Grantee's affected equipment or facilities remaining in place after the expiration of the one hundred eighty (180) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. Grantee shall reimburse the City for any costs incurred by the City in removing any Grantee Telecommunication Facilities upon abandonment, or in response to an emergency involving Grantee's Facilities. The City may extend such time not to exceed an additional ninety (90) days with prior written request from the Grantee, such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon Grantee's permanent abandonment of the equipment or facilities in place, the equipment or facilities shall become the City's property, and the Grantee shall submit an instrument in writing to the Public Works Director, to be approved by the City Attorney, transferring the ownership of such equipment or facilities to the City.

12.6 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis or sooner, but the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information purposes.

13. Commence Construction. If Grantee's telecommunications system is not installed, Grantee shall commence installation of its telecommunication system within time prescribed and to the satisfaction of the City after the effective date hereof or may lead to forfeiture of the Franchise without the opportunity to cure at the City's discretion. If the City intends to forfeit this Franchise, the City shall provide Grantee at least thirty (30) days prior notice of its intent to

declare forfeiture and Grantee shall have the opportunity to show cause as to why the mater permit should not be forfeited.

14. Reservation of Rights.

14.1 Grantee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise. The City hereby reserves its right to impose a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Grantee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

15. Unsafe Working Conditions.

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

1. Be in writing;
2. Be given to the person doing the work or posted on the work site;
3. Be sent to Grantee by overnight delivery;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

16. Dangerous Conditions; Authority for City to Abate.

16.1 Whenever construction, installation, or excavation of Grantee's telecommunications facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the City Engineer may reasonably require Grantee, at Grantee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, and utilities. Grantee shall be required to take action immediately and without notice from the City or within a prescribed time indicated in writing from the City.

16.2 In the event that Grantee fails or refuses to promptly take the action as directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, and other City property, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Grantee shall be liable to the City for the reasonable costs thereof.

17. Safety and Maintenance Standards.

17.1 Grantee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the rights-of-ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Grantee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its facilities. Additionally, Grantee shall keep its facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Grantee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Grantee, the City reserves the general right to inspect the facilities to evaluate if they are constructed and maintained in a safe condition.

17.2 Additional standards include:

17.2.1 Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

17.2.2 All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

17.2.3 Any opening or obstruction in the rights-of-way or other public places made by Grantee in the course of its operations shall be protected by Grantee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

18. Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

19. Indemnification; Exclusion of Damages.

19.1 Grantee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, reasonable costs, judgments, awards, or other liability asserted by a third party to the extent related to any injury or death of any person or damage to property caused by or arising out of any negligent, fraudulent, or willful acts or omissions of Grantee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to such claims

that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

19.2 Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance by Grantee of any of its obligations under this Section 19.

19.3 The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City, pursuant to this Section 19. Grantee may choose counsel to defend the City subject to this Section 19.3. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

19.4 Fatbeam understands the intent. Fatbeam is indemnifying and controlling the defense. Nonetheless, it is the City's discretion to engage separate counsel if it deems there is a conflict of interest. Counsel have procedures, and ethical requirements, to deal with conflicts. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

19.5 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Grantee under the indemnification provisions of this Section 19 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Grantee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of

immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Grantee for claims made against the City by Grantee's employees. This waiver has been mutually negotiated by the parties.

19.6 Notwithstanding any other provisions of this Section 19, Grantee assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Grantee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors. Grantee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

19.7 The provisions of this Section 19 shall survive the expiration, revocation, or termination of this Franchise.

19.8 NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES.

20. Insurance.

20.1 Grantee shall procure and maintain for so long as Grantee has Facilities in the rights-of-way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Grantee. Grantee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Grantee. Grantee shall procure insurance from insurers with a current A.M. Best rating of not less than A:VII. Grantee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Automobile Liability insurance with limits of no less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage.

- (b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).
- (c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate
- (d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.
- (e) Excess Umbrella liability policy with limits of no less than \$5,000,000 per occurrence and in the aggregate. Grantee may use any combination of primary and excess to meet required total limits.

20.2 Payment of deductible or self-insured retention shall be the sole responsibility of Grantee. Grantee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 20.1. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

20.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Grantee shall include the City, its officers, officials, employees, representatives, engineers, consultants, agents, and volunteers ("Additional Insureds"), as an additional insured under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 00 01 and/or CG 20 2607 04. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Grantee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Grantee's required insurance and shall not contribute with it.

20.4 Upon receipt of notice from its insurer(s) Grantee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 20.1. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 20.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 20.1 shall be considered a material breach of

this Franchise and subject to the City's election of remedies described in Section 25 below. Notwithstanding the cure period described in Section 25, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

20.5 Grantee's maintenance of insurance as required by this Section 20 shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee. If Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

20.6 The City may review all insurance limits once every calendar year during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Grantee. Grantee shall then issue or provide a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Grantee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

20.7 As of the Effective Date of this ordinance, Grantee is not self-insured. Should Grantee wish to become self-insured at the levels outlined in this Franchise at a later date, Grantee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Grantee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Grantee or its parent company is responsible for all payments within the self-insured retention; and (iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

21. Performance Bonds. Grantee may be required to obtain performance bonds and, if necessary, payment bonds to ensure the faithful performance of its responsibilities under this Franchise, SMC 12.90.340, or any use permit issued by the City, including a sufficient amount to cover removal of facilities and/or restoration of City facilities within right-of-way. The amount of the performance and payment bonds shall be set by the City Engineer and is not in lieu of any additional bonds that may be required through the permitting process. The bond shall be in a form acceptable to the City Attorney. The City may from time to time increase or decrease the amount of the required performance bond to reflect changes in risks to the City and to the public.

22. Security Fund and Liquidated Damages.

22.1 At the same time as providing acceptance of this Franchise, Grantee shall establish a permanent security fund in the amount of Fifty Thousand Dollars (\$50,000) to guarantee the full and complete performance of the requirements of this Franchise, the requirements of SMC Chapter 12.90, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. The Grantee may provide, in lieu of

a cash security deposit to the City, an unconditional letter of credit made out to the City, or bond in the amount of Fifty Thousand Dollars (\$50,000) to secure performance under this Franchise. The letter of credit or bond shall be in the form acceptable to the City Attorney.

22.2 If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings, pursuant to SMC 12.90.350(C), (2) refuse to grant additional permits, (3) claim liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day against the Security Fund, or (4) pursue other remedies to compel or force Grantee to comply with the terms hereof. If liquidated damages are used, then those damages shall be the exclusive monetary remedy for the breach.

22.3 Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to utilize any other remedies available in equity or law.

22.4 Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:

22.4.1 Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of Grantee's act or default regarding the installation, maintenance, repair or removal of telecommunications facilities in the rights-of-way, other ways or upon City property or in connection with restoration of the foregoing;

22.4.2 Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair or removal of the Facilities;

22.4.3 Providing a reasonable opportunity for Grantee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and

22.4.4 That Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

22.5 Grantee shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

22.6 Upon termination or expiration of the Franchise all funds remaining in the Security Fund shall be returned to Grantee within thirty (30) days after removal of Grantee's Telecommunications Facilities within the rights-of-way.

23. Remedies Cumulative. All remedies under SMC Chapter 12.90 and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve Grantee of its obligations to comply with this Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Grantee's duty to indemnify the City in any way; nor shall such recovery relieve Grantee of its obligations under this Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

24. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

25. Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in SMC Chapter 12.90 as said Chapter presently exists or is hereafter amended.

26. No Waiver. The failure of the City to insist on timely performance or compliance by Grantee shall not constitute a waiver of the City's right to later insist on timely performance or compliance by Grantee. The failure of the City to enforce any provision of SMC Chapter 12.90 on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of SMC Chapter 12.90 on any other occasion, nor shall the failure to enforce any prior ordinance, law or contractual provision affecting Grantee's facilities act as a waiver or estoppel against application of SMC Chapter 12.90, this Franchise or any other provision of applicable law.

27. City Ordinances and Regulations. Grantee agrees to comply with all present and future applicable federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Neither the granting of this Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time this Franchise is issued or thereafter be obtained. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

28. Severability. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request

renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

29. Assignment. This Franchise may not be assigned or transferred except as provided in SMC 12.90.370.

30. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City of Sumner
Attn: Mike Dahlem
Public Works Director
1104 Maple St.
Sumner, WA 98390
(253) 299-5702
miked@sumnerwa.gov

Grantee:

Fatbeam LLC
Regulatory/ Legal Fatbeam
Regulatory and Legal
2065 W Riverstone Dr STE 202
Coeur Da Alene ID 83814
509-344-1008
regulatory@fatbeam .com

31. Notice of Tariff Changes. If applicable to Grantee, Grantee shall, when making application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of the application and provide the City Engineer with a copy of the submitted application within three days of filing with the Washington Utilities and Transportation Commission or other regulatory body. If applicable to Grantee, Grantee shall further provide the City Engineer with a copy of any actual approved tariff change affecting the provisions of this Franchise.

32. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Grantee's Telecommunications Facilities for the fair market value thereof. In determining the value of such Telecommunications Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

33. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to Grantee by reason of such vacation. The City shall notify Grantee in writing not less than sixty (60) days before vacating all or any portion of any such area in which Grantee has Telecommunications Facilities. The City may, after sixty (60) days written notice to Grantee, terminate this Franchise with respect to such vacated area.

34. Condition of Facilities. Grantee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Grantee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services.

35. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the substantially prevailing party shall be entitled to recover all of

its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

36. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

37. Acceptance. Acceptance shall occur upon Grantee's filing with the City Engineer all of the following: (i) this executed Franchise; (ii) certificate of insurance and additional insured endorsement pursuant to Section 20; and (iii) establishment of the security fund required pursuant to Section 22. The effective date of this Franchise shall be the date upon which Grantee has filed all of the acceptance documents listed in the preceding sentence (the "Effective Date"). Acceptance shall occur within sixty (60) days after the approval of the Franchise by the City Engineer. If an administrative fee pursuant to Section 12.1 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

38. Governing Law. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

39. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 14, 19, 20, 27, and 38 shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its legal representatives, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

40. Miscellaneous.

40.1 City and Grantee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

40.2 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

40.3 This Franchise may be enforced at both law and equity.

40.4 This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

40.5 Grantee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the premises or Grantee's equipment is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

IN WITNESS WHEREOF, this Franchise is entered into and granted on _____, 20____, by and between the City of Sumner ("City"), a Washington municipal corporation, and Fatbeam, LLC ("Grantee"). Grantee accepts all of the terms and conditions of this Franchises as of the Effective Date.

CITY OF SUMNER

GRANTEE:

By:_____
City Engineer

By:_____
Title:_____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By:_____

EXHIBIT A

FACILITIES IN FRANCHISE AREA