



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/82480544495>

Or One tap mobile: US: +12532158782,,82480544495# or +12532050468,,82480544495#

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

Webinar ID: 824 8054 4495

CALL TO ORDER

Pledge of Allegiance

Invocation

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

PROCLAMATION

1. Animal Care / Control Officers Appreciation Week

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

CONSENT AGENDA

1. Resolution No.1653 - Tactical Response Team Interlocal Agreement
2. Resolution No. 1656 - Interlocal Agreement for Inmate Housing with Sunnyside, WA
3. Approval of the meeting minutes from the regular council meeting of March 20, 2023 and the study session of March 27, 2023.

PUBLIC HEARING

REGULAR BUSINESS

1. Unfinished Business

- a. Ordinance No. 2847 - Franchise Agreement with Fatbeam

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 Michelledc@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 Commission Reappointment - Bridges
- b. Cultural Arts Commission Appointment - Bailey

- c. Cultural Arts Commission Reappointment - Hardtke
- d. Cultural Arts Commission Reappointment - Haines
- e. Ordinance No. 2852 - Amending Sumner Municipal Code Chapter 6: Animal Control

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.



PROCLAMATION
Animal Care & Control Officers' Week

WHEREAS, the National Animal Care & Control Association has designated the second week of April each year as Animal Care and Control Officers' Appreciation Week; and

WHEREAS, animal care and control officers dedicate their careers to protecting the welfare of helpless animals that have been rescued from injury, disease, and starvation; and

WHEREAS, animal care and control officers give sanctuary to the millions of animals found homeless in our communities nationwide and seek to find them forever families; and

WHEREAS, animal care and control officers have contributed greatly to the evacuation, rescue, safety and protection of wild and domestic animals that have been ravaged by devastating disasters; and

WHEREAS, the citizens of Sumner know that a Metro animal care and control officer is there to assist them if their cherished pet becomes missing or other animals are threatening the safety and comfort of our citizens or their pets; and

WHEREAS, the City of Sumner would like to express its sincere thanks and appreciation for the outstanding service animal care and control officers provide in an emergency and on a daily basis to the many citizens and communities served by Metro Animal Services,

THEREFORE BE IT RESOLVED that the City of Sumner declares the week of April 9th through 15th, 2023, as Animal Care & Control Officers' Week, and requests that all citizens join us by expressing their sincere thanks, gratitude and appreciation for the many long hours of outstanding service and quality performance these individuals provide.

Dated this 3rd day of April 2023.

Kathy Hayden, Mayor
City of Sumner

SUBJECT: Resolution No.1653 - Tactical Response Team Interlocal Agreement

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: Yes

ATTACHMENTS:

1. Resolution No. 1653 - Interlocal Agreement for Multijurisdictional SWAT Team

STAFF CONTACT: Brad Moericke, Police Chief

SUMMARY BACKGROUND:

Since May 2019, Sumner has been a signatory agency to an Interlocal Agreement (ILA) for a multijurisdictional tactical response team. Since entering that agreement, the City of Dupont has elected to join in this agreement. The prior ILA has been updated to include Dupont as a signatory agency. It also changes references from a tactical response team to a Special Weapons and Tactics Team (SWAT) and also includes a clause that would allow other agencies (cities) to join the ILA as signatories without the need for future council action.

COUNCIL COMMITTEE/STUDY SESSION: Public Safety Committee
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MEETING/STUDY SESSION DATE: 2/15/2023

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Approve Resolution No. 1653, authorizing the Mayor to enter into an interlocal agreement for a multijurisdictional tactical response team.

**RESOLUTION NO. 1653
CITY OF SUMNER, WASHINGTON**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUMNER,
WASHINGTON, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL
COOPERATION AGREEMENT FOR A MULTIJURISDICTIONAL SWAT TEAM.**

WHEREAS, the City of Sumner along with the cities of Bonney Lake, Dupont, Fife, Milton, Orting, and Puyallup, desire to cooperatively form and operate a multijurisdictional Special Weapons and Tactics Team (known as a SWAT Team); and

WHEREAS, it is advantageous for the City of Sumner to enter into an interlocal agreement with the above municipalities to provide mutual aid and support for a SWAT Team to effectively share resources and capabilities to better protect life and property and preserve the peace; and

WHEREAS, such agreements are authorized pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Washington Mutual Aid Peace Officers Powers Act, Chapter 10.93 RCW; and

WHEREAS, the Sumner City Council Public Safety Committee has recommended approving this resolution during their committee meeting on February 15, 2023.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON,
DOES RESOLVE AS FOLLOWS:**

Section 1. The Mayor is hereby authorized to enter into the Interlocal Cooperation Agreement For Multijurisdictional SWAT Team substantially in a form approved by the City Attorney.

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

APPROVED AND ADOPTED this 3rd day of April 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

Michelle Converse, CMC, City Clerk

City Attorney Andrea Marquez

INTERLOCAL COOPERATION AGREEMENT FOR MULTIJURISDICTIONAL SWAT TEAM

WHEREAS, incidents of a serious criminal or emergent nature often require officers with specialty training and equipment in excess of what an individual law enforcement agency can reasonably provide on its own; and

WHEREAS, these incidents can often be effectively resolved via the cooperation and collective effort of multiple jurisdictions;

NOW, THEREFORE, THIS AGREEMENT is made under the Interlocal Cooperation Act (Chapter 39.34 RCW) and the Mutual Aid Peace Officers Powers Act (chapter 10.93 RCW) between the Cities of Bonney Lake, Fife, Milton, Orting, Puyallup, Sumner, and DuPont (the "Signatory Agencies"). Through this agreement, the Signatory Agencies agree to provide mutual aid and support for a multijurisdictional SWAT Team as provided herein.

Section 1. Definitions

For the purposes of this Agreement and all exhibits attached hereto the following terms, phrases, words and their derivations shall have the meanings given herein. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

- A. **Call Out** means any use or mobilization of SWAT Team following the request of the Chief Law Enforcement Officer of any Signatory Agency pursuant to the terms of this Agreement.
- B. **Chief Law Enforcement Officer** means the director of public safety or police chief.
- C. **Host Agency** means the Signatory Agency designated to maintain a single SWAT Team operational budget.
- D. **Incident Commander** means the representative appointed by the agency with primary geographic/territorial jurisdiction to serve as the overall commander of the SWAT Team during the callout.
- E. **Oversight Committee ("OC")** means the Executive Board composed of the Chief Law Enforcement Officer (or his/her designee) from each of the Signatory Agencies.
- F. **Primary Geographic or Territorial Jurisdiction** means the territorial boundaries of the city, town, or other public agency or unit of local government in which a law enforcement agency is authorized to act. Such jurisdiction includes the definition contained in RCW 10.93.020(1), as now enacted or hereafter amended.

- G. **Primarily Responsible Agency** means the law enforcement agency within whose Primary Geographic or Territorial Jurisdiction a call out occurs, if it occurs within a Signatory Agency jurisdiction. If the call out takes place outside the Primary Geographic or Territorial Jurisdiction of a Signatory Agency, then the term shall mean the Signatory Agency who requested the call out.
- H. **Requesting Agency** means the law enforcement agency that has requested assistance from the SWAT Team.
- I. **Signatory Agency** means a city, town or other public agency or unit of local government that is a signing party to this Interlocal Agreement.
- J. **Team Commander** means the individual responsible for directing the tactics and deployment of the SWAT Team during callouts.
- K. **SWAT Team** means a team of individual law enforcement officers, drawn from the Signatory Agencies, qualified by training and expertise to perform the tasks of a SWAT Team as defined in the Tactical Response and Operations Standard for Law Enforcement Agencies, published by the National Tactical Officer's Association. SWAT Team also includes a negotiator team composed of individual law enforcement officers, also drawn from the Signatory Agencies, qualified by training and expertise to perform the tasks of Negotiator.

Section 2. Objective

The primary objective of the SWAT Team is to respond effectively and appropriately to emergencies, major incidents and/or major law enforcement operations that create, or have the potential to create, significant and increased risks to public safety personnel and the public.

Section 3. Governance of the SWAT Team

- A. **Executive Board - Oversight Committee**: The management and affairs of the SWAT Team operating under this Agreement shall be governed by an Executive Board, known as the Oversight Committee ("OC"). The OC is comprised of the Chief Law Enforcement Officer (or his/her designee) from each Signatory Agency.

In the event a new Signatory Agency is added to this Agreement, the Chief Law Enforcement Officer from the newly-added agency will become a member of the OC upon that Signatory Agency's adoption of this Agreement.

- B. Chair of the OC:** The OC shall elect a Chair by majority vote at its first meeting. The Chair shall serve a 2-year term, after which the OC will hold another vote to elect a Chair for the next 2-year term. There is no limit to the number of terms an individual may serve as Chair. The Chair shall be responsible for leading discussion, preparing an agenda, and generally overseeing the operation of the OC, but has no additional voting authority as a result of his/her role as Chair.
- C. Normal Voting:** Each member of the Oversight Committee shall have one vote for all committee decisions on which a vote is required or taken. Except in emergency circumstances as outlined below, voting shall only be allowed in-person, at a properly-scheduled OC meeting. No absentee, proxy, electronic, or telephonic voting shall be allowed. All decisions, except those related to the SWAT Policy and Procedures Manual, shall be made by simple majority vote of OC members in attendance at the meeting during which the vote is taken, so long as at least a quorum of the OC is present. All decisions regarding changes to the SWAT Policy and Procedures Manual will require a unanimous vote from all OC members.
- D. Emergency Voting:** If the Chair determines a vote is required on an emergency matter, and that the vote must take place sooner than a meeting can reasonably be scheduled, the Chair may call for a vote via email. In such a circumstance, the Chair must send an email to each member of the OC. The email shall (1) describe the background and nature of the issue, (2) describe the emergent reasoning for calling an electronic vote, and (3) clearly state the motion upon which a vote is requested. Each OC member shall have 24 hours to respond to the email and indicate their vote on the matter presented. A member's vote should clearly and unequivocally state whether it is in favor or against the motion. The motion shall only pass if, at the end of the 24-hour period, a majority of the OC members have voted in favor.
- E. Quorum:** No vote shall take place at any meeting unless a majority of the Oversight Committee is present.
- F. OC Adopts Policies/Procedures:** The OC may, at its discretion, adopt policies, procedures and regulations applicable to the SWAT Team's operations and structure, consistent with best practices. In addition, the OC may adopt standards for qualification and selection to the Team, and subsequent training required for continued participation on the Team.
1. Any policies and procedures adopted by the OC must be signed by each OC member and the Chief Law Enforcement Officer of each Signatory Agency if someone other than the Chief Law Enforcement Officer is that agency's representative on the OC.
 2. Following the adoption, modification, or removal of any policy or procedure, the OC shall forward notice of the change to each Signatory Agency, along with an updated copy of the applicable policy/procedure/regulation, if applicable.

- G. **Meetings and Attendance:** At minimum, the OC shall meet once a quarter. Each meeting shall be scheduled at least 30 days in advance, except where extenuating circumstances make scheduling 30 days in advance impractical. Scheduling shall be coordinated by the Chair of the OC, who shall make every effort to ensure the meetings occur at times convenient for all members. Each member shall make all reasonable efforts to attend regularly-scheduled OC meetings in person. As indicated in section 3.C, no absentee, proxy, electronic, or telephonic voting shall be allowed except as outlined in section 3.D above.

Section 4. Operation of the SWAT Team

- A. **Governing Policies and Procedures:** During a callout, members of the SWAT Team will be governed by, and act in accordance with, the SWAT policies and procedures approved by the OC. To the extent the policies/procedures/regulations of the SWAT Team conflict with those of the individual jurisdictions, the SWAT versions will control all SWAT activities.
- B. **Team Structure:** The goal of the SWAT Team is to have seventeen (17) operators and two (2) Team Commanders.
1. **Tactical Personnel:** The SWAT Team shall be comprised of the following number of members from the Signatory Agencies. It is understood and intended the number and distribution of personnel may be adjusted at a later time by a vote of the Oversight Committee.
 - Puyallup: 8 team members plus 2 team commanders
 - Bonney Lake: 2 team members
 - Fife: 2 team members
 - Sumner: 2 team members
 - Milton: 1 team member
 - Orting: 1 team member
 - DuPont: 1 team member
 2. **Negotiators:** The SWAT Team shall include a negotiator element. The composition and structure of the negotiator element shall be left to the discretion of the OC.
 3. **Vacant Positions:** When attrition occurs in the initial SWAT Team, vacancies shall be filled based on criteria and processes approved by the OC, with the goal of always maintaining the minimum team personnel outlined in Section 4(B) above.
 4. **Team Commander – Selection and Term:** The OC shall select two (2) Team Commanders by majority vote. Each individual selected as Team Commander shall agree to serve in the position for at least three (3) years.

Following the expiration of the 3-year term, the OC may determine whether to extend the term of one or both Team Commanders for a fixed period of time.

The OC may, by majority vote, replace one or both Team Commander/s for any reason.

The OC shall determine the qualifications for the position of Team Commander, and the method by which team members may be nominated and/or considered for that position.

- C. **Incident Commander – Role and Authority:** For every SWAT Team activation/callout, an Incident Commander shall be appointed by the Primarily Responsible Agency. The Chief Law Enforcement Officer of the Primarily Responsible Agency, or his/her designee, shall notify the Team Commander of the individual being appointed as Incident Commander for that activation/callout.

The Incident Commander holds final authority for all aspects of a SWAT Team activation/ callout, including developing incident objectives, managing all incident operations, application of resources, and responsibility for all persons involved in the incident.

- D. **Team Commander – Role and Authority:** The Team Commander reports to, and is under the direct command of, the Incident Commander at any SWAT Team activation/callout. The Team Commander shall be responsible for the tactical application of SWAT Team personnel and resources to accomplish the objectives established by the Incident Commander.

- E. **Primary/Secondary Team Commander Selection and Authority:** For each SWAT Team activation/callout, one of the Team Commanders shall be identified as the primary Team Commander. The primary Team Commander shall have the authority of the Team Commander for that activation/callout. The Team Commander not identified as the primary will provide advice and support to the primary Team Commander.

The OC shall adopt a method or process by which the primary Team Commander is selected for each activation/callout, and shall notify the Team Commanders of that method or process. The Team Commanders shall abide by the method or process established by the OC, unless and until the OC approves an alternative method or process.

Section 5. Activations/Call Outs

- A. **Request For Assistance:** In the event that the Chief Law Enforcement officer of a Signatory Agency (or his/her designee in times of his/her absence) determines the Signatory Agency has a need for the services of the SWAT Team, he/she shall

contact one of the Team Commanders and make the request for assistance. He/she shall provide any relevant information requested by the Team Commander(s).

- B. **Acceptance/Denial – Response – Withdrawal:** The Team Commander(s) shall determine whether the request for assistance is within the scope and capabilities of the SWAT Team based on criteria outlined in the NTOA Manual. The Team Commander(s) shall have the authority to deny the request for assistance. If the Team Commander(s) determine the SWAT Team will respond to the request, the Team Commander(s) shall determine the number and type of SWAT Team personnel, equipment, and other resources needed. The Team Commander(s) shall have the authority to withdraw the SWAT Team from any incident at any time he/she determine/s the incident no longer fits within the scope of the SWAT Team.
- C. **Emergency Withdrawal of Single Agency From Activation/Callout:** The Chief Law Enforcement officer of a Signatory Agency, or his/her authorized representative, may withdraw all of that agency's personnel/services from an activation/callout if an emergency, major incident, or major crime event occurs within that jurisdiction that requires additional personnel to resolve safely and appropriately. In general, however, each Signatory Agency shall direct SWAT Team members in its employ to respond to an activation/callout as promptly and effectively as possible. Withdrawal of a Signatory Agency from an incident shall not affect that agency's financial responsibilities for any cost or liability incurred by the SWAT Team during the incident.

Section 6. Budgeting and Cost-Sharing

- A. **Host Agency:** For purposes of general administration, the OC shall designate one (1) Signatory Agency as the Host Agency. The Host Agency will be responsible for maintaining the budget approved by the OC, as well as all budget-related records and receipts.
- B. **Annual Operating Budget**
 - 1. By June 1 of each year, the Team Commanders shall submit a proposed annual budget to the OC. The budget should include all reasonably-anticipated training, equipment, and other operational costs for the following calendar year. The OC will consider the proposed budget at its next regularly-scheduled meeting.
 - 2. By December 31 of each year, the OC shall adopt a proposed budget for the following calendar year by majority vote. The budget should include all reasonably-anticipated training, equipment, and other operational costs for the following calendar year. Once adopted, that budget will be the official budget of the SWAT Team for the relevant calendar year, subject to change

only by a majority vote of the OC.

3. Each Signatory Agency hereby agrees to be liable for its proportional share of any OC-approved annual budget. Each member of the OC shall be responsible for submitting his/her agency's proportional share of the budget to his/her agency's budgeting process, and ensuring payment for that share is deposited into the account maintained by the Host Agency.

- C. **Proportional Share of Operational Costs:** The share of the annual SWAT Team budget for which each Signatory Agency will be responsible is equal to the percentage of each Signatory Agency's population to the total population of all Signatory Agencies combined, per the most recent Washington Office of Financial Management (OFM) estimate as of December 1 of the calendar year prior to which the budget applies. The percentage of each Signatory Agency's share shall be calculated to two decimal points (i.e., 1/100th of one-percent, without rounding). Any added amount necessary to bring the total to 100% after tabulation shall be added to the share of the Signatory Agency with the largest population.

Each Signatory Agency shall pay their annual share by January 31st of each year unless modified by a majority vote of the OC..

In the event a new Signatory Agency is added to this Agreement at any time other than the beginning of an annual budget cycle, the proportional share of each Signatory Agency shall be recalculated, to include the new Signatory Agency's proportional share, on the first day of the next new month immediately following the new Signatory Agency's adoption of this Agreement.

In the event that any Signatory Agency has prepaid its proportional share of the budget, any overpayment resulting from a recalculation of proportional share following the addition of a Signatory Agent shall not be refunded, but shall be credited to that Signatory Agency's proportional cost of the budget for the next month, and any month thereafter, until such overpayment has been resolved.

- D. **Certain Costs/Expenses Not Shared:** The following costs/expenses of participation in the SWAT Team are to be borne solely by the individual Signatory Agency to which the cost accrues

1. Regular pay and benefits for any Team Member;
2. Overtime pay for any Team Member;
3. The cost of outfitting an individual Team Member for participation on the team, including uniform, boots, gloves, helmet, other clothing-type items,

- individual weapon, and weapon-related accessories (suppressors, scopes, etc.);
4. Fuel for agency vehicles used to transport a Team Member to/from a call out;
 5. Damage, including wear and tear, on agency-owned vehicles not used exclusively for SWAT Team operations (*i.e.*, patrol cars, etc.);
- E. **Training Costs:** Costs for SWAT Team-specific training events (*i.e.*, events attended by the entire Team) shall be included in the annual operational budget. The Team Commander shall have the authority to coordinate and schedule training within the budget, and approve any requests for SWAT Team-specific training submitted by Team Members. Unless otherwise approved by the OC, individual training for Team Members (outside of Team training events) shall be the sole responsibility of the Signatory Agency that employs that Team Member.
- F. **Emergency Expenses.** If, during an incident to which the SWAT Team has responded, the Team Commander determines an emergency expense is necessary to the continued participation of the SWAT Team, the Team Commander shall inform the Incident Commander of the necessary expense and the basis therefore. The Incident Commander shall authorize or decline the expense. If the Incident Commander authorizes the expense, payment of that expense shall be the sole responsibility of the Signatory Agency employing the Incident Commander.
- G. **Consumables Used During a Callout:** The cost to replace consumable goods/equipment used during a particular activation/callout shall be the sole responsibility of the Requesting Agency for that activation/callout. Consumable goods/equipment includes, but is not limited to, explosives, ammunition, first aid supplies, and so on. Within a reasonable amount of time after the callout, the OC shall provide the Requesting Agency an accounting of any and all consumable items for which SWAT Team seeks reimbursement, and the Requesting Agency shall remit payment via the Host Agency within a reasonable time after receiving the accounting.
- H. **Funds Remaining at End of Budget Cycle:** Signatory Agencies agree that any money left over from any calendar year shall remain in the SWAT Team general account to supplement/augment continuing SWAT Team operations. Signatory Agencies shall provide a record of all direct and other costs to the Host Agency.
- I. **Audit Rights of Signatory Agencies:** Each Signatory Agency shall have the right to conduct an audit of the SWAT Team budget and account/s at any time.
- J. **Annual Report:** An annual report of all SWAT Team activities during a calendar year shall be provided to each Signatory Agency by April 1 of the following calendar year. This report shall include the following:

1. A tabulation of the number and nature of call outs and any other Team activity;
2. A tabulation of the personnel and respective jurisdiction at each call out;
3. A summary of the command positions assumed by personnel and their respective jurisdiction at each call out, including Incident Commander, Team Commanders, etc.;
4. A summary of any policy changes and the inclusion of a copy of the signed policy;
5. A copy of all completed risk matrixes, regardless of whether a SWAT Team call out resulted; and
6. A copy of the operational budget.

Section 7. Claims – Notice and Processing

- A. **Notice of Claim:** In the event a tort claim is filed against a Signatory Agency or its employees for actions arising from their conduct on behalf of the SWAT Team, the Signatory Agency shall promptly notify the other Signatory Agencies that the claim has been initiated. Any documentation, including the claim or legal complaints, shall promptly be provided to each Signatory Agency. A “tort claim” shall be defined as any written claim for damages whether or not such claim technically complies with RCW 4.96.020.
- B. **Designation of Lead Jurisdiction:** There shall be a lead jurisdiction for processing any claim filed with a Signatory Agency for alleged damages/injuries that occur as a result of SWAT Team activities. The lead jurisdiction shall be the jurisdiction that served as the Primarily Responsible Agency for the incident during which the action subject to the claim took place. If the claim also involves acts/omissions that did not occur during a SWAT Team call out, the lead jurisdiction for those portions of the claim shall be the jurisdiction that employs the individuals whose actions/omissions serve as the basis for that portion of the claim. If allegations are made against more than one Signatory Agency, or the employees of more than one Signatory Agency, the OC shall determine the lead jurisdiction for a claim by majority vote
- C. **Assistance Responding to Claims:** All SWAT Team personnel shall assist the lead jurisdiction, and anyone working on behalf of that jurisdiction with regard to any claim, in responding to the claim and providing relevant records. These records shall include, but are not limited to, incident reports, notes, transcripts, photos, evidence logs, recorded statements, documents from emergency dispatch centers, and warrants from all jurisdictions that participated in the action subject to the claim.

Whenever necessary, the Team Commander/s shall assist in coordinating the provision of any records, and communications with any Team Member.

D. Claims of \$7,500 or Less

1. Lead Jurisdiction Responsibilities: The lead jurisdiction shall be responsible for gathering records relating to the claim. The lead jurisdiction shall provide records to its insurance provider or risk-pooling organization, and shall assist the same in assessing liability for acts associated with the claim. The lead jurisdiction shall notify the other jurisdictions of any determinations as to payment of the claim. In determining whether a claim should be paid, the lead jurisdiction and its insurance provider or risk-pooling organization shall, at a minimum, consider the potential legal defenses to the claim and the costs of defending the claim.
2. Payment of the Claim - Apportionment of Payment: The lead jurisdiction, with the assistance of its insurance carrier or risk-pooling organization, shall determine whether payment of the claim would be in the best interest of the Signatory Agencies. In the event the lead jurisdiction determines payment of a claim of \$7,500 or less is appropriate, such determination shall be final and binding upon the other Signatory Agencies, and payment shall be apportioned equally among all Signatory Agencies. The lead jurisdiction shall provide full payment to the claimant, and the remaining Signatory Agencies or their insurers shall reimburse the lead agency for their respective shares. Prior to the payment of any claim, and as a condition of such payment, the lead jurisdiction shall obtain from the claimant a complete and total release of liability on behalf of all Signatory Agencies and each and every officer, agent, or volunteer of those agencies.
3. Denial of the Claim: In the event the lead jurisdiction determines payment of the claim would not be in the best interest of the Signatory Agencies, the lead jurisdiction shall notify the other Signatory Agencies, and that determination shall be binding on the other Signatory Agencies; PROVIDED, another Signatory Agency that determines payment is appropriate may pay such claim in full, but shall not be entitled to any reimbursement from the other Signatory Agencies.

- E. Claims over \$7,500**: The lead jurisdiction shall coordinate communication among all Signatory Agencies to discuss any claim over \$7,500, and to determine, with input from the involved insurance carriers or risk-pooling organizations, the appropriate manner in which to respond to such a claim. This communication may occur in person, by phone, or by email where appropriate.

Section 8. Litigation - Process – Cost Sharing

- A. **General Intent:** It is the intent of the Signatory Agencies to provide and receive services of the SWAT Team without the threat of liability to one another, and to fully cooperate in the defense of any claims or lawsuits arising out of or connected with any SWAT Team action. It is the intent of the Signatory Agencies that they share equally in the financial burden of litigation regarding SWAT Team activities. The costs to be equally shared include, but are not necessarily limited to, costs of defense, compensatory damages, and any attorney's fees awarded. The Signatory Agencies intend this cost-sharing to apply in all circumstances, regardless which Signatory Agency employs any individual team member/s whose actions or omissions are at issue in the litigation. The remainder of the liability-sharing portion of this agreement should be interpreted consistent with this intent.
- B. **Notification to Other Signatory Agencies:** In the event a Signatory Agency is served with a lawsuit alleging any act or omission by any Team Member, Team Commander, or Signatory Agency, undertaken on behalf of the SWAT Team, that Signatory Agency shall provide timely notice and documentation of the lawsuit to each of the other Signatory Agencies. The Signatory Agency that initially receives the lawsuit shall also schedule a meeting with all Signatory Agencies to discuss the lawsuit and to determine, with input from the insurer or risk-pooling organization for each Signatory Agency, the appropriate manner in which to respond to and/or defend the lawsuit. Nothing in the Agreement shall be deemed a waiver by any Signatory Agency of the requirements set forth in Chapter 4.96 RCW, and the fact that a Signatory Agency provides notice or copies of a claim to another jurisdiction shall not constitute a waiver of the requirement that a party who files suit against a jurisdiction first file a claim with the jurisdiction in accordance with Chapter 4.96 RCW. Moreover, nothing in this Agreement shall be deemed acceptance of service of a lawsuit, and the fact that a Signatory Agency provides notice or copies of a lawsuit to another jurisdiction shall not be deemed adequate service of such lawsuit.
- C. **Costs of Defense:** The cost of defense of any claim or litigation brought against any Signatory Agency or its employees for any act or omission undertaken on behalf of the SWAT Team shall be shared equally among the Signatory Agencies. The Signatory Agencies recognize this equal sharing of liability is different than the proportional sharing of budgeted expenses described above. This equal sharing of litigation costs shall apply regardless whether any Signatory Agencies are represented jointly.
- D. **Joint Representation Encouraged:** In the event of litigation against a Signatory Agency or its employees for any act or omission undertaken on behalf of the SWAT Team, the Signatory Agencies are encouraged to select a single attorney to coordinate and conduct the defense. The Signatory Agencies recognize that joint representation improves access to records and personnel, improves communication among agencies and personnel, and minimizes the overall costs of defense. It is generally intended that Signatory Agencies and their employees will agree to joint defense, except in cases of bona fide conflict, as described in the next section.

- E. **Conflict Counsel – Cost-Sharing**: In the event any attorney retained to represent any individual of Signatory Agency in any SWAT Team-related litigation determines conflict counsel should be appointed for any individual or Signatory Agency, that individual or Signatory Agency shall be entitled select their own conflict counsel, with the input of the relevant insurance carrier or risk-pooling organization. The costs of any conflict counsel shall be shared equally among the Signatory Agencies.
- F. **Dismissal From Lawsuit – Continued Cost-Sharing**: In the event a Signatory Agency or its employee/s is/are successfully withdrawn or dismissed from a lawsuit, that Signatory Agency shall nonetheless be required to pay its equal share of any subsequent and continued litigation costs.
- G. **Settlement – Procedure - Effect**
1. **Settlement Procedure**: Any Signatory Agency receiving a settlement offer or demand in any action or proceeding arising from SWAT Team activity shall immediately notify the other Signatory Agencies of that offer/demand, including the particulars thereof. Such Signatory Agency shall consult with the other Signatory Agencies and their insurance carrier/s or risk-pooling organization/s prior to making any settlement decision.
 2. **Individual Settlement Decisions Discouraged**: It is the intent of this Agreement that the Signatory Agencies act in good faith on behalf of each other in conducting settlement negotiations on liability claims or lawsuits so that, whenever possible, all Signatory Agencies agree with the settlement costs or, in the alternative, that all Signatory Agencies reject settlement demands and agree to go to trial and share in any litigation costs going forward.
 3. **Individual Settlement Decision – Settlement Costs Not Shared**: Any Signatory Agency entering into settlement with a claimant/plaintiff without ending the liability of all other Signatory Agencies and their employees shall not be entitled to contribution from the other Signatory Agencies for the amount of that settlement.
 4. **Individual Settlements – Continued Litigation Costs Shared**: Any Signatory Agency entering into settlement with a claimant/plaintiff without ending the liability of all other Signatory Agencies and their employees shall remain responsible for an equal share of any costs/expenses for any continued litigation against other Signatory Agencies and/or their employee/s.
- H. **Liability Sharing – Non-Punitive Damages**: Excluding any award of punitive

damages, liability for the actions or omissions of any individual or Signatory Agency, imposed as a result of their participation in the SWAT Team, shall be shared equally among all Signatory Agencies. The costs and expenses to be shared equally include, but are not limited to, any settlement of any claim for damages, fines, costs and expenses, awards, and attorney's fees (including costs of defense). These costs and expenses shall be shared equally regardless of which Signatory Agency or employee the action is brought against, regardless of which Signatory Agency or employee is ultimately responsible for the conduct, regardless of the number of Signatory Agencies named in the lawsuit or claim, and regardless of the number of officers from each Signatory Agency named in the lawsuit or claim.

- I. **Liability – Punitive Damages:** In the event punitive damages are awarded against any individual or Signatory Agency as a result of any action or omission occurring during any SWAT Team related activity, no other Signatory Agency shall be liable for any portion of such award. Any decision by a Signatory Agency to indemnify its officer/s or employee/s for any award of punitive damages will have no effect on the contribution owed by any other Signatory Agency.
- J. **Payment of Costs/Awards – Reimbursement:** In the event any Signatory Agency fails to timely provide payment of its equal portion of any shared costs/expenses outlined above, any other Signatory Agency may choose to pay the non-paying Signatory Agency's share. The Signatory Agency that failed to pay shall then be liable to the Signatory Agency that paid the share, plus any attorney's fees incurred in the collection of said monies from the non-paying Signatory Agency.
- K. **Hold Harmless:** The Signatory Agencies express their intent that no legal cause of action shall be brought by one Signatory Agency against any other Signatory Agency as a result of any SWAT Team related activity, except to enforce the cost and liability sharing provisions of this Agreement. Therefore, each Signatory Agency agrees to hold harmless and indemnify the other Signatory Agencies from any loss, claim or liability arising from the actions or omissions of its officers and employees or each other as related to any SWAT Team activity, except as expressly outlined in this Agreement.
- L. **Insurance – Effect on Agreement:** The failure of any insurance carrier or self-insured pooling organization to agree to or follow the terms of this section shall not relieve any individual Signatory Agency from its obligations under this Agreement.

Section 9. Insurance Coverage Required

The Signatory Agencies shall, to the best of their ability, coordinate their liability insurance and/or self-insured coverage to the extent possible to fully implement and follow this Agreement. However, the consent of any liability insurance carrier or self-insured pool or organization is not required to make this agreement effective as between the Signatory

Agencies, and the failure of any insurance carrier or risk-pooling organization to agree or follow the terms of this provision on liability shall not relieve any Signatory Agency from its obligations under this agreement.

Section 10. Employment

Except as provided herein, all public personnel are deemed to be continuing employment for their respective employers when activated as members of the SWAT Team. Each Signatory Agency shall be solely and exclusively responsible for the compensation and benefits for those personnel. All rights, duties, and obligations of the employer and the employee shall remain with that Signatory Agency. Each Signatory Agency shall be responsible for ensuring compliance with all applicable laws regarding employees, and with provisions on any applicable collective bargaining agreements, civil service rules regulations, and its own disciplinary policies and procedures.

Section 11. Press Releases

Signatory Agencies will coordinate any press releases relating to SWAT Team activities only through the Primary Responsible Agency, in an effort to fully and fairly acknowledge the contributions of participating agencies, and with due regard for the integrity of the operations and the safety of officers.

Section 12. Authorized Staff

The Signatory Agencies to this agreement shall provide the names and phone numbers of staff who have the authority to commit manpower and/or equipment to any SWAT Team activation/callout.

Section 13. Prisoner Transportation

Transportation of arrestees will be coordinated by the Incident Commander.

Section 14. Injury Benefits

Whenever any commissioned officer of a Signatory Agency is injured while acting pursuant to this Agreement, even though such injury may have occurred while the officer was under the direction of a Signatory Agency which was not the employer of the injured officer at the time of such injury, such officer and/or his/her dependents shall receive from that Officer's employer the same benefits that such officer would have received had that officer been

acting under the immediate direction of the officer's employer and within said employer's jurisdiction.

Section 15. Severability

Should any clause, phrase, sentence or paragraph of the Agreement or its application to any party or circumstance be declared invalid or void by a court of competent jurisdiction, the remaining provisions of this Agreement and/or their application to other parties and circumstances, not declared invalid or void, shall remain in full force and effect.

Section 16. Term

The minimum term of this Agreement shall be one (1) year, effective upon its adoption by all Signatory Agencies. This Agreement shall automatically extend for consecutive one (1) year terms without action of the legislative bodies of the Signatory Agency jurisdictions, unless and until terminated pursuant to the terms of this agreement.

Section 17. Termination

Any Signatory Agency may withdraw from this Agreement with thirty (30) calendar days advance written notice to the other Signatory Agencies herein. Withdrawal during any calendar year shall not entitle the withdrawing agency to a reduction or refund with respect to funds budgeted for or otherwise committed with respect to the withdrawing agency for that calendar year. Termination of this Agreement and/or withdrawal of an agency shall not terminate the indemnity/liability of that agency for any incident arising prior to the withdrawal. All terms of this Agreement shall survive the termination with respect to any cause of action, claim or liability arising on or prior to the date of termination.

1. In the event a Signatory Agency withdraws from and terminates participation under this Agreement, property provided by that Signatory Agency pursuant to the terms and conditions of this Agreement, including but not limited to vehicles, equipment, firearms, ammunition and explosives, shall belong to and shall be returned to that Signatory Agency.
2. Items that were jointly purchased through the SWAT Team general operating budget will continue to remain with and be available for use by the SWAT Team until such time that this Agreement is terminated in its entirety, at which time items that were jointly purchased by the Signatory Agencies will be divided among the Signatory Agencies in proportion to the number of Team Members each Agency contributes to the Team under the Agreement as of the date of termination.

Section 18. Contract Administration

The Signatory Agencies do not, by this Agreement, intend to create any separate legal or administrative entity. The Signatory Agencies will cooperatively work together to further the intent and purpose of this agreement. The Chief Law Enforcement Officers from the Signatory Agencies shall be responsible for administering the terms of this agreement.

Section 19. Entire Agreement

This agreement contains the complete understanding of the Signatory Agencies regarding the subject matter of this agreement.

Section 20. Authorization

By resolution or ordinance or otherwise pursuant to law, the governing bodies of the Signatory Agencies listed below have authorized their respective designated officials to execute this agreement on their behalf. This agreement may be executed by counterparts and if so, shall be deemed valid as if each designated official had signed the original.

Section 21. Additional Signatory Agencies

Additional agencies may become parties to this Agreement if approved by a majority vote of the OC at a regularly scheduled meeting. Once approved by such a vote, the new Signatory Agency will execute this Agreement by affixing the signature of a designated official to a copy of this Agreement in the same manner as the existing Signatory Agencies.

The addition of a Signatory Agency does not change the terms of this Agreement unless otherwise stated herein, and does not require re-adoption of this Agreement by any Signatory Agency or such agency's governing body.

Except as otherwise provided herein, the rights and liabilities of any additional Signatory Agency shall attach immediately upon that Agency's adoption of this Agreement by signature of a designated official.

CITY OF BONNEY LAKE

By: _____
Michael McCullough, Mayor

Date: _

As To Form: _____
Print Name: _____
Bonney Lake City Attorney

Date: _

CITY OF PUYALLUP

By:_____

Steve Kinkelie, City Manager

Date: _

As To Form: _____

Joe Beck, Puyallup City Attorney

Date: _

CITY OF MILTON

By: _____

Shanna Styron-Sherell, Mayor

Date: _

As To Form: _____

Print Name: _____

Milton City Attorney

Date: _

CITY OF SUMNER

By:_____

Date: _

Kathy Hayden, Mayor

*As To Form:*_____

Date: _

Print Name: Andrea Marquez

Sumner City Attorney

CITY OF FIFE

By: _____
Derek Matheson, City Manager

Date: _

As To Form: _____
Greg Amann, Fife City Attorney

Date: _

CITY OF ORTING

By:_____

Date: _

Joshua Penner, Mayor

As To Form: _____

Date: _

Print Name: _____

Orting City Attorney

CITY OF DUPONT

By:_____

Date: _

Ronald J. Frederick, Mayor

*As To Form:*_____

Date: _

Gordon P. Karg
DuPont City Attorney

SUBJECT: Resolution No. 1656 - Interlocal Agreement for Inmate Housing with Sunnyside, WA

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: Yes

ATTACHMENTS:

1. Resolution No. 1656 - Interlocal Agreement with Sunnyside for Jail Services

STAFF CONTACT: Brad Moericke, Police Chief

SUMMARY BACKGROUND:

The City of Sunnyside, Washington operates a 97-bed municipal jail to serve as a regional jail facility in central Washington and also contracts with a number of municipalities in western Washington as a lower cost alternative for housing inmates. The City of Sumner has long held contracts for jail housing in central Washington; previously with the City of Wapato and more recently with Yakima County Corrections. However, neither of those two options are currently available. The main reasons for having these remote jail contracts are to preserve the availability of local jail space for those booked on new charges and waiting court dates, and to more affordably house inmates serving post-conviction jail sentences.

COUNCIL COMMITTEE/STUDY SESSION: Public Safety
--

MEETING/STUDY SESSION DATE: 3/15/2023

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Approve Resolution No. 1656, allowing the Mayor to enter into the interlocal agreement for inmate housing with the City of Sunnyside, WA.

**RESOLUTION NO. 1656
CITY OF SUMNER, WASHINGTON**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT FOR INMATE HOUSING WITH THE CITY OF SUNNYSIDE WASHINGTON.

WHEREAS, the City of Sumner needs and desires to have available jail facilities to provide for the custody and care of our misdemeanor inmates; and

WHEREAS, the City of Sunnyside Washington owns and operates a 97-bed municipal jail in the City of Sunnyside to provide regional correctional services essential to the preservation of the public health, safety, and welfare; and

WHEREAS, both the City of Sumner and the City of Sunnyside desire to enter into a jail services agreement for the housing of Sumner inmates; and

WHEREAS, such agreements are authorized pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, and the Cities and Counties Jails Act, Chapter 70.48 RCW; and

WHEREAS, the Sumner City Council Public Safety Committee recommended approving this resolution during their committee meeting on March 15, 2023.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is authorized to enter into the Interlocal Agreement For Inmate Housing with the City of Sunnyside substantially in a form as approved by the City Attorney.

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

APPROVED AND ADOPTED this 3rd day of April 2023.

ATTEST:

Michelle Converse, CMC, City Clerk

Mayor Kathy Hayden

APPROVED AS TO FORM:

City Attorney Andrea Marquez

WHEN RECORDED RETURN TO:

City of Sunnyside, Washington
818 East Edison
Sunnyside, WA 98944

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUNNYSIDE, WASHINGTON
AND THE CITY OF SUMNER, WASHINGTON, FOR THE HOUSING OF INMATES**

THIS INTERLOCAL AGREEMENT is made and entered into on this 3rd day of April 2023, by and between the City of Sumner, Washington, hereinafter referred to as "Sumner", and the City of Sunnyside, Washington, hereinafter referred to as "Sunnyside", each party having been duly organized and now existing under the laws of the State of Washington.

WITNESSETH:

WHEREAS, Sunnyside is authorized by law to have charge and custody of the Sunnyside City Jail and Sumner prisoners or inmates, respectively; and

WHEREAS, Sumner wishes to designate Sunnyside as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, Sunnyside is desirous of accepting and keeping in its custody such inmate(s) in the Sunnyside Jail for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any city to contract with any other city to perform any governmental service, activity or undertaking which each contracting city is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. **GOVERNING LAW.** The parties hereto agree that, except where expressed otherwise, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement.

2. **DURATION.** This Agreement shall enter into full force and effect from the date of execution and end December 31, 2023, subject to earlier termination as provided by Section 3 herein. This agreement shall be renewed automatically for like successive periods under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require Sumner to house its inmates in Sunnyside continuously or exclusively.

3. TERMINATION.

(a) By either party. This Agreement may be terminated by written notice from either party to the other party and to the State Office of Financial Management as required by RCW 70.48.090 stating the grounds for said termination and specifying plans for accommodating the affected prisoners. The notice must be delivered by regular mail to the contact person identified herein. Termination shall become effective *thirty* (30) working days after receipt of such notice. Within said *thirty* (30) working days, Sumner agrees to remove its inmate(s) from Sunnyside.

(b) By Sumner due to lack of funding. The obligation of Sumner to pay Sunnyside under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by Sumner. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then Sumner shall have the option of terminating the Agreement upon written notice to Sunnyside, except that all services provided to that point shall be compensated at the agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to Sumner.

(c) Termination for Breach. In the event Sumner breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within *seven* (7) days of Sunnyside giving Sumner written notice thereof, or, if not reasonably capable of being cured within such *seven* (7) days, within such other period of time as may be reasonable in the circumstances, Sunnyside may terminate Sumner's rights under this Agreement in addition to and not in limitation of any other remedy of Sunnyside at law or in equity, and the failure of Sunnyside to exercise such right at any time shall not waive Sunnyside's right to terminate for any future breach or default.

(d) In the event of termination of this agreement for any reason, Sumner shall compensate Sunnyside for prisoners housed by Sunnyside after notice of such termination until Sumner retakes its inmates in the same manner and at the same rates as if this agreement had not been terminated.

4. MAILING ADDRESSES. All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

To Sunnyside:

City of Sunnyside
818 E. Edison Avenue
Sunnyside, WA 98944

Primary Contact Person:

Andrew Gutierrez, Corrections Sergeant
509-836-6200, agutierrez@sunnyside-wa.gov

Secondary Contact:

Johnnie Gusby, Support Services Commander

509-836-6216, JGusby@sunnyside-wa.gov

To Sumner:

City of Sumner
1104 Maple Street
Sumner, WA 98390
Billing: brec@sumnerwa.gov

Primary Contact Person:

Brad Moericke, Chief of Police
253-299-5641, bradm@sumnerwa.gov

Secondary Contact:

Bree Cowdery, Professional Standards
253-299-5640, brec@sumnerwa.gov
Communications: 253-287-4552

Notices mailed shall be deemed given on the date mailed. The Parties shall notify each other in writing of any change of address.

5. DEFINITIONS. The Parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

(a) Day. A twenty-four-hour-long unit of time commencing at 00:00:00 a.m., and ending 23:59:59 p.m.

(b) Inmate Classifications shall be pursuant to the Sunnyside's Objective Jail Inmate Classification System which is modeled after the National Institute of Corrections Jail Classification System:

(i) **"Minimum"** classification shall apply to those inmates who present a low risk to staff and the community.

(ii) **"Medium"** classification shall apply to those inmates who present a moderate risk to staff and the community.

(iii) **"Maximum"** classification shall apply to those inmates who present a substantial risk to staff and the community.

6. COMPENSATION.

(a) Rates. Sunnyside agrees to accept and house Sumner inmates for compensation per inmate at the rate of \$60.00 per day. This includes minimum and medium classification inmates. The parties agree that Sunnyside will not charge a separate booking fee in addition to such rate. The date of booking into the Sunnyside

Jail of Sumner inmates shall be charged a minimum of a full daily rate per inmate regardless of the time of booking within a 24-hour period. The date of release from Sunnyside Corrections and/or returned to Sumner, regardless of the time frame within a 24-hour day shall not constitute a charge by the City of Sunnyside against Sumner.

(b) Billing and Payment. Sunnyside agrees to provide Sumner with an itemized invoice listing all names of housed inmates, the case/citation number, the number of days housed (including the date and time of booking and date and time of release), and the payment amount due. Sunnyside agrees to provide said invoice by the 10th of each month. Sumner agrees to make payment to the City of Sunnyside within *thirty* (30) days of receipt of such invoice for the amount billed for the previous calendar month.

(c) Transportation of inmates is included in the cost and is provided by Sunnyside Corrections.

7. RIGHT OF INSPECTION. Sumner shall have the right to inspect, at all reasonable times, all Sunnyside facilities in which inmates of Sumner are confined in order to determine if such jail maintains standards of confinement acceptable to Sumner and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Sunnyside shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

8. FURLOUGHS, PASSES, AND WORK RELEASE. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work crews, electronic home detention or work release shall be granted to any inmate housed pursuant to this Agreement without written authorization by the committing court.

9. INMATE ACCOUNTS. Sunnyside shall establish and maintain an account for each inmate received from Sumner and shall credit to such account all money which is received and shall make disbursements, debiting such accounts in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. Sunnyside shall be accountable to Sumner for such inmate funds. At either the termination of this Agreement, the inmate's death, and release from incarceration or return to either Sumner or indefinite release to the court, the inmate's money shall be refunded in the form of a pre-paid debit card or check issued to the inmate at the time of their release or transfer.

10. INMATE PROPERTY. Sumner may transfer to Sunnyside only agreed amounts of personal property of Sumner inmates recovered from or surrendered by inmates to Sumner upon arrest. Only those items which fit into a 12-inch by 14-inch bag will be allowed on transports, when such transports are conducted by Sunnyside Jail Personnel. Additional legal material or personal belongings may be shipped to the Sunnyside Jail at the expense of the inmate.

11. RESPONSIBILITY FOR OFFENDER'S CUSTODY. It shall be the responsibility of Sunnyside to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with the individual needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require the City of Sunnyside, or any of its agents, to provide service, treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed as to require Sunnyside to provide services, treatment, facilities or programs to Sumner inmates above, beyond or in addition to that which is required by applicable law.

12. MEDICAL SERVICES.

(a) Inmates deemed Sumner inmates shall receive such medical, psychiatric and dental treatment when **emergent** and necessary to safeguard their health while housed in Sunnyside. Sunnyside shall provide or arrange for the providing of such medical, psychiatric and dental services. Except for routine minor medical services provided in the Sunnyside Jail, Sumner shall pay directly or reimburse Sunnyside for any and all costs associated with the delivery of any emergency and/or major medical service provided to Sumner inmates. In the event an inmate lacks medical and/or dental insurance, Sumner shall be responsible for any **emergent** medical, dental and psychiatric treatment provided outside of the Sunnyside Jail and shall be billed therefor.

(b) An adequate record of all such services shall be kept by Sunnyside for Sumner's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services requiring treatment from providers outside of the Sunnyside Jail shall be reported to Sumner as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, Sumner agrees to compensate Sunnyside dollar for dollar any amount expended, or cost incurred in providing the same; provided that, except in emergencies, Sumner will be notified by contacting the on-duty supervisor in Sumner prior to the inmate's transfer to a hospital, if and when circumstances allow, or as soon afterward as practicable.

(d) Sunnyside will make all reasonable efforts to ensure that medical care providers providing services to Sumner inmates adhere to payment requirements of RCW 70.48.130 when such services are not billed directly to Sumner by the medical care provider. Sunnyside may elect to have the medical care provider(s) bill Sumner directly. Sumner will have the responsibility for notifying medical care providers of these payment requirements if billed directly by medical care providers.

13. DISCIPLINE. Sunnyside shall have physical control over and power to execute disciplinary authority over all inmates of Sumner. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by applicable law.

14. RECORDS AND REPORTS.

(a) Sumner shall forward to Sunnyside before or at the time of delivery of each inmate, a copy of all inmate records pertaining to the inmate's present incarceration. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information in a timely manner.

(b) Sunnyside shall keep all necessary and pertinent records concerning such inmates in the manner mutually agreed upon by the parties hereto. During an inmate's confinement in Sunnyside, Sumner shall upon request be entitled to receive and be furnished with copies of any report or record associated with said inmate(s) incarceration.

15. REMOVAL FROM THE JAIL. An inmate of Sumner legally confined in Sunnyside shall not be removed from the jail by any person without written authorization from Sumner or by order of any court having jurisdiction. Sumner hereby designates the Corrections Sergeant as the official authorized to direct Sunnyside to remove Sumner inmates from the Sunnyside Jail. Sunnyside agrees that no early releases or alternatives to incarceration, including furloughs, passes, work release, work crews or electronic home detention shall be granted to any inmate without written authorization from the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of the Sunnyside Jail. In the event of any such emergency removal, Sunnyside shall inform Sumner of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

16. ESCAPES. In the event any Sumner inmate escapes from Sunnyside's custody, Sunnyside will use all reasonable means to recapture the inmate. The escape shall be reported immediately to Sumner. Sunnyside shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Sunnyside; however, Sunnyside shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or other countries.

17. DEATH OF AN INMATE.

(a) In the event of the death of a Sumner inmate, the Yakima County Coroner shall be notified. Sumner shall receive copies of any records made at or in connection with such notification.

(b) Sunnyside shall immediately notify Sumner of the death of a Sumner inmate, furnish information as requested and follow the instructions of Sumner regarding the disposition of the body. Sumner hereby designates the Chief of Police as the official authorized to request information from and provide instructions to Sunnyside regarding deceased inmates. The body shall not be released except on written order of said appropriate official(s) of Sumner. Written notice shall be provided within three weekdays of receipt by Sumner of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by Sumner. With Sumner's consent, to be obtained on an individual basis, Sunnyside may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by Sumner. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

(c) Sumner shall receive a certified copy of the death certificate for any of its inmates who have died while in the City of Sunnyside's custody.

18. RETAKING OF INMATES. Upon request from Sunnyside, Sumner shall, at its expense, retake any Sumner inmate within *thirty-six* (36) hours after receipt of such request. In the event the confinement of any Sumner inmate is terminated for any reason, Sumner shall, at its expense, retake such inmate at the Sunnyside Facility.

19. HOLD HARMLESS AND INDEMNIFICATION.

(a) Nothing contained in this Section or this Agreement shall be construed to create a right of indemnification in any third party.

(b) The terms of section 19 shall survive the termination or expiration of this Agreement.

19.1 SUNNYSIDE – HOLD HARMLESS AND INDEMNIFICATION. Sunnyside agrees to hold harmless, indemnify and defend Sumner, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct, negligent act, error, or omission of Sunnyside, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

(a) Sunnyside's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of Sumner, its officials, agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both Sumner and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

19.2 SUMNER – HOLD HARMLESS AND INDEMNIFICATION. Sumner agrees to hold harmless, indemnify and defend Sunnyside, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of Sumner, its officials, officers, agents, volunteers or employees, in connection with the services required by this agreement, provided, however, that:

(a) Sumner's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of Sunnyside, its agents, officers, employees or volunteers; and

(b) In the event that the officials, agents, officers, and/or employees of both Sumner and Sunnyside are negligent, each party shall be liable for its contributory share of negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorney's fees).

20. RIGHT OF REFUSAL AND TRANSPORTATION.

(a) Sunnyside shall have the right to refuse to accept any inmate from Sumner when, in the opinion of Sunnyside, its inmate census is at capacity such that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reached or exceeded.

(b) Sunnyside shall further have the right to refuse to accept any inmate from Sumner who, in the judgment of Sunnyside, has a current illness or injury which may adversely affect the operations of the Sunnyside Jail, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property, or is classified as a maximum-security inmate pursuant to Sunnyside's Objective Jail Classification System.

(c) Sumner prisoners incarcerated in Sunnyside pursuant to this Agreement shall be transported to Sunnyside by and at the expense of Sunnyside and shall be returned, if necessary, to Sumner's custody by Sunnyside personnel and at Sunnyside's expense provided that notice of the necessity of transport is received by Sunnyside *three* (3) days prior to time of expected transport.

21. INDEPENDENT CONTRACTOR. In providing services under this contract, Sunnyside is an independent contractor and neither it nor its officers, agents or employees are employees of Sumner for any purpose, including responsibility for any

federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of Sumner under any applicable law, rule or regulation.

22. GENERAL PROVISIONS.

(a) Severability. In the event any provisions of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced and valid to the extent permitted by law. All provisions of this Agreement are severable, and the unenforceability or invalidity of a single provision herein shall not affect the remaining provisions.

(b) Dispute Resolution. In the event of a dispute regarding the enforcement, breach, default, or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be resolved by arbitration pursuant to RCW 7.04A, as amended, with both parties waiving the right of a jury trial upon trial de novo, with venue placed in Sunnyside, Yakima County, Washington. Each party shall bear its own attorney fees and costs.

(c) Waiver of Breach. The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate nor be construed as a waiver of any subsequent breach by such other party.

(d) Savings Clause. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be severed only to the extent necessary to bring it within legal requirements.

(e) Filing. This Agreement shall be filed with the Yakima County Auditor's Office or, alternatively, listed by subject on each or either party's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

23. INTERPRETATION. This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and gender neutral.

24. ACCESS TO RECORDS CLAUSE. The parties hereby agree that authorized representatives of the parties shall have access to any books, documents,

paper and record of the other party which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and all other records pertinent to this Agreement and work undertaken pursuant to this Agreement shall be retained by the parties for a period of *three* (3) years after the final expiration date of this Agreement or any amendments hereto, unless a longer period is required to resolve audit, findings or litigation. In such cases, the parties may expressly agree by an amendment or separate agreement for such longer period for record retention.

25. INTERLOCAL COOPERATIVE ACT PROVISIONS Each party shall be solely responsible for all costs, materials, supplies and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incident to the fulfillment of this Interlocal Agreement, shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incident to this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement. The City Manager of the City of Sunnyside, Washington, shall be designated as the Administrator of this Interlocal Cooperative Agreement.

A copy of this Interlocal Agreement shall be filed or placed on the City's and the Port's website as provided by RCW 39.34.

26. ENTIRE AGREEMENT. This Agreement represents the entire integrated Agreement between Sumner and Sunnyside and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

CITY OF SUNNYSIDE

By: _____
Elizabeth Alba, City Manager

ATTEST:

Jacqueline Renteria, City Clerk

APPROVED AS TO FORM:

Kerr Law Group, PLLC,
Attorneys for the City of Sunnyside

THE CITY OF CITY/COUNTY OF

By: _____
Kathy Hayden, Mayor

ATTEST:

Michelle Converse, City Clerk

APPROVED AS TO FORM:

Andrea Marquez, City Attorney

STATE OF WASHINGTON)

: ss.

THE CITY OF SUNNYSIDE)

On this day personally appeared before me Elizabeth Alba, City Manager, of the City of Sunnyside, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC in and for the State of Washington

Residing at: _____

My Commission Expires: _____

STATE OF WASHINGTON)

: ss.

THE CITY OF SUMNER)

On this day personally appeared before me Kathy Hayden, Mayor, of the City of Sumner, to be known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that she signed the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this _____ day of _____, 20____.

NOTARY PUBLIC in and for the State of Washington

Residing at: _____

My Commission Expires: _____

SUBJECT: Approval of the meeting minutes from the regular council meeting of March 20, 2023 and the study session of March 27, 2023.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Minutes - March 20, 2023 regular council meeting
2. Minutes - March 27, 2023 study session

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:

Meeting minutes from the past two council meetings.

COUNCIL COMMITTEE/STUDY SESSION:

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION: Committee Do-Pass

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, Administrative Services Director Jeff Steffens, Development Services Director Doug Beagle, Chief Operating Officer Kassandra Raymond, Public Works Director Mike Dahlem, Police Chief Brad Moericke, Communications Director Carmen Palmer 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

DEPUTY MAYOR HOCHSTATTER WAS ABSENT. MOVED BY STUARD, SECONDED BY NEUMAN TO EXCUSE DEPUTY MAYOR HOCHSTATTER FROM TONIGHT'S MEETING. PASSED BY VOICE VOTE.

MAYOR HAYDEN WAS INFORMED MR. BRIDGES, SCHEDULED FOR HIS REAPPOINTMENT TO THE PARKS AND FORESTRY COMMISSION, IS UNABLE TO ATTEND TONIGHT'S MEETING. HIS REAPPOINTMENT WILL NOW TAKE PLACE IN APRIL. THE MAYOR ASKED FOR A MOTION TO AMEND THE AGENDA, REMOVING ITEM 3a (Parks & Forestry Reappointment) FROM NEW BUSINESS. THE MOTION WAS MADE BY COLE SECONDED BY BITETTO. PASSED BY VOICE VOTE.

CONSENT AGENDA

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

1. Main & Wood Intersections 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 March 13, 2023 study session.

PASSED BY VOICE VOTE.

PUBLIC HEARING

24th Street East Right-of-Way Vacation

Mayor Hayden opened the Public Hearing at 6:04pm and called on City Attorney Andrea Marquez to address the council on the matter, 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. With no questions from the council or the public, Mayor Hayden closed the Public Hearing at 6:05pm.

REGULAR BUSINESS

1. Unfinished Business

There was no Unfinished Business tonight.

2. Public Comment

Two citizens addressed the council –

Marcia Jacobs - Ms. Jacobs shared her concern with the dramatic increases in the rental market within Sumner. She asked council to consider finding other landlords for future multifamily housing projects.

Pam Osborne – Ms. Osborne invited the Council and public to the 100 year celebration of the Sumner United Methodist Church on April 8th, 2023.

3. New Business

a. Ordinance No. 2849 – Amending the 2023/2024 Biennial Budget

MOVED BY COLE, SECONDED BY NEUMAN TO APPROVE ORDINANCE NO. 2849 AMENDING THE 2023/2024 BIENNIAL BUDGET.

Chief Financial Officer Kassandra Raymond addressed the council.

PASSED BY VOICE VOTE.

b. Ordinance No. 2847 – Franchise Agreement with Fatbeam (1st reading)

MOVED BY STUARD SECONDED BY BITETTO TO PROCEED WITH THE FIRST READING OF THE FRANCHISE AGREEMENT AS PRESCRIBED BY LAW.

City Attorney Andrea Marquez addressed the council. Since this ordinance requires two readings, there will be no voting tonight.

4. Reports

a. Council

Councilmember Neuman had nothing to report tonight.

Councilmember Cole Updated the Council from the Rainier Communications Commission she highlighted the topics from the last meeting. Her big take away from the meeting and one that might interest Sumner residents is the new camera on the County City Building aimed at Mt. Rainier so if it blows we will be able to see it in real time.

Councilmember Stuard had nothing to report tonight.

Councilmember Reed had nothing to report tonight.

Councilmember Bitetto had nothing to report tonight.

Councilmember Brown had nothing to report tonight.

b. **City Administrator**

City Administrator Jason Wilson shared the following:

Upcoming Policy Issues:

- March 27, 2023 – Study Session
 - Sound Transit Parking Garage Update
 - Ordinance amending Small Subdivisions & Pipestem Lots Code
 - 2024 Comprehensive Plan Update
 - Cemetery Building Discussion
- April 3, 2023 – Regular Council Meeting
 - Proclamation for Animal Control Appreciation Week.
 - Resolution approving an ILA with Sunnyside for Jail Services
 - Resolution approving a revised ILA for our Metro Cities Tactical Response Team
 - Cultural Arts Commission Appointment (Nolan Bailey)
 - Two Cultural Arts Commission Reappointments (Donna Hardtke, Ben Haines)
 - Parks & Forestry Commission Reappointment (Ben Bridges)
 - Ordinance Approving Franchise Agreement with Fatbeam
 - Ordinance amending SMC Chapter 6 relating to Animal Control

c. **Mayor**

Mayor Hayden invited everyone to the Daffodil Parade on April 1, at 2:30 in Sumner. Sumner Main Street Association is hosting food trucks and a beer garden from noon to 5pm. We will be posting the parade route/road closures this week. The Mayor also thanked the Public Works crews for repainting the daffodils on the roadways – we are ready for spring!

5. Executive Session

6. Adjournment

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

ATTEST:

Michelle Converse, City Clerk

Kathy Hayden, Mayor



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, City Engineer Michael Kosa, Administrative Services Director Jeff Steffens, Communications Director Carmen Palmer, Public Works Director Mike Dahlem, Police Chief Brad Moericke, Chief Financial Officer Kassandra Raymond, Deputy City Attorney Maili Barber, Alisa O'Haver-Ayala, Associate City Engineer, Drew McCarty Engineering Assistant and Chrissanda Walker Associate Planner

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

CALL TO ORDER

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

STUDY SESSION BUSINESS:

1. Sound transit Parking Garage Update
Austin Neilson, Government & Community Relations Manager – South Corridor; Victoria Morris, PE, Assoc. DBIA; Project Director; John Welch, Vice President Harbor Pacific Contractors, Inc.
2. Ordinance No.2851 – Small Subdivisions& Pipestem Lots Code Update
3. Cemetery Building Update

CITY ADMINISTRATOR REPORT

AGENDA SETTING

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

EXECUTIVE SESSION

ADJOURNMENT

With no additional business before the council, Mayor Hayden adjourned the meeting at 7:45pm.
Councilmembers concurred.

ATTEST:

City Clerk Michelle Converse, CMC

Mayor Kathy Hayden

SUBJECT: Ordinance No. 2847 - Franchise Agreement with Fatbeam

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.

Tonight's reading is the second and final reading of the ordinance before Council's vote.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

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

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Move to approve Ordinance 2487, authorizing a franchise agreement between the City of Sumner and Fatbeam.

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

SUBJECT: Forestry & Parks Commission Reappointment - Bridges

CATEGORY: Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

STAFF CONTACT: Ryan Windish, Community Development Director

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: Cultural Arts Commission Appointment - Bailey

CATEGORY: Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Nolan Bailey Application

STAFF CONTACT: Ryan Windish, Community Development Director

SUMMARY BACKGROUND:

The Mayor is seeking the appointment of Mr. Nolan Bailey to a four-year term to the Sumner Cultural Arts Commission.

Mr. Bailey is a current resident of Sumner and a talented musician. He will bring to the committee a passion for art and music.

The Sumner Cultural Arts Commission consists of 15 members who are appointed by the Mayor and confirmed by the City Council. The members are to be selected without respect to political affiliations.

COUNCIL COMMITTEE/STUDY SESSION:

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve the Mayor's appointment of Mr. Nolan Bailey to the Sumner Cultural Arts Commission for a four-year term ending in 2027.

Lana Hoover

Community Relations Specialist
City of Sumner
1104 Maple St., Sumner, WA 98390
253.299.5781
253.266.4904
www.sumnerwa.gov



From: Michelle Converse <MichelleC@sumnerwa.gov>
Sent: Tuesday, January 17, 2023 10:04 AM
To: Lana Hoover <Lanah@sumnerwa.gov>
Subject: FW: Anonymous User completed Commission Application

From: Sumner Connects <notifications@engagementhq.com>
Sent: Tuesday, January 17, 2023 10:03 AM
To: Michelle Converse <MichelleC@sumnerwa.gov>
Subject: Anonymous User completed Commission Application

****EXTERNAL EMAIL****

Anonymous User just submitted the survey Commission Application with the responses below.

I am interested in serving on the following:

Arts & Culture Commission

Name:

Nolan Bailey

Phone Number:

[REDACTED]

Email Address

[REDACTED]

Address:

 Sumner, WA 98390

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

Coatings Specialist

Education:

I received my diploma from Tacoma Community College.

Professional or community involvement:

I played music in Tacoma and was an active part of their music scene from 2015-2020. I also participated in teen outreach from ages 12-15, where I played in a band to benefit the youth of Auburn.

Why are you interested in serving on this commission?

I am passionate about art and music and feel that with my experience I could contribute to Sumner's art commission.

Have you previously served on a City of Sumner commission?

No

|

SUBJECT: Cultural Arts Commission Reappointment - Hardtke

CATEGORY: Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

STAFF CONTACT: Ryan Windish, Community Development Director

SUMMARY BACKGROUND:

Mayor Hayden is seeking the approval to reappoint Donna Hardtke to the Cultural Arts Commission for a term of four years.

Ms. Hardtke has been an integral part of the Cultural Arts Commission for over 20 years and the Mayor appreciates the enthusiasm she brings to the Commission.

The Sumner Cultural Arts Commission consists of 15 members who are appointed by the Mayor and confirmed by the City Council. The members are to be selected without respect to political affiliations.

COUNCIL COMMITTEE/STUDY SESSION: Approve the Mayor's recommendation to reappoint Donna Hardtke to the Cultural Arts Commission for a term of four years (2027).

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION: Committee Do-Pass

STAFF RECOMMENDATIONS/MOTION:

SUBJECT: Cultural Arts Commission Reappointment - Haines

CATEGORY: Motion

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

STAFF CONTACT: Ryan Windish, Community Development Director

SUMMARY BACKGROUND:

Mayor Hayden is seeking the approval to reappoint Ben Haines to the Cultural Arts Commission for a term of four years.

Mr. Haines is a Senior Librarian at the Sumner branch of the Pierce County Library and has participated in the Cultural Arts Commission for a number of years. The Library is committed to supporting local culture and creativity.

The Sumner Cultural Arts Commission consists of 15 members who are appointed by the Mayor and confirmed by the City Council. The members are to be selected without respect to political affiliations.

COUNCIL COMMITTEE/STUDY SESSION:
--

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve the Mayoral reappointment of Ben Haines to the Cultural Arts Commission for a term of four-years ending in 2027.

SUBJECT: Ordinance No. 2852 - Amending Sumner Municipal Code Chapter 6:
Animal Control

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2852 - Amending Sumner Municipal Code Chapter 6: Animal Control

STAFF CONTACT: Maili Barber, Deputy City Attorney

SUMMARY BACKGROUND:

The City and Metro Animal Services wishes to update SMC 6.12 relating to the keeping of Pigs that was codified into law in 1938 by repealing that section entirely and adding a new section that addresses the permitted allowance and maintenance of farm animals (including pigs), livestock, and poultry in SMC 6.18.

COUNCIL COMMITTEE/STUDY SESSION: Public Safety
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MEETING/STUDY SESSION DATE: 3/15/2023

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Move to adopt Ordinance No. 2852, revising sections of SMC Chapter 6, Animal Control, substantially in the form as approved by the City Attorney.

**ORDINANCE NO. 2852
CITY OF SUMNER, WASHINGTON**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING TITLE 6 ANIMALS OF THE SUMNER MUNICIPAL CODE BY ADDING 6.18 TITLED LIVESTOCK AND REPEALING CHAPTER 6.12 TITLED PIGS.

WHEREAS, the City of Sumner wishes to protect the health, welfare and safety of animals kept within the City; and

WHEREAS, the City of Sumner finds a need define the keeping of such animals to allow the safe husbandry of such; and

WHEREAS, the City of Sumner wishes to clarify the permitted allowance and maintenance of such animals to include a section in the City animal code to accommodate such permissions; and

WHEREAS, the City of Sumner wishes to update SMC 6.12 Pigs, that was codified into law in 1938 by repealing the section and encompassing the allowances into the SMC 6.18.

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

Section 1. That Sumner Municipal Code Title 6 Animals is hereby amended to add Chapter 6.18 Livestock, and to read as follows:

Sections:

- 6.18.010 Definitions**
- 6.18.020 Keeping small farm animals**
- 6.18.030 Keeping large farm animals**
- 6.18.040 Livestock and poultry – at large restricted**
- 6.18.050 Animal sanitation**
- 6.18.060 Violation - Punishment**

6.18.010 Definitions

In construing the provisions of this chapter, except where otherwise plainly declared or clearly apparent from the context, words used in this chapter shall be given their common and ordinary

meaning; in addition, the following definitions shall apply to each reference to the following words or phrases:

(a) Small farm animals = Small fowl, small livestock

(b) Large farm animals = Large fowl, large livestock

(c) Small fowl = chickens, ducks, pigeons, pheasant (Golden, Amherst, etc.)

(d) Large fowl = Peacocks, geese, turkeys, emu/ostrich, etc.

(e) Small livestock = Miniature pigs such as Kune Kune, Juliana, or Potbelly breeds, Miniature goats such as Nigerian or Pygmy breeds, rabbits

(f) Large livestock = horses, bovine animals, sheep, goats, swine, reindeer, donkeys, mules, etc.

6.18.020 Keeping of small farm animals.

The keeping of small farm animals, including chickens, geese, ducks or other small fowl, rabbits, and miniature goats, and miniature pigs is permitted subject to the following standards:

(1) The maximum number of all small fowl and small livestock permitted to a residence shall be:

(a) five small fowl per ½ to one acre. (example: ½ to 1.99 acre = 5 allowed; 2 acres = 10 allowed.)

(b) small livestock ½ to 1 acre = 2 permitted. Each additional acre 2 per acre increase allowed.

(c) All small fowl and livestock must be maintained in a manner that prevents accumulation of manure, debris, excess feed to prevent rodents and other pests.

(d) Structures and pens for small fowl and small livestock shall be in accordance with recommended sizes for the species and shall be sturdy, weatherproof, escape proof, fall within the zoning allowances for the property, and maintained in a cleanly fashion.

(e) Structures will not be permitted within 25 feet of any property boundary, or occupied building on another's property (current or hereafter constructed).

(f) Male miniature goats and miniature pigs must be neutered.

(g) Small farm animals and small livestock may not create a nuisance for the neighborhood – such nuisances (noise, odor, etc.), confirmed by two separate neighboring residences by affidavit, must be abated within 30 days or the animals may be disallowed at the location.

(h) Shelter shall be available in the form of a minimum two-sided pen, stall, or building with a cover which must conform to applicable building codes for the location.

6.18.030 Keeping of large farm animals.

The keeping of large farm animals is permitted on properties over one acre; provided, that the property contains a minimum of one-half acre of lot area available as pasture, yard, or stall space for each two such animals in any combination. Any pen or building shall be located at least 100 feet from any neighboring building now existing and hereafter constructed, owned by any other person within the city and must conform to applicable building codes for the location.

(1) Permitted uses

- (a) Two large fowl per ½ to one acre with additional two per acre increase.
- (b) Two large livestock per one acre with additional two per acre increase.
- (c) All large livestock and fowl must be maintained in a manner that prevents accumulation of manure, debris, or excess feed to prevent rodents or other nuisance pests and odors.
- (d) Shelter shall be available in the form of a minimum two-sided pen, stall, or building with a cover which must conform to applicable building codes for the location.
- (e) Structures and pens for large fowl and livestock shall be in accordance with recommended sizes for the species and shall be sturdy, weatherproof, escape proof, fall withing the zoning allowances for the property, and be maintained in a cleanly fashion.
- (f) Any pen, stall, or building shall be located at least 100 feet from any neighboring building now existing and hereafter constructed, owned by any other person within the city.
- (g) Large farm animals and large livestock may not create a nuisance for the neighborhood – such nuisances (noise, odor, etc.), confirmed by two separate neighboring residences by affidavit, must be abated within 30 days or the animals may be disallowed at the location.

6.18.040 Livestock and poultry – at large restricted

Livestock and poultry must be confined to the owner or caretaker's property boundaries and may not become at large. Livestock or poultry that is with a handler and under control by a normal lead, tether, halter, or reins is permitted. It is unlawful for any person owning or having the charge and control of any livestock or fowl to permit or allow the animals to enter or trespass upon private or public property without the express permission of the owner or caretaker of such property while not under control or at large. Any livestock or fowl at large may be seized and impounded.

6.18.050 Animal sanitation

Where any livestock, with the exception of small fowl, deposits any fecal matter upon any public sidewalk, street, alley or within any city park, playground, or cemetery, or upon any other public place or another's property, the keeper of said animal shall remove and dispose of such fecal matter before the keeper of the animal leaves the immediate area where the fecal matter was deposited. For purposes of this section, the "keeper of an animal" shall mean the person who has immediate possession and control of the animal while the animal is on public property as set forth above.

6.18.060 Violation – Punishment.

Any party keeping livestock in violation of this chapter or failing or refusing to comply with the order of the Animal Control Authority mentioned in SMC 6.04.020, shall be found to have committed a Class 1 civil infraction as adopted by reference and defined under RCW 7.80.120. Additionally, violations of this chapter are subject to the penalties outlined in SMC 6.04.305 Habitual offender.

6.18.080 Construction.

If the provisions of this chapter are found to be inconsistent with other provisions of the Sumner Municipal Code, this chapter is deemed to control.

Section 2. That Sumner Municipal Code Chapter 6.12 PIGS is hereby repealed as follows:

Sections:

6.12.010—Prohibited locations.

6.12.020—Sanitation.

6.12.030—Violation—Penalty.

6.12.010 Prohibited locations.

No pig or pigs shall be kept by any person within the city within 300 feet of any inhabited house on adjoining property nor within 200 feet of any street. (Ord. 444 § 1, 1938. Prior code § 5.06.010)

6.12.020 Sanitation.

No one within the city may keep any pig or pigs unless the places where they are kept shall be at all times maintainable in a sanitary condition and this condition shall be determined by the health officer of the city. When the health officer notifies the owner that the place or places where the pig or pigs are kept is unsanitary the party so keeping the pig or pigs may have five days time in

which to place the same in a sanitary condition in accordance with the direction of the city health officer and if they are not placed in a sanitary condition within the five days the places may be abated as a nuisance. (Ord. 444 § 2, 1938. Prior code § 5.06.020)

6.12.030 Violation—Penalty.

Any party keeping pigs in violation of this chapter, or failing or refusing to comply with the order of the health officer mentioned in SMC 6.12.020 shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not to exceed \$100.00 or imprisoned in the city jail not to exceed 30 days, or may be punished by both such fine and imprisonment. (Ord. 444 § 3, 1938. Prior code § 5.06.030)

Section 3. Severability – Construction. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction; such decision shall not affect the validity of the remaining portions of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Sumner Municipal Code, the provisions of this ordinance shall control.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the Code Reviser are authorized to make the necessary corrections to this ordinance, 6 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 5. Effective Date. This ordinance shall be in full force and effect 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 3rd day of April, 2023.

Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

City Clerk Michelle Converse

City Attorney Andrea Marquez

First Reading:

Date Adopted:

Date of Publication:

Effective Date:

APRIL 2023

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

Meeting dates and times may change. Please contact City Hall to confirm this information prior to any meeting you plan to attend. **These meetings are accessible to persons with disabilities.** For individuals who require special accommodations, please contact City Hall at (253) 299-5500, 24 hours in advance.

Name: Michelle Converse, CMC

Title: City Clerk

City of Sumner | 1104 Maple Street | Sumner, Washington 98390

Ph: (253) 299-5500

Website: www.sumnerwa.gov