



CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
August 7, 2023 6:00 PM

The city is conducting this public meeting using a hybrid model. The public is welcome to attend tonight's meeting in-person at City Hall (Council Chambers), or virtually by using the meeting access link below.

<https://sumnerwa-gov.zoom.us/j/84690189935>

Or One tap mobile: +12532158782,,84690189935#

Or Telephone: +1 253 215 8782 / +1 253 205 0468 US

Webinar ID: 846 9018 9935

CALL TO ORDER

Pledge of Allegiance

Invocation

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

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

CONSENT AGENDA

1. Approval of the minutes from the July 17, 2023 regular council meeting and the study session of July 24th, 2023.
2. Resolution No. 1660 - Interlocal Agreement for School Resource Officer with Sumner-Bonney Lake School District
3. Approval of electronic payments and warrants in the amount of \$4,819,406.96.

PUBLIC HEARING

REGULAR BUSINESS

1. **Unfinished Business**
2. **Public Comment (Limit 3 minutes)**
Members of the community who wish to give public comment are strongly encouraged to join the meeting via the provided link or by telephone. If you are unable to attend 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 day of the meeting. Any written comments received will be read into the record and/or distributed to the City Council. Please contact the City Clerk at 253-299-5590 with any questions.
3. **New Business**
 - a. Ordinance No. 2865 - Pierce County Boundary Review Board Water and Sewer Service Extension Approval
 - b. Ordinance No. 2866 - Amending the 2023/2024 Biennial Budget
 - c. Ordinance No. 2857 - Repealing and Amending Sumner Municipal Code 9.16 and 9.20
 - d. Ordinance No. 2867 - Amending Sumner Municipal Code 2.100: Personnel Policies
 - e. Ordinance No. 2868 - Amending the 2023 Compensation Schedule

- f. Ordinance No. 2863 - Franchise Agreement with Ziply Wireless LLC
- g. Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC

4. Reports

- a. Council
- b. City Administrator
- c. Mayor

5. Executive Session

6. Adjournment

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



SUBJECT: Approval of the minutes from the July 17, 2023 regular council meeting and the study session of July 24th, 2023.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. July 17, 2023 Minutes
2. July 24, 2023 Minutes

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:

Minutes from the previous two council meetings.

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

COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Approve as written.



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

Staff present: City Attorney Andrea Marquez, Development Services Director Doug Beagle, Community & Economic Development Director Ryan Windish, Public Works Director Mike Dahlem, Police Chief Brad Moericke, Communications Director Carmen Palmer, Administrative Services Director Jeff Steffens, City Engineer Michael Kosa, Engineering Specialist Courtney Littrell 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

COUNCILMEMBER REED WAS ABSENT. MOVED BY HOCHSTATTER SECONDED BY BITETTO TO EXCUSE MR. REED FROM TONIGHT'S MEETING.

PASSED BY VOICE VOTE.

CONSENT AGENDA

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

1. White River Restoration - Construction Management Contract Award
2. Approval of the checks and electronic payments in the amount of \$3,266,597.11.
3. Approval of the minutes from the June 20, 2023 regular council meeting and June 26th and July 10th, 2023 study session.
4. Public Works Trust Fund Application Authorization
5. 160th Ave E Storm and Sewer Line Replacements - Construction Contract Award

PASSED BY VOICE VOTE

PUBLIC HEARING

There was no Public Hearing tonight.

REGULAR BUSINESS

1. Unfinished Business

There was none tonight.

2. Public Comment

Sam and Janis Suznevich, of Sumner – spoke about fireworks in Sumner.

3. New Business

a. Ordinance No. 2862 - Sumner Municipal Code Update - 12.20 Sidewalk Construction

MOVED BY STUARD SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2862
SUMNER MUNICIPAL CODE UPDATE – 12.20 SIDEWALK CONSTRUCTION

Engineering Specialist Courtney Littrell spoke to the topic.

Discussion ensued.

PASSED BY ROLL CALL VOTE.

4. Reports

a. Council

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

Councilmember Bitetto thanked the Suznevich's for attending and voicing their concerns about fireworks to the Council. July 14th Music off Main was well attended. She ended her comments by encouraging everyone to return their ballots, the future of the library depends on it!

b. Mayor

Mayor Hayden commented on the upcoming events, which include:

July 21, 2023, 6:30 Music Off Main – Sonic Funk Orchestra at Heritage Park

July 29, 2023, 3:30/6:30 Chalk Art Festival/Music Off Main – Amelia Day & the Cloves at Loyalty Park

August 6th, Classy Chassis Car Show downtown.

c. City Administrator

Administrative Services Director Jeff Steffens on behalf of City Administrator Jason Wilson updated the Council and the public on the following items:

Upcoming Policy Issues:

- July 24, 2023 – Study Session
 - Community Court update
 - Payroll and pay date code amendments
- July 31, 2023 – No Meeting (5th Monday)
- August 7, 2023 – Regular Council Meeting
 - Resolution for ILA with SBLSD for School Resource Officer
 - First reading of an Ordinance authorizing a Franchise Agreement with Ziplly Wireless LLC
 - First reading of an Ordinance authorizing a Franchise Agreement with Ziplly Fiber Pacific LLC
 - Ordinance – Updating Drug Code
 - Ordinance – Amending Personnel Policies related to payroll
 - Ordinance – Amending 2023 Compensation Schedule

Ordinance – Adopting the Pierce County Boundary Review Board Water and Sewer Service Extension

5. Executive Session

There was none tonight.

6. Adjournment

With no other matters before the Council, Mayor Hayden adjourned the meeting at 6:17pm. Councilmembers concurred.

ATTEST:

Michelle Converse, City Clerk

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Kathy Hayden, Mayor



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

Staff present: City Attorney Andrea Marquez, Administrative Services Director Jeff Steffens, and Chief Operating Officer Cassandra Raymond.

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

CALL TO ORDER

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

COUNCILMEMBERS NEUMAN AND DEPUTY MAYOR HOCHSTATTER WERE ABSENT.

BOTH NOTIFIED THE MAYOR PER SECTION 13 OF COUNCIL RULES. A MOTION TO EXCUSE THE DEPUTY MAYOR AND COUNCILMEMBER WAS MADE BY BITETTO SECONDED BY COLE. MOTION PASSED.

REGULAR BUSINESS

1. Community Court Update
2. Ordinance No. 2867 – Amending Sumner Municipal Code 2.100: Personnel Policies
3. Ordinance No. 2868 – Amending the 2023 Compensation Schedule

CITY ADMINISTRATOR REPORT

ADJOURNMENT

With no additional business, Mayor Hayden adjourned the meeting at 7:30pm.

Attest:

Kathy Hayden, Mayor

Michelle Converse, City Clerk

SUBJECT: Resolution No. 1660 - Interlocal Agreement for School Resource Officer
with Sumner-Bonney Lake School District

CATEGORY: Resolution

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Resolution No. 1660 - Interlocal Agreement for School Resource Officer with Sumner-Bonney Lake School District

STAFF CONTACT: Brad Moericke, Police Chief

SUMMARY BACKGROUND:

The City of Sumner and the Sumner-Bonney Lake School District have had an interlocal agreement to provide a police officer as a full-time SRO for the schools within the City of Sumner over the past 3 years and both the City and the District desire to enter into a new successor 3-year agreement for SRO under similar terms as the previous agreement. The SBLSD would reimburse the City for the costs (salary + benefits) associated with providing a uniformed police officer for the 180 day (9 month) academic year for each of the three years.

COUNCIL COMMITTEE/STUDY SESSION: Public Safety
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MEETING/STUDY SESSION DATE: 7/19/2023

COMMITTEE RECOMMENDATION: Do-pass

STAFF RECOMMENDATIONS/MOTION:

Approve Resolution No.1660 authorizing the Mayor to enter into the interlocal agreement for School Resource Officer Program with the Sumner-Bonney Lake School District.

**RESOLUTION NO. 1660
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 WITH THE SUMNER-BONNEY LAKE
SCHOOL DISTRICT NO. 320 FOR A SCHOOL RESOURCE OFFICER
PROGRAM.**

WHEREAS, the City of Sumner and the Sumner-Bonney Lake School District No. 320 desire to enter into a successor Interlocal Agreement on the basis of mutual advantage and benefit for a School Resource Officer (SRO) Program; and

WHEREAS, the City and the District recognize that it is advantageous to have a School Resource Officer Program during regular school hours and for certain school events throughout the school year to assist the District in its educational mission by responding to and addressing issues affecting the safety, security, and efficiency of the schools and providing positive interactions with students; and

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

WHEREAS, the Sumner City Council Public Safety Committee has recommended approving this resolution during their committee meeting on July 19, 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 Agreement with the Sumner-Bonney Lake School District for School Resource Officer Program 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 7th day of August 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

Michelle Converse, CMC, City Clerk

City Attorney Andrea Marquez

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF
SUMNER AND THE SUMNER-BONNEY LAKE
SCHOOL DISTRICT NO. 320 FOR SCHOOL
RESOURCE OFFICER (SRO) PROGRAM**

THIS INTERLOCAL AGREEMENT, made and entered into this ____ day of August 2023 by and between the Sumner-Bonney Lake School District NO. 320, a municipal corporation of the State of Washington (hereinafter referred to as the "District") and the City of Sumner, a Washington Municipal Corporation (hereinafter referred to as the "City").

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, permits local governmental agencies to make more efficient use of their powers by enabling them to cooperate with each other on the basis of mutual advantage and thereby to provide services and facilities in a manner that best accords with geographic, economic, population or other factors influencing the needs and development of each governmental entity; and

WHEREAS, the City and District recognize that a School Resource Officer program benefits both the District and the City; and,

WHEREAS, the parties have mutually determined that it would be beneficial to assign one (1) full-time, experienced, fully commissioned City of Sumner Police Officer as the School Resource Officer (hereinafter referred to as "SRO") for certain District schools within the City including, but not limited to, Sumner High School during regular school hours and for certain special school events throughout the school year, in order to assist the District in its educational mission by responding to, and addressing issues such as juvenile crimes affecting the safety, security and efficiency of the school system as well as providing for positive interaction with students on a regular basis; and

WHEREAS, the District agrees to provide funding to offset costs to the City in specifically assigning the District one full-time, commissioned City of Sumner police officer to serve as SRO; and

NOW, THEREFORE, the City of Sumner, Pierce County, Washington and the Sumner-Bonney Lake School District No. 320, Pierce County, Washington, have entered into this Interlocal Agreement in consideration of the mutual benefits to be derived therefrom and in accordance with the authorization provided by Chapter 39.34 RCW as follows:

1. Purpose

By entering into this Agreement the parties agree that the City shall provide one full-time commissioned City of Sumner police officer to be assigned to the District schools within the City limits of Sumner (the "Designated Schools") and to implement a SRO program in the District for the term of this Agreement. The City does not intend to assume, nor the District expect it to gain, any greater responsibility or liability than what is specifically addressed in this Agreement or than that imposed through the normal provision of law enforcement services.

The SRO program will:

- a. Discourage drug abuse amongst students;
- b. Discourage criminal activity on school grounds and surrounding neighborhoods;
- c. Provide problem solving and other methods of dispute resolution to students, parents, teachers and neighborhood residents;
- d. Bridge the gap between law enforcement officers and the District's students by encouraging cooperation;
- e. Aid in the reduction of juvenile crime through counseling, teaching about the criminal justice system and taking personal interest in students
- f. Provide law enforcement services to the District as appropriate;
- g. Promote safety at the Designated Schools by providing a uniformed police presence;
- h. Provide education on relevant law enforcement and public safety topics.

2. Term

This agreement shall be for a period of approximately three (3) years, commencing on September 1, 2023 and shall terminate three days after the last day of the 2025-2026 school year, unless terminated earlier as set forth below. This agreement may be renewed thereafter upon the mutual written consent of both parties no later than July 1, 2026. The City may temporarily suspend this agreement for operational necessity, in the sole discretion of the Police Chief, upon thirty (30) days written notice. Either party may terminate this agreement for any reason upon sixty (60) days written notice. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by midnight of the third day following the date of posting in the United States mail, by certified mail,

3. Force Majeure

Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the Contract for a period of thirty (30) days or more.

4. School Resource Officer (SRO) Responsibilities

4.1 Duties of the SRO include but are not limited to the following:

- a. Community problem solving, safety education, and providing a law enforcement presence and resource to students at the Designated Schools;
- b. Enforcement of federal, state and local laws;
- c. Serve as a liaison between school staff, faculty and students;
- d. Confer with school staff on strategies to prevent juvenile delinquency and enhance school safety, and assist in the implementation of those strategies;
- e. Assist in the investigation of crimes committed on or adjacent to the Designated schools' property;
- f. Providing students with social service resources;

- g. Participate in meetings and school activities appropriate to the SRO's role;
- h. Enhance the trust relationship between schools, parents, and police and be a positive police presence;
- i. Occasionally act in an instructional role when presenting legal and safety information to students in a classroom setting;
- j. Issue a written report monthly to the District and the Chief outlining their activities;
- k. Establish and maintain a working rapport with the school administration and staff;
- m. Wear the official City police uniform, including carrying a firearm, with civilian attire being only worn on occasions mutually agreed upon by the District, the SRO and the City's Chief of Police;
- n. Assist in resolving disputes on campuses, including working with students to help them solve disputes in a non-violent manner;
- o. Consistent with State law or other policy or agreement, maintain an activity log to include all SRO activities such as meetings, conferences, extra-curricular activities, events, arrests, investigations, and training;
- p. Perform other duties as mutually agreed upon by the City, SRO and District provided the duty is legitimately and reasonably related to the SRO program and described in writing and is consistent with Federal and State law; local ordinances; and City and District policies, procedures, rules and regulations;
- q. Assist in providing school-based security during the regular-school day and the Extracurricular Events (as defined below and outlined on Exhibit A) and assist in the promotion of a safe and orderly environment at the District (the SRO, however, shall not act as a disciplinarian. If the SRO is confronted with a non-criminal violation such as a school rule violation, the SRO will assist only for the purpose of providing security for the school staff member(s) charged with enforcing school rules. In the absence of an authorized school district employee, the SRO may refer the matter to school administration);
- r. Provide ongoing assessments of school safety.

4.2 The SRO will assist with the enforcement, investigation, and prevention of criminal activity at the Designated Schools, and will respond to calls for service at other campuses as needed and when available. The SRO will patrol the Designated Schools' campuses and facilities during school hours and during Extracurricular Events, as needed, to deter and help address issues that affect the safety and well being of students, staff, and other community members. The SRO will also serve as a positive resource to students, parents, and staff and will be available to teach/assist with relevant public and school safety curriculum as appropriate.

4.3 The SRO will participate as a guest speaker on law enforcement or public safety topics as needed and agreed upon by the District and the City in the Designated Schools. The parties agree that the City will maintain operational control over the SRO at all times and that the City may call the SRO away from assigned duties for mandatory training (both SRO and general department trainings), emergency responses, legal summons/subpoena, or as deemed necessary for public safety by the on-duty police supervisor. During periods when school is not in session, the City may assign the SRO to other City related duties. The SRO will dedicate at least seventy-five percent (75%) of his/her on-duty time during the school year to the

performance of this Agreement. The parties agree that this Agreement assumes a traditional one hundred eighty (180) day school year. The parties agree that if any significant change in the District's scheduling results in a school year exceeding one hundred eighty (180) days or being less than one hundred and eighty days (180) the parties may renegotiate the terms of this agreement, including compensation as applicable, only insofar as they relate to the change in school year length.

- 4.4 The daily activities of the SRO will be governed by the City's School Resource Officer Standard Operating Procedure, as amended from time to time, which is incorporated herein by reference. In the event of a conflict between this Agreement and the City's School Resource Officer Standard Operating Procedure, the operating procedures shall control.

5. Interview and Arrest Procedures

If the SRO plans to interview a suspect or victim of a crime, the SRO, to the extent practicable, will advise and work with the principal of the school in which the suspect or the victim attends, to minimize disruption to the school and other students. A school principal or his/her designee may request to be present during the interview of a student, however that presence may subject the witness to a legal subpoena as a witness in any ensuing legal action. In the event a SRO arrests a District student, on District property, the SRO shall employ best efforts to notify the school principal or his/her designee as soon thereafter as practical. In the event that the arrested student is a juvenile, the City will make attempts to notify the parent or legal guardian pursuant to City policies and procedures. The District may also make notification as necessary under its own policies and procedures.

6. City Responsibilities

- a. To provide one commissioned police officer to be assigned to the District for the entire calendar school year for the term of this agreement. The SRO shall be required to report to the District, in advance where possible, any pre-arranged use of paid vacation leave. Where the SRO is unable to report to work due to a personal or family health emergency or sickness for a period of three (3) consecutive days or more, after the third day, the City agrees to provide back-up coverage of the SRO duties for the day(s) the SRO is unavailable, if possible in light of the City's operational needs. For each school day during the term of this agreement, the SRO shall work a 4-10 schedule, between the hours of 06:30 and 16:30 Tuesday through Friday. As part of this Agreement, the City shall also provide one fully commissioned police officer, whether the SRO or another officer, for the after-hours District-sponsored events outlined on Exhibit A (the "Extracurricular Events"). The SRO is a non-essential employee and will not be scheduled to work for the district on any holidays recognized by the City. Should the District require, or request, exclusive SRO or police officer presence at District-sponsored events other than those that occur during regular school hours or specifically identified as Extracurricular Events, the District shall compensate the City for any overtime pay the assigned officer earns in addition to the compensation outlined in Section 7, below.
- b. Provide law enforcement services to the Designated Schools during regular school hours, and during the Extracurricular Events.

- c. Provide adequate record keeping and reporting, as required by federal, state, and local laws.
- d. The City will consider the District's requirements, and the requirements of this agreement in selecting the SRO after taking into consideration input from the District.
- e. All salary, wages, and/or other employee compensation for City employees rendering services under this Agreement shall be the responsibility of the City, except as otherwise addressed in Section 7 of this Agreement.
- f. The City agrees to provide all law enforcement related training and equipment necessary to support the SRO consistent with that provided to regular patrol officers in the City's police department.
- g. Provide the SRO with a cell phone and laptop computer with accessories.
- h. The SRO shall remain an employee of the City, and shall not be an employee of the District. The District and the City acknowledge that the SRO shall remain under the direct supervision of the City. The City shall remain solely responsible for the SRO's hiring, training, discipline, or dismissal. Any allegations of improper conduct shall be referred to the SRO's immediate supervisor.
- i. The cost of overtime as authorized by the City for work not covered within the scope of this agreement.

7. District Responsibilities:

- a. Provide a secure and adequate office, with standard amenities, for the SRO program.
- b. Provide a secure and confidential location for files and records that can be properly locked.
- c. Provide a desk with drawers, a chair, access to a printer, and general office supplies.
- d. Provide District in-service training as applicable.
- e. Provide regular feedback and an annual performance review of the SRO to the Chief.
- f. Provide input in the SRO selection process.
- g. Provide advanced notice to the City of any District-sponsored events that require SRO or police presence, that occur outside the normal school day hours or the Extracurricular Events.
- h. Provide funding for the SRO position, as outlined in Section 7 herein.

8. Funding

The District agrees to pay the following amounts to the City for its performance of the services set forth in this Agreement:

8.1 The District agrees to pay the sum of Ninety-Two Thousand Six Hundred Dollars and 00/100 (\$92,600) per year for services to be rendered during the school years (2023-2026). The district will pay semiannually in September and in February during the school year.

8.2 On or before September 30th of every year thereafter during the term of this Agreement, the District shall pay to the City a five percent (5%) annual CPI increase over the prior year's payment.

8.3 The District shall compensate the City for the actual cost of any requested SRO or other officer presence during District-sponsored events that occur outside the regular school day hours or the Extracurricular Events specifically covered by this agreement. Invoicing and payment for said extra coverage shall be pursuant to the information below.

8.4 The parties agree that their respective fiscal staff shall work out an agreeable invoicing schedule. The District shall pay the City within thirty (30) days of receiving an invoice from the City. Payment due to the City shall be mailed to:

City of Sumner
Finance Department
1104 Maple Street Suite 240
Sumner, WA 98390

9. Records

The City shall maintain adequate records to support billings for services set forth in this Agreement. Said records shall be maintained for a period of six (6) years after completion of this Agreement. The District or its authorized representatives shall have access, during normal working hours, to any City books, documents, papers or records which directly relate to this Agreement, except those documents which are exempt from public disclosure as a matter of law.

10. Request for SRO Removal/Replacement

If the District has good cause to believe that a particular SRO is not effectively performing in accordance with this Agreement, the District may make a written request to the City that the SRO be removed from the District. Within ten (10) business days after receiving the request, the District Superintendent or designee will meet with the Police Chief or his/her designee to discuss the removal request. The SRO shall be removed and replaced if, in the opinion of the Superintendent and the City Mayor or their designees, the performance issue cannot be resolved.

11. Prohibition against assignment

Neither this agreement nor any interest therein may be assigned by either party without first obtaining written consent of the other party.

12. Independent Contractor Status of City of Sumner

- a. The City, its employees, representatives, contractors and agents shall perform all duties pursuant to this agreement as an independent contractor. The District shall not control or supervise the manner in which this Agreement is performed nor withhold or pay any taxes on behalf of the City, its employees, representatives, contractors or agents. Personal Liability insurance is the responsibility of the City.
- b. The City certifies they are customarily engaged in the business for which this agreement is written, that they are responsible for filing a schedule of expenses with the Internal Revenue Service on the next applicable filing date, that they have established an account with all state agencies requiring such registration or license,

and that they are maintaining a separate set of records reflecting items of income and expense for their business.

13. Identification

- a. Each party to this Agreement shall indemnify, defend and hold the other party and its officers, directors, agents, employees, representatives, vendors, subcontractors and contractors harmless from and against any and all costs, liabilities, suits, losses, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees, court costs, and disbursements, that the other party may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring during the Term of this Agreement, but only to the extent the same are caused by any negligent, omission or wrongful act of the indemnifying party. The provisions of this section (Indemnification) shall survive the expiration or earlier termination of this Agreement.
- b. Evidence of insurance or self-insurance coverage will promptly be provided upon request by either party.

14. Drug Free Work Place

The City and the City's employees, representatives, contractors or agents shall perform all the duties pursuant to the Agreement in compliance with the intent of the City's drug free workplace policy.

15. Criminal Activity

- a. The City and the City's employees and agents shall perform all duties pursuant to the Agreement without conviction of any crimes against persons, nor be found in any dependency action by the court in a domestic relations proceeding or in any disciplinary board final decision to have sexually assaulted or exploited a minor or have been convicted of any crime listed in RCW 28A.400.322.
- b. The City shall ensure that the City and City's employees or agents having unsupervised access to children in the performance of this agreement have no prior conviction, civil adjudications or disciplinary board final decisions which indicate that it is inappropriate for these individuals to be working with children. Furthermore, the City shall require the City's employees or agents who have regularly scheduled unsupervised access to children are fingerprinted and checked through the Washington State Patrol (WSP) Criminal Identification System, prior to performing services under this contract.

16. Property

Any real or personal property used or acquired by any party to this Agreement in connection with the performance of this Agreement will remain the sole property of such party, and the other parties shall have no interest therein.

17. Verbal Agreements

This written agreement constitutes the mutual agreement of the City and the District in whole. No alteration or variation of the terms of this agreement and no oral

understandings or agreements not incorporated herein, unless made in writing between parties hereto, shall be binding.

18. Applicable Law

- a. This agreement shall be governed by the laws of the State of Washington. Venue for any legal action shall be proper only in Pierce County Washington.
- b. The City shall comply, where applicable, with the contract work hours and safety standards act and collective bargaining agreements, and any other federal and state statutes, rules, and regulations.

19. Non-Discrimination

The Parties agree that, in the course of carrying out the terms of this agreement, they shall not discriminate on the basis of sex, race, creed, religion, color, national origin, age, honorably discharged veteran or military status, marital status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability in its programs and activities.

20. Confidentiality

Laws involving confidentiality govern both the District and the City. Both the District and City agree that its employees, subcontractors and others shall maintain the confidentiality of all information provided by the other to the extent authorized to do so by the laws governing each. The federal Family Educational Rights and Privacy Act governs the District and the City understands this Act and other state and federal laws will restrict the issuance of certain information to the City. The District likewise understands that certain intelligence and law enforcement information is to remain confidential and in sole control of the City. Each agency agrees to respect the requirement imposed on the other and in the event of any judicial action being taken to promptly notify the other of any attempt to seek disclosure of information.

21. Ethical Conduct

- a. Neither the City nor any employee or agent of the City shall participate in the performance of any duty pursuant to this agreement in which duty such person has participated as an employee of the District and the City shall ensure there are no violations of the Chapter 42.23 RCW Code of Ethics for Municipal Officers-Contract Interests.
- b. Neither the City nor any employee or agent of the City shall participate in the performance of any duty or service in whole or in part under this agreement that is in violation of Ethics in Public Service law in RCW 42.17 A.555 related to use of public office or agency facilities and RCW 41.06.250 prohibiting the use of public resources for political activities.

22. **Disputes**

Any factual dispute between the City and the District that relates to this Agreement shall be referred for resolution to the Mayor, or his/her designee, and the Superintendent of the District, or the Superintendent's designee. In the event the dispute cannot be resolved between the parties to each party's mutual satisfaction, the issue shall be submitted to mediation through the Pierce County Dispute Resolution Center. Both parties agree to utilize this process prior to the institution of any legal action to enforce the terms and conditions of this Agreement. The cost of mediation shall be borne equally by the parties.

23. **Prevailing Party Attorney's Fees**

In any legal action brought to enforce any of the terms and conditions of this Agreement, the prevailing party in said legal action shall be entitled to reasonable attorney's fees and costs incurred.

24. **Notice**

Any notice to be given to the City under this Agreement shall be either certified mailed or personally delivered to:

Mayor
City of Sumner
1104 Maple Street, Suite 240
Sumner, WA 98390

Any notice to be given to the District under this Agreement shall be certified mailed or personally delivered to:

Superintendent
Sumner-Bonney Lake School District
1202 Wood Avenue
Sumner, WA 98390

25. **Legislative Appropriation**

The parties agree that the obligations of the parties are each contingent upon sufficient legislative appropriation being made by each party to support this Agreement during each party's current and subsequent fiscal years. The City acknowledges that a significant portion of the District's operating funds come from District levies, that such levies require voter approval, and that a failure or failures of such levies could require the District to review its ability to maintain this or other programs.

26. **Entire Agreement**

This document comprises the entire agreement between parties and supersedes any provision not contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

In witness whereof, the parties have executed this agreement.

City of Sumner

Mayor Kathy Hayden

Date

City Administrator Jason Wilson

Date

City Attorney Andrea Marquez

Date

Sumner-Bonney Lake School District No.320

Dr. Laurie Dent
Superintendent

Date

Bang Parkinson
Chief Financial and Operations Officer

Date

Approved as to Form:

Marion Leach
Attorney

Date

Sumner-Bonney Lake School Board Approval: _____
Date

Filed with Pierce County Auditor's Office: _____
Date

EXHIBIT A
EXTRACURRICULAR EVENTS

Any reference to "Extracurricular Events" in this agreement shall mean, and be limited to:

All home Sumner High School football games;
Sumner High School Homecoming;
Sumner High School Prom;
Sumner High School Graduation

SUBJECT: Approval of electronic payments and warrants in the amount of \$4,819,406.96.

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Signature page

STAFF CONTACT: Kassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:

Checks and payments from the last check run.

COUNCIL COMMITTEE/STUDY SESSION:

MEETING/STUDY SESSION DATE:

COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

Approve as presented.



CLAIMS VOUCHER APPROVAL

City of Sumner Finance Department

The following check/electronic payments are approved for payment:

Accounts Payable Check #:	From: 31361	To: 31471	\$935,737.30
Use Tax (paid to WA State Department of Revenue)	n/a	n/a	\$135.59
Voided Check(s)	-	-	\$0.00
Voided EFT(s)	-	-	\$0.00
AP Electronic (EFTs) Payments:	From: 601	To: 612	\$2,408,684.14
AP Wire(s):	From: 15275	To: 15281	\$526,559.03
Payroll & Benefits Electronic Payments	From: 7/5/2023	To: 7/19/2023	\$935,745.90
Payroll & Benefits Checks	From: 10018	To: 10019	\$12,545.00
		TOTAL	\$4,819,406.96

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the service rendered, or the labor performed as described herein, and that the claim is a just, due, and unpaid obligation against the City of Sumner and I am authorized to authenticate and certify to said claim.

Kassandra Raymond
Chief Financial Officer

7/18/2023 | 4:20 PM PDT

Date

We, the undersigned Finance and Personnel Committee of the City of Sumner City Council, do hereby certify that the check numbers and electronic payments listed above are approved for payment in the amount of:

\$4,819,406.96

DocuSigned by:

Patricia Cole

7/19/2023 | 5:25 PM PDT

Date

DocuSigned by:
Chair

Barbara Bitetto

7/18/2023 | 4:35 PM PDT

Date

74E2EC62EDD845C
DocuSigned by: Member

E. Stinson

7/24/2023 | 11:32 AM PDT

Date

53B00000000000000000000000000000
DocuSigned by: Member

SUBJECT: Ordinance No. 2865 - Pierce County Boundary Review Board Water and Sewer Service Extension Approval

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2865 - Pierce County Boundary Review Board Approval
2. Ordinance No. 2865 - Presentation

STAFF CONTACT: Courtney Littrell, Engineering Specialist, Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Two parcels (3621049077 and 3621049016) located within the City of Pacific, in King County, are to be developed by a private contractor. However, the City of Pacific is unable to provide sewer, water and storm services to the parcels without a substantial and unfeasible cost. The utility expansions from the City of Pacific would also have potential impacts to critical areas around the White River, as the utility extensions would need to be located over or under the White River. The City of Sumner already has utility connections to the parcels just south of the two parcels in the City of Pacific, where that parcel is developed with a warehouse.

In the most recent General Water Plan Update and Sanitary Sewer Comprehensive Plan, the City of Sumner expanded the service area to include the two parcels within the City of Pacific. These two plans were adopted by City council on August 17th, 2020, and the plans were approved by the Washington State Department of Health on December 29th, 2020, and the Washington State Department of Ecology on February 23rd, 2023. The final step in the process was to receive approval of the expansion area by the Pierce County Boundary Review Board, which the City received on June 28th, 2023. Said approval requires acknowledgment by City Council through adoption of this ordinance.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 7/11/2023

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion to adopt Ordinance No. 2865, acknowledging the approval of the Pierce County Boundary Review Board for the extension of water, sewer, and storm services within the City of Pacific.

**ORDINANCE NO. 2865
CITY OF SUMNER, WASHINGTON**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, ACKNOWLEDGING THE APPROVAL OF THE PIERCE COUNTY BOUNDARY REVIEW BOARD FOR THE EXPANSION OF UTILITY SERVICES INTO THE CITY OF PACIFIC.

WHEREAS, the City of Sumner will be providing utility connections for water, sewer, and storm services to two parcels (3621049077 and 3621049016) within the City of Pacific and King County; and

WHEREAS, on May 15, 2023, the King County Boundary Review Board officially approved the acceptance of Sumner utilities into King County; and

WHEREAS, on June 28, 2023, the Pierce County Boundary Review Board officially approved the extension of Sumner utility services into the City of Pacific, subject to the adoption of this ordinance acknowledging the approval and official expansion of utility service areas.

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

Section 1. The City of Sumner City Council shall acknowledge that the Pierce County Boundary Review Board has approved the expansion of water, sewer, and storm utilities into the City of Pacific and King County, to parcels 3621049077 and 3621049016, as shown in Exhibit A and Exhibit B. The City's utility service areas shall be officially updated accordingly.

Section 2. Severability. 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, this ordinance is deemed to control.

Section 3. Effective Date. This ordinance shall be effective five (5) days from and after its passage approval and publication as provided by law.

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

Passed by the City Council and approved by the Mayor the of the City of Sumner, Washington,
at a regular meeting thereof this 7th day of August, 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

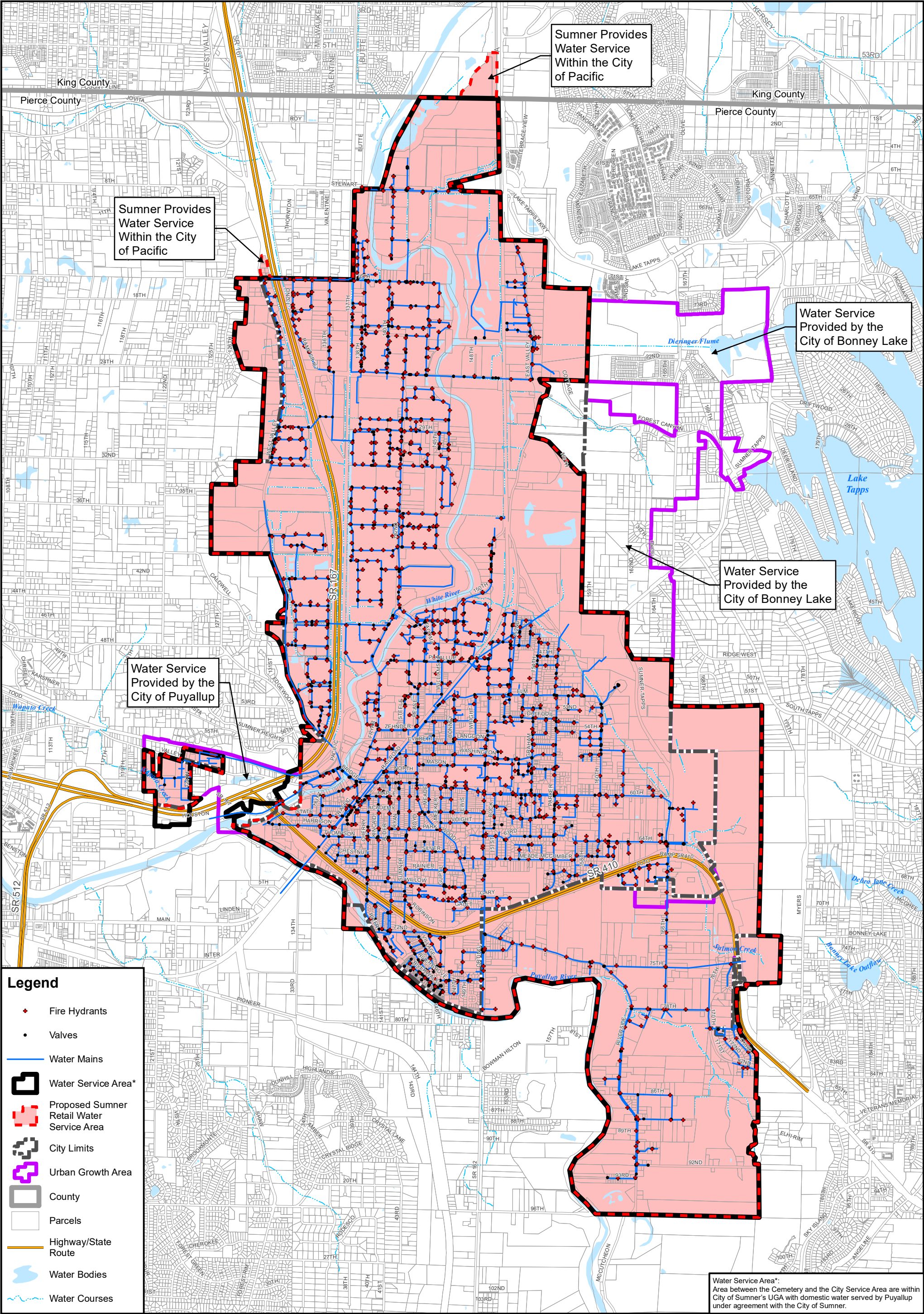
City Clerk Michelle Converse, CMC

Andrea Marquez, City Attorney

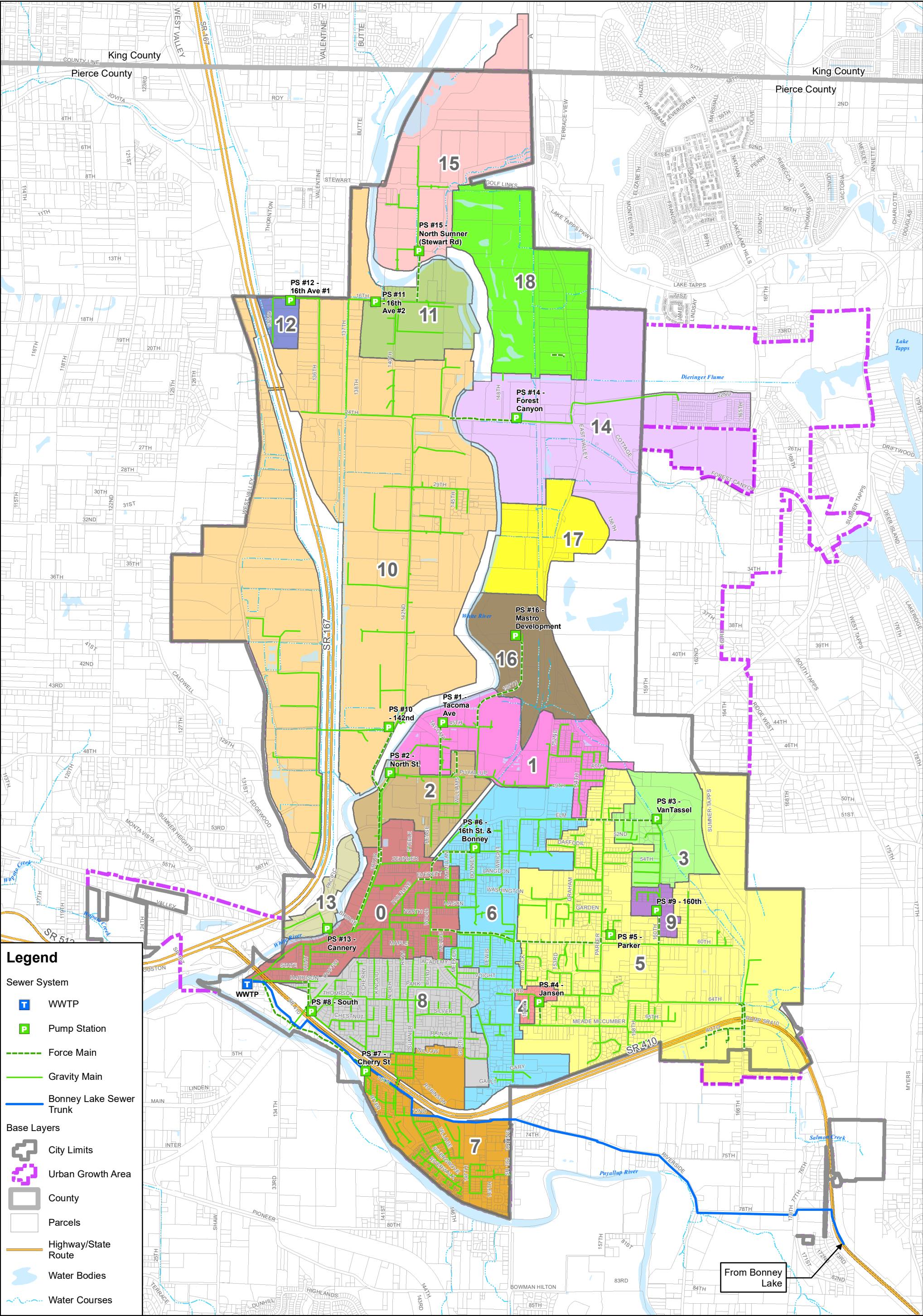
Date Adopted:

Date of Publication:

Effective Date:



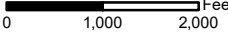
P:\Mapping\Maps_Generated\Sumner\17-10500.00\002\2.3\maps\Fig 1-7 Proposed Sumner Retail Water Service Area - 11x17.mxd 6/17/2020 cto/lenino



P:\Mapping\Maps_Generated\Sumner\17-10500.00\0011\4\maps\Fig 5-1 Sewer System Map 11x17.mxd 4/28/2020 ctolelino



GIS Base: City of Sumner & Pierce County
Data sources supplied may not reflect current or actual conditions. This map is a geographic representation based on information available. It does not represent survey data. No warranty is made concerning the accuracy, currency, or completeness of data depicted on this map.
BHC Consultants LLC., assumes no responsibility for the validity of any information presented herein, nor any responsibility for the use or misuse of the data.



Sewer System Map
General Sewer Plan Update
City of Sumner

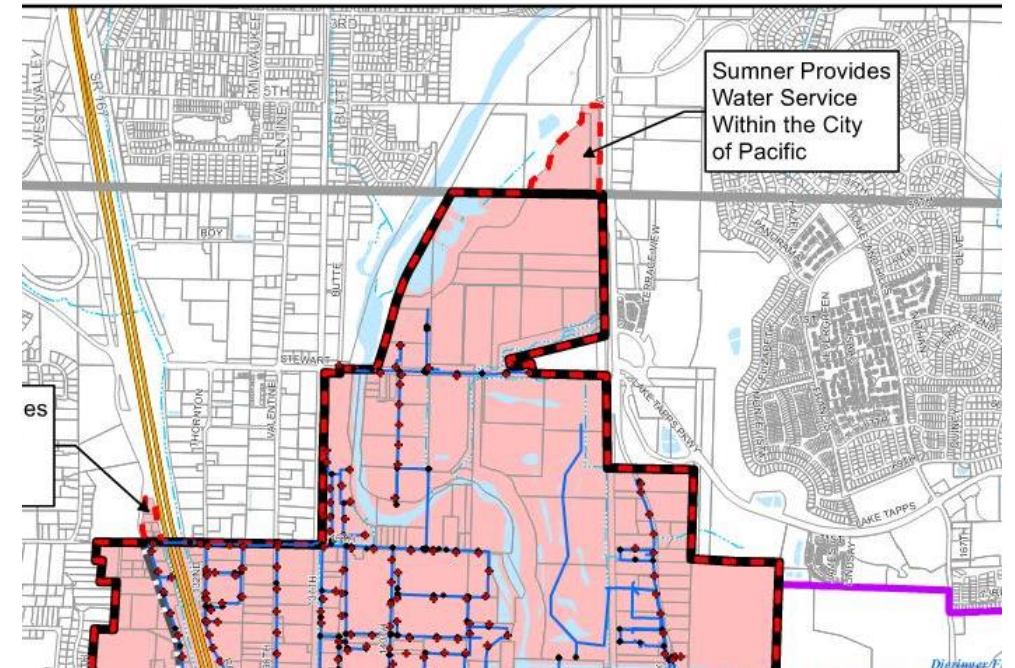
Ordinance No. 2865

Pierce County Boundary Review Board Water and Sewer Service Extension Approval

City Council Meeting – Monday August 7th, 2023
Courtney Littrell, Engineering Specialist

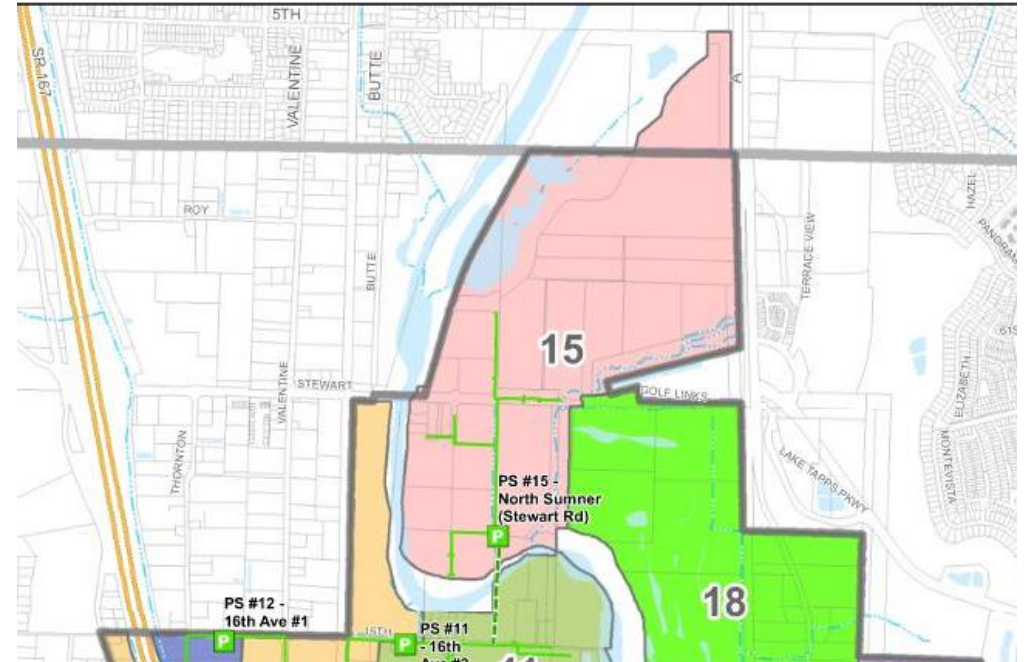
Water Service Expansion

Exhibit A



Sewer Service Expansion

Exhibit B



Agreement Details

- Receive Sewer Utility Fees
- Receive Water Utility Fees
- Transportation Impact Fees from this development are to go towards Stewart Road improvements
 - Paid to City of Pacific

Questions?

SUBJECT: Ordinance No. 2866 - Amending the 2023/2024 Biennial Budget

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: \$124,168

Within Budget Allocation: As Amended

ATTACHMENTS:

1. Ordinance No. 2866 - Amending the 2023/2024 Biennial Budget

STAFF CONTACT: Cassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:

At its ARPA Committee meeting of July 12, 2023, the ARPA Committee members elected to allocate the remaining ARPA funds as follows:

\$12,000 for the purchase of a microphone array for the Council Chambers (via a transfer from Fund 115 to Fund 001);

\$60,000 for the General Fund portion of a fiber loop/array;

\$52,168 to supplement the General Fund allocation to the BusUp commuter program (via a transfer from Fund 115 to Fund 001).

With this amendment, the ARPA Funds received will be fully allocated.

COUNCIL COMMITTEE/STUDY SESSION: ARPA Committee

MEETING/STUDY SESSION DATE: 7/12/2023

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

Approve Ordinance No. 2866 Amending the 2023/2024 Biennial Budget

**ORDINANCE NO. 2866
CITY OF SUMNER, WASHINGTON**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING THE 2023-2024 BIENNIAL BUDGET AS ORIGINALLY ADOPTED IN ORDINANCE NO. 2838, APPROVED DECEMBER 5, 2022, AND PREVIOUSLY AMENDED IN ORDINANCE 2849, APPROVED MARCH 20, 2023, ORDINANCE 2855, APPROVED JUNE 5, 2023 AND ORDINANCE 2858, APPROVED JUNE 20, 2023.

WHEREAS, The Sumner City Council approved Ordinance No. 2838 which adopted a biennial budget for fiscal years 2023-2024; and

WHEREAS, The Sumner City Council approved Ordinance No. 2838 which amended the 2023-2024 biennial budget for fiscal years 2023-2024; and

WHEREAS, The Sumner City Council approved Ordinance No. 2855 which amended the 2023-2024 biennial budget for fiscal years 2023-2024; and

WHEREAS, The Sumner City Council approved Ordinance No. 2858 which amended the 2023-2024 biennial budget for fiscal years 2023-2024; and

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

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

WHEREAS, The City of Sumner experienced a destructive fire in the downtown area on October 28, 2022; and

WHEREAS, The City of Sumner has coordinated with the Washington State Department of Commerce to accept, by separate Council resolution, a federal general disaster relief grant on behalf of the businesses impacted by the Sumner Main Street Fire and other disaster events; and

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

Section 1. Amendment. The biennial budget for the City of Sumner for the period January 1, 2023 through December 31, 2024 as contained in the adopted 2023-2024 Biennial Budget for total revenue/sources and expenditures/uses as approved by the City Council, is hereby amended by Total Revenue and Expenditures for each fund as shown on the attached Exhibit A, including acceptance of the Department of Commerce grant funding.

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

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

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

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 7th day of August, 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

City Clerk Michelle Converse, CMC

City Attorney Andrea Marquez

Funds	Beginning Fund Balance	Revenues			Expenditures			Ending Fund Balance
	<i>Adopted</i>	<i>Adopted</i>	<i>Previous</i>	<i>08/07/23</i>	<i>Adopted</i>	<i>Previous</i>	<i>08/07/23</i>	<i>Revised</i>
001 General	11,300,000	\$ 41,287,140	\$ 904,104	\$ 52,168	\$ 40,975,513	\$ 1,301,354	\$ 52,168	\$ 11,214,377
002 General Fund Reserves	980,824	-	-	-	-	-	-	980,824
003 Building Reserves	450,756	200,000	-	-	390,000	-	-	260,756
103 Complete Streets	-	-	-	-	-	-	-	-
105 Drug Enforcement	65,510	-	-	-	4,000	-	-	61,510
106 Hotel/Motel	262,600	205,000	-	-	338,156	-	-	129,444
115 ARPA Funding	680,624	-	-	-	50,100	-	124,168	506,356
200 Debt Service	2,570,000	465,800	-	-	496,100	-	-	2,539,700
221 LID Guarantee	691,569	-	-	-	-	-	-	691,569
302 Sidewalk	412,457	530,000	553,200	-	880,000	553,200	-	62,457
305 Real Estate Excise Tax	851,288	1,600,000	-	-	550,000	-	-	1,901,288
310 Parks & Trails Capital Fund	423,721	4,868,061	(337,500)	-	5,131,106	(1,125,000)	-	948,176
320 Street Capital Fund	7,709,379	17,364,200	2,711,700	-	24,625,588	2,957,000	-	202,691
325 Facilities Capital Fund	50,000	515,000	400,000	-	565,000	400,000	-	-
401 Water	13,219,995	10,189,150	-	-	20,279,605	13,125	-	3,116,415
402 Wastewater	9,286,248	15,566,163	-	-	21,270,227	113,100	-	3,469,084
403 Utility Bond Reserves	1,731,342	-	-	-	-	-	-	1,731,342
408 Stormwater	8,227,784	38,031,772	-	-	42,424,254	63,125	-	3,772,177
410 Cemetery Operations	74,238	1,498,200	-	-	1,425,316	8,500	-	138,622
415 Cemetery Development	208,994	300,000	-	-	300,000	-	-	208,994
440 Animal Control	94,087	2,093,628	-	-	2,062,680	7,950	-	117,085
501 Unemployment Insurance	9,351	-	-	-	3,991	-	-	5,360
550 Fleet Management	94,835	1,498,570	-	-	1,551,411	-	-	41,994
551 Information Technology	479,281	3,264,440	32,650	60,000	3,336,088	47,650	60,000	392,633
555 Equipment Reserve	1,942,959	2,126,935	-	-	1,770,000	-	-	2,299,894
601 Cemetery Endowment	1,545,873	33,000	-	-	-	-	-	1,578,873
605 Development Impact Fees	6,898,068	500,000	-	-	998,833	1,192,500	-	5,206,735
611 Firemen's Pension	29,798	164,000	-	-	160,000	-	-	33,798
Total All Funds	\$ 70,291,581	\$ 142,301,059	\$ 4,264,154	\$ 112,168	\$ 169,587,969	\$ 5,532,504	\$ 236,336	\$ 41,612,153

SUBJECT: Ordinance No. 2857 - Repealing and Amending Sumner Municipal Code 9.16 and 9.20

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2857 - Repealing and Amending Sumner Municipal Code 9.16 and 9.20

STAFF CONTACT: Maili Barber, Deputy City Attorney

SUMMARY BACKGROUND:

Required updates to our Sumner Municipal Code chapters 9.16 "drugs" and 9.20 "drug paraphernalia" in compliance with the passage of SB 5536.

COUNCIL COMMITTEE/STUDY SESSION: Public Safety
--

MEETING/STUDY SESSION DATE: 7/19/2023

COMMITTEE RECOMMENDATION: Do pass

STAFF RECOMMENDATIONS/MOTION:

Adopt Ordinance 2857

**ORDINANCE NO. 2857
CITY OF SUMNER, WASHINGTON**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER,
WASHINGTON, AMENDING AND REPEALING SECTIONS OF SMC 9.16 DRUGS
AND 9.20 DRUG PARAPHERNALIA IN RESPONSE TO SECOND ENGROSSED
SECOND SUBSTITUTE SENATE BILL 5536 PASSED IN THE FIRST SPECIAL
SESSION OF 2023.**

WHEREAS, on February 25, 2021, the Washington Supreme Court decided *State v. Blake* (197 Wn.2d 170) (“Blake”). Blake held that RCW 69.50.4013 was unconstitutional as written because it lacked the legal element of “knowing” possession. The State legislature responded to Blake by enacting Chapter 311 of Laws of 2021 (the “Blake bill”). While the Blake bill added Blake’s required “knowingly” element to RCW 69.50.4013, the Blake bill also included two RCW amendments that greatly impacted drug enforcement statewide: 1) section 9 of the Blake bill amended RCW 69.50.4013 to reduce unlawful drug possession to a misdemeanor; and 2) section 13 of the Blake bill amended RCW 10.31 to add a requirement that required police to twice refer drug suspects to treatment services before they were able to arrest or charge the suspect with a drug crime. The Blake bill included a July 1, 2023 expiration date for these amendments; and

WHEREAS, after the Blake decision, the Sumner City Council adopted Ordinance 2768 adding the required “knowingly” element. Nonetheless, after the Blake bill passed, Sumner’s code was preempted by state law; and

WHEREAS, as the July 1, 2023 expiration date in the Blake bill approached, the State Legislature convened to consider passing new drug possession legislation to surpass the Blake bill expiration date. While the Legislature considered several alternate bill drafts, it ultimately adjourned without passing any new drug possession legislation; and

WHEREAS, However, in a special session on May 16, 2023, the Legislature adopted permanent drug-related legislation in [SB 5536](#). [SB 5536](#), the so-called “*Blake Fix*,” passed the State Legislature and was signed by Governor Jay Inslee on May 16, 2023, with the provisions relating to use and possession of drugs taking effect on July 1, 2023 and August 14, 2023;

WHEREAS, in special session SB 5536, the state adopted clear preemption language that overrides local regulation of drug paraphernalia and the state fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act, and local ordinances must be consistent with RCW chapter; and

WHEREAS, controlled substances remain an ongoing problem in the Sumner community affecting its residents and businesses. The City Council finds that it is in the City’s best interests to adopt state legislation prohibiting the possession and public use of controlled substances in the City, with provisions to hold offenders accountable and to repeal inconsistent city codes; and

WHEREAS, and in turn, person charged with drug crimes have the ability to enter into Sumner’s Community Court to receive substance use treatment and the ability to avoid criminal conviction and punishment for successful treatment compliance.

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

Section 1. Amendment to City Code. Sumner Municipal Code Sections 9.16 and 9.20 are hereby amended as shown on the attached Exhibit A which is referenced herein as if fully set forth.

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

Section 3. Effective date. This ordinance shall be effective five (5) days from and after its passage approval and publication as provided by law.

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

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this _____ day of August 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

Michelle Converse, City Clerk

City Attorney Andrea Marquez

First Reading:
Date Adopted:
Date of Publication:
Effective Date:

ORDINANCE NO. 2857 – Exhibit A

Chapter 9.16

DRUGS¹

Sections:

- 9.16.010 Statutes adopted by reference.
- 9.16.020 Legend drug labeling.
- 9.16.030 ~~Being under the influence of drugs. Repealed~~
- 9.16.040 ~~Possession of injection devices. Repealed~~
- 9.16.045 ~~Possession or use of dangerous drugs. Repealed~~
- 9.16.050 ~~Violation—Penalty. Repealed~~

9.16.010 Statutes adopted by reference.

Pursuant to the authority contained in RCW 35A.12.140, the following sections of chapter RCW 69.50 ~~RCW~~ relating to drugs and other controlled substances are hereby adopted by reference as they now exist or shall hereafter be added to, deleted from, modified or amended from time to time:

RCW

- 69.50.101
- 69.50.202
- 69.50.204
- 69.50.206
- 69.50.208
- 69.50.210
- 69.50.212
- 69.50.302
- 69.50.308
- 69.50.309
- 69.50.401
- 69.50.4011
- 69.50.4012
- 69.50.4013
- 69.50.4014
- 69.50.4015
- 69.50.402
- 69.50.403

69.50.404
69.50.407
69.50.416
69.50.425
69.50.445
69.50.500
69.50.505
69.50.506
69.50.509
69.50.510

(Ord. 2430 § 1 (part), 2013; Ord. 1615 § 1, 1994; Ord. 1467 § 1, 1989; Ord. 1247 § 1, 1984)

9.16.020 Legend drug labeling.

Pursuant to the authority contained in RCW 35A.12.140, the following sections of chapter RCW 69.41 RCW relating to legend drug labeling are hereby adopted by reference:

RCW

69.41.010 Definitions (Legend drugs – Prescription drugs).
69.41.020 Prohibited acts – Information not privileged communication.
69.41.030 Sale, delivery or possession of legend drug without prescription or order prohibited – Exceptions.
69.41.040 Prescription requirements.
69.41.042 Record requirements.
69.41.050 Labeling requirements.
69.41.070 (3) (5) Penalties.
69.41.230 Drugs in violation are contraband.
69.41.300 Definitions (Steroids).

(Ord. 2430 § 1 (part), 2013; Ord. 1793 § 1, 1997; Ord. 1247 § 2, 1984)

9.16.030 — Being under the influence of drugs.

~~It is unlawful for any person to be under the influence of any drug or other controlled substance as defined or scheduled in chapter 69.50 RCW in any private premises or house to the annoyance of any individual, or in a public place, in a vehicle in or on a public place, or in a place open to the public view or to which the public has access. For the purposes of this section, an individual is “under the influence” of a drug or other controlled substance when any of his normal faculties are substantially affected or impaired as a result of the use of such drug or other controlled substance. (Ord. 2430 § 1 (part), 2013; Ord. 1247 § 3, 1984)~~

9.16.040 — Possession of injection devices.

~~It is unlawful for any person to possess any hypodermic needle, syringe, or similar device which may be adapted or used for injecting drugs or other controlled substances by subcutaneous or intracutaneous injection into the body, unless such possession be authorized for medical or physical treatment by a licensed medical doctor or osteopathic physician; provided, however, that the provisions contained in this section shall not apply to manufacturers,~~

jobbers, licensed medical technicians, hospitals, nursing homes, technologists, nurses, laboratories, research-teaching institutes, medical doctors, osteopathic physicians, dentists, veterinarians, pharmacists, embalmers, drug stores and drug distributors selling or using such devices in the ordinary and legal course of their respective business, trades or professions. (Ord. 2430 § 1 (part), 2013; Ord. 1247 § 4, 1984)

9.16.045 — Possession or use of dangerous drugs.

A. It is unlawful for any person to knowingly possess or use any dangerous drug except as now or hereafter authorized or permitted by the laws of the state or except upon the written or oral order or prescription of a physician, surgeon, dentist, or veterinary surgeon, licensed to practice in the state.

B. The term “dangerous drug” for the purpose of this chapter shall mean and include any controlled substance classified in Schedule I, II, III or IV of chapter 69.50 RCW, as it now exists or shall hereafter be added to, deleted from, modified or amended.

C. Any violation of this section is a gross misdemeanor. (Ord. 2768 § 1, 2021; Ord. 2430 § 1 (part), 2013)

9.16.050 — Violation — Penalty.

A. A person who is convicted of a violation of this chapter, unless otherwise specifically designated as a gross misdemeanor, is guilty of a misdemeanor and shall be punished by imprisonment for not less than 24 consecutive hours, and by a fine of not less than \$250.00. On a second or subsequent conviction, the fine shall not be less than \$500.00. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant’s physical or mental well-being or that the local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of 40 hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred.

B. A person who is convicted of a violation of this chapter, specifically designated as a gross misdemeanor, shall be punished by a fine in an amount fixed by the court of not more than \$5,000, or by imprisonment for a maximum term fixed by the court of not more than one year, or by both such imprisonment and fine.

C. A person who violates RCW 69.50.445 as adopted is guilty of a Class 3 civil infraction under chapter RCW 7.80 RCW. (Ord. 2539 § 2, 2015; Ord. 2430 § 1 (part), 2013; Ord. 1467 § 2, 1989; Ord. 1301 § 1, 1985; Ord. 1247 § 9, 1984. Formerly 9.16.090)

¹ See chapter 69.50 RCW for state law on uniform controlled substances.

Chapter 9.20

DRUG PARAPHERNALIA

Sections:

Article I. Sales and Display

- 9.20.010 ~~Permitting presence of unaccompanied minors prohibited.~~ *Repealed*
9.20.020 ~~Parents to accompany minors.~~ *Repealed*
9.20.030 ~~Separation of sales and display rooms.~~ *Repealed*
9.20.040 ~~Nuisance abatement.~~ *Repealed*
9.20.050 ~~Violation—Penalty.~~ *Repealed*

Article II. Possession, Manufacture, Advertisement

- 9.20.060 Statutes adopted by reference.
9.20.065 ~~Knowing possession of drug paraphernalia.~~ *Repealed.*
9.20.070 *Repealed.*
9.20.080 *Repealed.*
9.20.090 *Repealed.*
9.20.100 ~~Nuisance declared.~~ *Repealed*
9.20.110 ~~Disposition of property.~~ *Repealed*
9.20.120 ~~Violation—Penalty.~~ *Repealed*

Article I. Sales and Display

9.20.010—Permitting presence of unaccompanied minors prohibited.

No owner, manager, proprietor or other person in charge of any place of — or displaying for the purpose of sale any device, contrivance, instrument or paraphernalia, as defined by RCW 69.50.102, for smoking or injection, or consuming marijuana, hashish, PCP, or any controlled substance, as defined by the laws of the state, other than prescription drugs and devices to ingest or inject prescription drugs, as well as roach clips, and cigarette papers and rollers designed for the smoking of the foregoing, shall allow or permit any person under the age of 18 years to be, remain in, enter or visit such room unless such minor person is accompanied by one of his or her parents, or by his or her legal guardian. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1315 § 1, 1985)

9.20.020—Parents to accompany minors.

A person under the age of 18 years shall not be, remain in, enter or visit any room in any place used for the sale, or displaying for sale, devices, contrivances, instruments or paraphernalia, as defined by RCW 69.50.102, for smoking or injecting marijuana, hashish, PCP, or any controlled substance, other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips, and cigarette papers and rollers designed and used for smoking the foregoing, unless such person is accompanied by one of his or her parents, or his or her legal guardian. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1315 § 2, 1985)

9.20.030—Separation of sales and display rooms.

A person shall not maintain in any place of business to which the public is invited the display for sale, or the offering to sell, of devices, contrivances, instruments or paraphernalia, as defined by RCW 69.50.102, for smoking or injecting marijuana, hashish, PCP, or any controlled substance, other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips, and cigarette papers and rollers designed for the smoking of the foregoing, unless within a separate room or enclosure to which minors not accompanied by a parent or legal guardian are excluded. Each entrance to such a room shall be signposted in reasonably visible and legible words to the effect that narcotic paraphernalia are being offered for sale in such a room, and minors, unless accompanied by a parent or legal guardian, are excluded. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1315 § 3, 1985)

9.20.040—Nuisance abatement.

A. The distribution or possession for the purpose of sale, exhibition, or display in any place of business from which minors are not excluded as set forth in this section, and where devices, contrivances, instruments or paraphernalia, as

defined by RCW 69.50.102, for smoking or injecting marijuana, hashish, PCP, or any controlled substance, other than prescription drugs and devices to ingest or inject prescription drugs, including roach clips, and cigarette papers and rollers designed for smoking the foregoing, is a public nuisance, and any building, structure, premises, or room or rooms therein constituting a nuisance as herein defined may be abated in a civil action in the manner provided by law, or the court upon final judgment of conviction for violation of this chapter of any person found therein at the time of his arrest may forthwith, and as a part of the same proceedings, direct the chief of police to abate summarily any such place as a nuisance as defined by this chapter.

B. Such abatement shall be effected by closing and securely locking the place abated and excluding all persons therefrom. It is unlawful for any owner, agent, lessee, tenant, person in charge or occupant to enter, use or occupy any building, structure or premises, or room or rooms therein, abated as a nuisance under the provisions of this chapter, from and for a period of one year after the date of such abatement, unless he as principal gives and files with the clerk-treasurer a good and sufficient surety bond, to be approved by the court making the order of abatement, or in case of summary abatement to be approved by the chief of police, in the penal sum of \$1,000, payable to the city, conditioned that such building, structure or premises, or room or rooms therein, will not thereafter be used in violation of this chapter, and further conditioned that he will pay all fines, costs and damages assessed against him for any violation of this chapter, and in case of the violation of any of the conditions of such bond the whole amount may be recovered as penalty to the city. This remedy is in addition to any other remedy provided by law. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1315 § 4, 1985)

9.20.050 — Violation — Penalty.

Any person who violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be fined by a sum not exceeding \$1,000, or by imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1315 § 5, 1985)

Article II. Possession, Manufacture, Advertisement

9.20.060 Statutes adopted by reference.

Pursuant to the provisions of RCW 35A.12.140, the following sections of chapter RCW 69.50 RCW relating to drug paraphernalia, as currently adopted and hereafter amended, are adopted by this reference:

RCW

69.50.102 Drug paraphernalia – Definitions

69.50.412 Prohibited acts: E – Penalties

69.50.4121 Drug paraphernalia—Selling or giving—Penalty.

(Ord. 2769 § 1 (Exh. A), 2021; Ord. 1469 § 1, 1989; Ord. 1396 § 1, 1987)

9.20.065 — Knowing possession of drug paraphernalia.

It is unlawful for any person to knowingly possess drug paraphernalia, as defined in RCW 69.50.102, adopted by reference. A person who violates this section shall be guilty of a misdemeanor. (Ord. 2769 § 1 (Exh. A), 2021)

9.20.070 Possession prohibited. Repealed by Ord. 1537. (Ord. 1396 § 2, 1987)

9.20.080 Manufacture or delivery prohibited. Repealed by Ord. 1537. (Ord. 1396 § 3, 1987)

9.20.090 Advertisement prohibited. Repealed by Ord. 1537. (Ord. 1396 § 4, 1987)

9.20.100 — Nuisance declared.

The distribution or possession for the purpose of sale, exhibition or display, in any place of business, of any devices, contrivances, instruments or paraphernalia which are primarily designed for or intended to be used for the smoking, ingestion or consumption of marijuana, hashish, PCP or any controlled substance, other than prescription drugs and devices to ingest or inject prescription drugs, is declared to be a public nuisance and may be abated. This remedy shall be in addition to any other remedy provided by law, including the penalty provisions applicable for violation of the terms and provisions of this article. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1396 § 5, 1987)

9.20.110—Disposition of property.

~~Any item determined by a court of competent jurisdiction to be drug paraphernalia shall be deemed forfeited to the city. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1396 § 6, 1987)~~

9.20.120—Violation—Penalty.

~~Any person who violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction thereof, shall be fined by a sum not exceeding \$1,000, or by imprisonment for a term not exceeding 90 days, or by both such fine and imprisonment. (Ord. 2769 § 1 (Exh. A), 2021; Ord. 1469 § 2, 1989; Ord. 1396 § 7, 1987)~~

SUBJECT: Ordinance No. 2867 - Amending Sumner Municipal Code 2.100: Personnel Policies

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2867 - Amending Sumner Municipal Code 2.100 Personnel Policies

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:

It is important for staff, elected officials and the public that the City has an accurate, transparent and efficient payroll process. The limitations of our old software program allowed for accuracy but not efficiency or transparency. Now that we have been using the Munis payroll system for a year, staff have proposed changes to our current process. Effective October 1st, we will be transitioning our pay cycles from paydates on the 5th and 20th of every month to bi-weekly. This change requires some immediate code updates.

These changes will not affect the amount that staff are paid on an annual basis, but with the moving to 26 vs 24 pay periods, individual paychecks will be smaller. In recognition of this potential burden, the City has authorized a one-time payment of \$500.

Staff will be returning to the Council later this year for further updates regarding these changes' effect on benefits, which will go into effect in 2024.

COUNCIL COMMITTEE/STUDY SESSION: Study Session MEETING/STUDY SESSION DATE: 7/24/2023 COMMITTEE RECOMMENDATION:
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STAFF RECOMMENDATIONS/MOTION:

Approve Ordinance No. 2867 - Amending Sumner Municipal Code 2.100: Personnel Policies.

ORDINANCE NO. 2867
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON,
AMENDING SMC 2.100 PERSONNEL POLICIES.

WHEREAS, the City strives for an accurate and efficient payroll system for our staff; and

WHEREAS, transparency in both employee and elected official salaries are important to the community; and

WHEREAS, the proposed personnel changes accomplish these goals while better aligning with our current payroll software.

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

Section 1. Amendment to City Code. Sumner Municipal Code Section 2.100 is hereby amended as follows:

2.100.240 Hours of work and overtime.

All city positions are designated as either “exempt” or “nonexempt” according to the Fair Labor Standards Act (“FLSA”) and Washington Minimum Wage Act regulations.

A. Reporting Time Worked. All non-exempt personnel are responsible for accurately reporting all hours worked on each day worked. Employees failing to accurately record time worked or who falsify time records are subject to discipline, up to and including termination.

B. When Eligible. Nonexempt employees are eligible for overtime for time worked beyond the employee’s scheduled shift, or as provided in a collective bargaining agreement. Paid leave (holidays, sick leave, vacation, etc.) is counted as regular time for the purposes of computing overtime.

C. Authorization. All overtime must be authorized in advance by the employee’s supervisor, although exceptions may be made for emergency situations.

D. Rate of Pay. Unless otherwise specified in a collective bargaining agreement, overtime pay is calculated at one and one-half times the employee’s regular rate of pay for all time worked beyond the employee’s scheduled shift.

E. Exempt Employees. Exempt employees are never eligible for overtime or compensatory time, but ~~are expected to~~typically work 40 hours or more per week. An exempt employee is paid to perform a job which may or may not necessarily be completed in a normal work week, meaning

the demands of the job may require extra hours of work, attendance at night meetings or conferences, and additional supervisory duties. In recognition of the extra time demands of certain exempt positions, exempt employees are not required to strictly adhere to the normal attendance requirements as a nonexempt employee. However, if the flexible attendance interferes with department operations, or the work of the subordinates, this will be addressed as a performance issue. (Ord. 2595 § 1 (part), 2017)

2.100.300 Salary classification and grades.

It is the responsibility of the city council to establish through approval of the annual budget the salary-wage ranges for all classifications in the city of Sumner. Each job title within the city is classified into one of the city's classifications for salary-compensation purposes. Each classification is designated a particular hourly salary or salary range shown on the city's salary and wage compensation schedule, which is approved annually by the city council. Occasionally, due to rounding in the City's automated payroll software, a minor fluctuation may occur in final annual salary figures.

The mayor or city administrator may propose, and the city council may grant, an across-the-board pay adjustment (cost-of-living increase) from time to time, raising the salaries-wages of all positions by a specified amount within a classification(s). Such adjustments, if any, will not change an employee's pay increase anniversary date. (Ord. 2595 § 1 (part), 2017)

2.100.310 Employee pay rates.

Employees shall be paid within the limits of the wage range to which their positions are assigned. Usually, new employees will start their employment at the minimum wage rate for their classification. However, a new employee may be employed at a higher rate than the minimum when the employee's experience, training or proven capability warrant, or when prevailing market conditions require a starting rate greater than the minimum. ~~Only the mayor or The City Administrator~~ has the authority to employ a person at a rate ~~higher than the up to~~ salary range step ~~31~~, with any step higher than 3 being approved by the ~~Mayor/city council~~.

Step increases are contingent on satisfactory performance. If an employee's performance is consistently unsatisfactory, the department director may defer a scheduled pay increase for a stipulated period of time or until the employee's job performance is satisfactory.

Any employee promoted to a position in a higher classification and salary-wage range should typically receive the next highest available pay step in the new range. If the new step is less than three percent higher, the mayor or city administrator may approve the next highest step.

Temporary and seasonal workers' pay shall not exceed the amount set by the city council. (Ord. 2595 § 1 (part), 2017)

2.100.320 Paydays.

Employees will normally be paid ~~on the fifth and twentieth of each month~~ every other Friday on a bi-weekly pay schedule. If the regular payday occurs on a ~~Saturday, Sunday or a bank~~ holiday, employees will be paid on the last working day before the regular payday. (Ord. 2595 § 1 (part), 2017)

2.100.420 Healthcare plans.

The city provides its employees' healthcare coverage through either the Association of Washington Cities (AWC) or Teamsters Trust as enumerated in the employees' collective bargaining agreement. For non-represented employees healthcare coverage is as follows:

A. Health insurance:

Plan:	AWC High Deductible Healthcare Plan
Employee Monthly Premium Cost Share:	\$0.00
Annual Employer Health Savings Account Contribution:	\$1,500 for employee only \$3,000 for employee + 1 or more
Annual Employer Health Reimbursement Account (bridge):	Maximum of \$1,400 for employee only Maximum of \$4,800 for employee + 1 or more

B. Dental insurance:

Plan:	Delta Dental Plan J or Willamette Dental \$10.00
Employee Monthly Premium Cost Share:	\$0.00

C. Vision insurance:

Plan:	VSP \$0.00
Employee Monthly Premium Cost Share:	\$0.00

(Ord. 2614 § 1 (part), 2017; Ord. 2595 § 1 (part), 2017)

2.100.430 Refusal of medical coverage –Premium cost savings sharing.

In accordance with the AWC Employee Benefit Trust underwriting rules, eligible employees who choose to waive city medical and/or dental coverage for themselves or their dependents because of coverage in another plan may receive ~~\$50 per pay period, \$100.00 per month,~~ which shall be added to the employees paycheck as a gross amount. In order to refuse medical coverage, the employee must certify that they have minimum acceptable coverage compliant with the Affordable Care Act.

Employees who waive medical coverage are entitled to an amount equal to the employee only health savings account contribution deposited into their deferred compensation (457b) account. (Ord. 2595 § 1 (part), 2017)

2.100.610 Vacation leave.

A. Accrual. Each regular full-time employee is entitled to vacation leave as follows:

Years of Service	Vacation Days (Hours)
< 1	12 (96)
1 – 2	13 (104)
2 – 3	14 (112)
3 – 4	15 (120)
4 – 5	16 (128)
5 – 6	17 (136)
6 – 7	18 (144)
7 – 8	19 (152)
8 – 9	20 (160)
9 – 10	21 (168)
10 – 11	22 (176)
11 – 13	23 (184)
13 – 16	24 (192)

Years of Service	Vacation Days (Hours)
16 – 19	25 (200)
19 – 22	26 (208)
22 – 25	27 (216)
25+	28 (224)

All new employees shall accrue vacation leave from the date of employment. Regular part-time employees will receive vacation leave on a pro rata basis. Temporary employees and seasonal workers are not eligible for any vacation leave benefits unless otherwise provided by the mayor, city administrator or a collective bargaining agreement. The mayor or city administrator, as a condition of appointment, may start a new employee at an accrual rate of ~~one-twelve~~ to ~~six~~ 72 years-months without council approval. Starting an employee higher than ~~six-72 years~~ months requires council approval.

Employees who are in an unpaid status for the entire pay period do not accrue vacation benefits. Employees who are in any form of a paid status during the pay period are eligible for accruals.

B. Accrual Limits. Total vacation accrual must be at or below 368 hours by the end of the calendar year for those employees hired prior to January 1, 2021, and 280 hours for those employees hired on or after January 1, 2021. Unused vacation time will be forfeited to the city. An employee may request a three-month extension to use the vacation time; provided, that the extension is needed due to a planned event, e.g., upcoming vacation, long-term medical leave or retirement.

C. Cash Out. Employees will be paid for unused vacation time upon termination of employment at the rate of 100 percent.

The mayor may authorize, as funds are available, the cash out of accrued vacation hours for employees with vacation balances in excess of 280 hours. The minimum sell-back shall be 40 hours per occurrence and employees will not be able to sell back more hours than they have used in the previous six months, not to exceed 120 hours annually. In order to receive a sell-back, a written request must be submitted to human resources at least 30 days prior to payment of the sell-back amount. The intent of the cash out is to minimize the unfunded liability by cashing out vacation at a lower hourly rate than it would likely be paid out in the future. (Ord. 2755¹ § 1 (Exh. A), 2020; Ord. 2663 § 1, 2018; Ord. 2614 § 1 (part), 2017; Ord. 2595 § 1 (part), 2017)

2.100.625 Protected leave.

A. Protected Leave. The employer will provide employees with family and medical leave, pregnancy disability leave, military leave and other paid and unpaid leave required by state and federal law, including but not limited to:

1. Family and medical leave ([29 U.S.C. 2601](#) et seq., and Chapter [49.78](#) RCW);
2. Family Care Act leave (RCW [49.12.265](#));
3. Pregnancy disability leave (Chapter [49.60](#) RCW);
4. Leave for victims of domestic violence, sexual assault and stalking (Chapter [49.76](#) RCW);
5. Leave for spouses of deployed military personnel (Chapter [49.77](#) RCW);
6. Leave for certain emergency services personnel (RCW [49.12.460](#)).

Leave eligibility, benefits and requirements will be determined by applicable law and will be administered according to policies established by the mayor or city administrator.

B. Washington Paid Family and Medical Leave Law. Eligible employees are covered by Washington's Family and Medical Leave Program (PFML), Chapter [50A.04](#) RCW. Eligibility for leave and benefits ~~and associated premiums are, which begins January 1, 2020, is~~ established by Washington law. ~~Premiums for benefits are established by law and for the period ending December 31, 2020, will total four-tenths of one percent of employees' wages (unless otherwise limited by action of the state).~~ Employees will pay through payroll deduction the full costs of the premiums associated with family leave benefits and ~~45 percent of~~ the cost of the premiums associated with the medical leave benefits, as determined under RCW [50A.04.115](#). The city will pay the remaining premium amounts.

C. Protected Leave Use. Employees may choose to use any applicable protected leave, e.g., FMLA, ~~WFLA~~PFML, etc., consecutive to accrued leave; provided, that after the employee uses 960 hours of sick leave, and has exhausted other available accrued leaves (vacation, compensatory or holiday time), protected leave shall run concurrent with any remaining sick leave balance. (Ord. 2663 § 2, 2018; Ord. 2614 § 1 (part), 2017)

2.100.630 Management leave.

Management leave may be granted to employees at time of hire as approved by the city administrator or mayor. Management leave will have no cash-out value and will not be carried over at the end of the ~~calendar year~~employee's first year of employment. In temporary positions of high function but limited duration, and with the approval of the city administrator or mayor, management leave may be offered as part of a compensation package.

The city recognizes that certain FLSA-exempt positions are required to work substantially in excess of the standard work schedule for the city on an ongoing, regular basis. The mayor or the city administrator has the authority to authorize additional management leave for these positions. (Ord. 2595 § 1 (part), 2017)

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

Section 3. Effective date. This ordinance shall be effective October 1, 2023.

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

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 7th day of August 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

City Clerk Michelle Converse, CMC

City Attorney Andrea Marquez

Date Adopted:

Date of Publication:

Effective Date:

SUBJECT: Ordinance No. 2868 - Amending the 2023 Compensation Schedule

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2868 - 2023 Bi-Weekly Compensation Schedule
-

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:

The City's switch from monthly to bi-weekly payroll effective October 1, 2023 necessitates amending our current 2023 Compensation Schedule. Previously, salaries were presented on a monthly basis and this amendment displays salaries on either an hourly or per pay period basis. This update does not have any impact on an employee's annual salary, it is just a change in methodology and presentation.

COUNCIL COMMITTEE/STUDY SESSION: Study Session MEETING/STUDY SESSION DATE: 7/24/2023 COMMITTEE RECOMMENDATION:
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STAFF RECOMMENDATIONS/MOTION:

Approve Ordinance No. 2868 - Amending the 2023 Compensation Schedule to a bi-weekly payroll.

**ORDINANCE NO. 2868
CITY OF SUMNER, WASHINGTON**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING THE 2023 COMPENSATION SCHEDULE FOR NON-REPRESENTED EMPLOYEES AND EMPLOYEES REPRESENTED BY THE INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL NO. 302, AND THE POLICE GUILD COMMISSIONED OFFICERS AND THE POLICE GUILD REPRESENTING SPECIAL COMMISSIONED AND NON-COMMISSIONED POLICE EMPLOYEES AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL NO. 313.

WHEREAS, the City strives for an accurate, transparent and efficient payroll system; and

WHEREAS, the City has transitioned to a bi-weekly payroll; and

WHEREAS, the City has established a 2023 Compensation Schedule for both represented and non-represented employees; and

WHEREAS, the dollar amounts in Exhibit A represent a change in presentation and not a change in annual compensation.

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

Section 1. Adoption. The City of Sumner 2023 Compensation Schedule for non-represented employees and represented employees represented by the International Union of Operating Engineers Local No. 302 and the Police Guild Commissioned Officers and the Police Guild representing special commissioned and non-commissioned police employees and International Brotherhood of Teamsters Local No. 313 employees attached hereto as Exhibit A, covering the period from October 1, 2023 through December 31, 2023, is hereby adopted.

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

Section 3. Effective date. This ordinance shall be effective October 1, 2023.

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

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 7th day of August, 2023.

Mayor Kathy Hayden

ATTEST:

APPROVED AS TO FORM:

City Clerk Michelle Converse, CMC

City Attorney Andrea Marquez

First Reading:

Date Adopted:

Date of Publication:

Effective Date:

PART-TIME, TEMPORARY, NON-REPRESENTED, NON-EXEMPT					
CLASSIFICATION	TYPICAL POSITION TITLES	BAND	STEP	HOURLY RATE	PERIOD PAY
SEASONAL	Laborer	SEA1	1	\$ 20.00	
			2	\$ 22.00	
			3	\$ 24.00	
			4	\$ 26.00	
			5	\$ 28.00	
	Intern	SEA2	1	\$ 25.00	
			2	\$ 30.00	
			3	\$ 35.00	
			4	\$ 40.00	
			5	\$ 45.00	
TEMPORARY	Temporary Administrative	TMP1	1	\$ 25.00	
			2	\$ 30.00	
			3	\$ 35.00	
			4	\$ 40.00	
			5	\$ 45.00	
	Temporary Professional	TMP2	1	\$ 55.00	
			2	\$ 60.00	
			3	\$ 65.00	
			4	\$ 70.00	
			5	\$ 75.00	
PART-TIME HOURLY	Animal Care Technician	HR1	1	\$ 16.00	
			2	\$ 18.00	
			3	\$ 20.00	
			4	\$ 22.00	
			5	\$ 24.00	
	Pollution Prevention Specialist	HR2	1	\$ 32.00	
			3	\$ 34.00	
			5	\$ 36.00	

**Hourly rates have been truncated to two decimals for presentation purposes. Actual rates are calculated to the 1/100th of a cent.*

NON-REPRESENTED, NON-EXEMPT					
CLASSIFICATION	TYPICAL POSITION TITLES	BAND	STEP	HOURLY RATE	PERIOD PAY
LABOR	Custodial Technician	21	1	\$ 23.41	\$ 1,873.38
			2	\$ 24.75	\$ 1,980.46
			3	\$ 26.17	\$ 2,094.00
			4	\$ 27.67	\$ 2,214.00
			5	\$ 29.26	\$ 2,340.92
PROFESSIONAL	Technician, Administrative Assistant, Specialist, Assistant Planner	31	1	\$ 29.01	\$ 2,321.08
			2	\$ 30.67	\$ 2,454.00
			3	\$ 32.42	\$ 2,594.31
			4	\$ 34.28	\$ 2,742.92
			5	\$ 36.25	\$ 2,900.31
		32	1	\$ 30.02	\$ 2,402.31
			2	\$ 31.75	\$ 2,540.31
			3	\$ 33.57	\$ 2,685.69
			4	\$ 35.49	\$ 2,839.38
			5	\$ 37.52	\$ 3,002.31
		33	1	\$ 31.55	\$ 2,524.15
			2	\$ 33.36	\$ 2,669.08
			3	\$ 35.27	\$ 2,821.85
			4	\$ 37.29	\$ 2,983.85
			5	\$ 39.43	\$ 3,154.62
TECHNICAL	Administrator, Analyst, Assistant Engineer, Associate Planner, Building/Plans Inspector, Coordinator, GIS/CAD Specialist, IT Technician, Professional Standards Officer	41	1	\$ 34.60	\$ 2,768.77
			2	\$ 36.59	\$ 2,927.54
			3	\$ 38.68	\$ 3,095.08
			4	\$ 40.90	\$ 3,272.77
			5	\$ 43.25	\$ 3,460.15
		42	1	\$ 35.62	\$ 2,850.00
			2	\$ 37.66	\$ 3,013.38
			3	\$ 39.82	\$ 3,186.00
			4	\$ 42.10	\$ 3,368.77
			5	\$ 44.52	\$ 3,561.69
		43	1	\$ 38.68	\$ 3,094.62
			2	\$ 40.89	\$ 3,271.85
			3	\$ 43.24	\$ 3,459.23
			4	\$ 45.72	\$ 3,657.69
			5	\$ 48.34	\$ 3,867.23
		44	1	\$ 40.71	\$ 3,257.54
			2	\$ 43.05	\$ 3,444.00
			3	\$ 45.51	\$ 3,641.54
			4	\$ 48.12	\$ 3,850.15
			5	\$ 50.88	\$ 4,070.77

**Hourly rates have been truncated to two decimals for presentation purposes. Actual rates are calculated to the 1/100th of a cent.*

NON-REPRESENTED, EXEMPT					
CLASSIFICATION	TYPICAL POSITION TITLES	BAND	STEP	HOURLY RATE	PERIOD PAY
OPERATIONS MANAGERS	Building Official, Communications Director, Senior Planner, Superintendent, Operational Manager, Associate Engineer, Assistant Attorney, Project Manager	61	1		\$ 3,420.46
			2		\$ 3,616.15
			3		\$ 3,823.38
			4		\$ 4,042.62
			5		\$ 4,274.31
		62	1		\$ 3,501.69
			2		\$ 3,702.46
			3		\$ 3,914.31
			4		\$ 4,138.62
			5		\$ 4,375.85
		63	1		\$ 3,746.31
			2		\$ 3,960.92
			3		\$ 4,187.54
			4		\$ 4,427.54
			5		\$ 4,681.38
		64	1		\$ 4,071.69
			2		\$ 4,304.77
			3		\$ 4,551.23
			4		\$ 4,812.46
			5		\$ 5,088.00
		65	1		\$ 4,213.85
			2		\$ 4,455.69
			3		\$ 4,710.92
			4		\$ 4,980.92
			5		\$ 5,266.15
DEPUTY DIRECTOR	Deputy Police Chief, Chief Financial Officer, Deputy City Attorney, City Engineer	71	1		\$ 4,865.54
			2		\$ 5,144.31
			3		\$ 5,439.23
			4		\$ 5,750.77
			5		\$ 6,080.31
		72	1		\$ 5,252.31
			2		\$ 5,553.23
			3		\$ 5,871.23
			4		\$ 6,207.69
			5		\$ 6,563.54
		73	1		\$ 5,741.08
			2		\$ 6,069.69
			3		\$ 6,417.69
			4		\$ 6,785.54
			5		\$ 7,174.15
DEPARTMENT DIRECTOR	Judge (Part Time), Department Director, City Attorney, Police Chief	80	5		\$ 7,581.23
		81	5		\$ 7,581.23
		82	5		\$ 7,784.77
EXECUTIVE	City Administrator	91	5		\$ 8,242.62

REPRESENTED, NON-EXEMPT					
CLASSIFICATION	TYPICAL POSITION TITLES	BAND	STEP	HOURLY RATE	PERIOD PAY
Union - IUOE	Operator in Training	OE1	1	\$ 29.39	\$ 2,351.54
			2	\$ 31.07	\$ 2,486.31
			3	\$ 32.74	\$ 2,619.69
	Operator	OE2	1	\$ 35.18	\$ 2,814.46
			2	\$ 37.19	\$ 2,975.54
			3	\$ 39.32	\$ 3,146.31
			5	\$ 41.58	\$ 3,326.77
	Engineering Technician	OE3	1	\$ 36.35	\$ 2,908.62
			2	\$ 38.44	\$ 3,075.23
			3	\$ 40.64	\$ 3,251.54
			5	\$ 42.96	\$ 3,437.54
	Journey Operator	OE4	1	\$ 37.32	\$ 2,985.69
			2	\$ 39.46	\$ 3,156.92
			3	\$ 41.72	\$ 3,337.85
			5	\$ 44.11	\$ 3,528.92
	Lab Technician	OE5	1	\$ 38.37	\$ 3,069.69
			2	\$ 40.56	\$ 3,245.54
			3	\$ 42.89	\$ 3,431.54
			5	\$ 45.35	\$ 3,628.15
	Senior Operator 3	OE6	1	\$ 40.65	\$ 3,252.00
			2	\$ 42.98	\$ 3,438.46
			3	\$ 45.44	\$ 3,635.54
			5	\$ 48.04	\$ 3,843.69
	Lab Analyst Senior Engineering Technician Pretreatment Coordinator	OE7	1	\$ 42.63	\$ 3,410.77
			2	\$ 45.07	\$ 3,606.00
			3	\$ 47.65	\$ 3,812.77
			5	\$ 50.38	\$ 4,031.08
	Electrician/Instrumentation Technician Senior Operator 4	OE8	1	\$ 44.22	\$ 3,538.15
			2	\$ 46.75	\$ 3,740.77
			3	\$ 49.44	\$ 3,955.38
			5	\$ 52.27	\$ 4,182.00
	Chief Operator	OE9	1	\$ 47.51	\$ 3,801.23
			2	\$ 50.23	\$ 4,018.62
			3	\$ 53.11	\$ 4,248.92
			5	\$ 56.15	\$ 4,492.62
Union - Teamsters	PW Operator 1 Groundskeeper 1 Mechanic 1	TM1	1	\$ 30.94	\$ 2,475.69
			3	\$ 32.07	\$ 2,565.69
			5	\$ 33.02	\$ 2,642.31
	PW Operator 2 Groundskeeper 2	TM2	1	\$ 36.59	\$ 2,927.54
			5	\$ 40.17	\$ 3,213.69
	Mechanic 2 Facilities Maint Tech 2	TM3	1	\$ 37.17	\$ 2,974.15
			5	\$ 41.31	\$ 3,305.08
	PW Shops Senior Operator	TM4	5	\$ 41.31	\$ 3,305.08
	Field Supervisors	TM5	1	\$ 44.04	\$ 3,523.38
			5	\$ 47.90	\$ 3,832.15

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REPRESENTED, NON-EXEMPT					
Union - Police Commissioned	Police Officer	PC1	1	\$ 39.06	\$ 3,125.08
			2	\$ 41.00	\$ 3,280.62
			3	\$ 43.07	\$ 3,445.85
			4	\$ 45.25	\$ 3,620.77
			5	\$ 47.52	\$ 3,801.69
			6	\$ 49.98	\$ 3,998.77
	Police Officer Detective	PC2	6	\$ 52.48	\$ 4,198.62
	Police Officer Sergeant	PC3	6	\$ 59.48	\$ 4,758.46
Union - Police Support	Animal Control Shelter Assistant	PS1	1	\$ 23.10	\$ 1,848.46
			2	\$ 24.43	\$ 1,954.62
			3	\$ 25.82	\$ 2,066.31
			4	\$ 27.32	\$ 2,185.85
			5	\$ 28.88	\$ 2,310.92
	Police Records Specialist I	PS2	1	\$ 27.69	\$ 2,215.38
			2	\$ 29.23	\$ 2,339.08
			3	\$ 30.86	\$ 2,469.23
			4	\$ 30.92	\$ 2,473.85
			5	\$ 34.44	\$ 2,755.85
	Police Records Coordinator	PS3	1	\$ 32.88	\$ 2,630.77
			2	\$ 34.14	\$ 2,731.85
			3	\$ 35.45	\$ 2,836.62
			4	\$ 36.82	\$ 2,946.00
			5	\$ 38.23	\$ 3,059.08
	Community Service Officer	PS4	1	\$ 32.53	\$ 2,603.08
			2	\$ 34.21	\$ 2,736.92
			3	\$ 35.95	\$ 2,876.31
			4	\$ 37.82	\$ 3,025.85
			5	\$ 39.82	\$ 3,186.00
	Animal Control Officer	PS5	1	\$ 31.39	\$ 2,511.69
			2	\$ 33.00	\$ 2,640.00
			3	\$ 34.70	\$ 2,776.15
			4	\$ 36.49	\$ 2,919.23
			5	\$ 38.40	\$ 3,072.46
	Animal Control Supervisor	PS6	5	\$ 44.94	\$ 3,595.38

**Hourly rates have been truncated to two decimals for presentation purposes. Actual rates are calculated to the 1/100th of a cent.*

SUBJECT: Ordinance No. 2863 - Franchise Agreement with Ziplly Wireless LLC

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2863 - Ziplly Wireless LLC Wireline Franchise

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Ziplly approached the City with a request for two separate franchises for the fiber network they're building out. Ziplly Wireless LLC and Ziplly Fiber Pacific LLC have both applied for agreements with the City, to serve two separate purposes. Both are attached. As a reminder, franchise agreements require two readings after committee do pass.

COUNCIL COMMITTEE/STUDY SESSION: PW Committee

MEETING/STUDY SESSION DATE: 7/11/2023

COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

Conduct required readings for both Ziplly franchise agreements and authorize the Mayor to enter into both.

ORDINANCE 2863
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 ZIPLY WIRELESS, LLC ("GRANTEE"). THE CITY AND GRANTEE ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES."

WHEREAS, Zippy Wireless, LLC dba Zippy Fiber, a limited liability company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services ("Wireline Communications 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 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") but subject to applicable law; 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 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 (the “Franchise Area”).

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 (as defined 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 the Franchise Area, 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 to Cable Services or small wireless facilities.

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 as set forth in SMC Section 12.90.240 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) or unless any delays are caused by a force majeure event. 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 (unless delays are caused by a force majeure event) 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 its Facilities 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 to perform any location services necessary to locate Grantee's 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. The City shall take into account payment by third parties of relocation costs or expenses in establishing or extending the Relocation Date.

9.5 Contractor Delay Claims. Grantee shall be responsible for the actual third party costs, City incurred expenses, and/or damages incurred by the City for delays in a Public Improvement Project to the extent the delay is caused by or arises out of Grantee's failure to comply with the final agreed upon schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any other reason outside of Grantee's reasonable control. 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 and 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: tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 0 and Section 18; or

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, hold harmless and defend the City, in accordance with the provisions of Section 20, against any all claims, suits, actions, damages, or liabilities for delays to the extent caused by or arising out of the failure of Grantee to remove or relocate its facilities as required in this Section 9; provided that Grantee shall not be responsible for indemnifying, holding harmless or defending City for any claims due to delays not caused by grantee or to the extent caused by the negligence, willful misconduct or unreasonable delay of the City or any third party.

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 or expand the City's authority under federal, law, or local laws, to require the undergrounding of utilities, including without limitation RCW 35.99.

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 0 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. 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 Grantee shall promptly commence to 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. Any 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 Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition reasonably 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. The City may extend such time

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.

13. 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. Reservation of Rights.

13.1 Grantee's 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 of these statutes and other federal law, the City will not impose a franchise fee under the terms of this Franchise. The parties shall, in good faith, negotiate a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the prohibitions of RCW 35.21.860 or federal law no longer apply, or if prohibitions on the imposition of such fees are removed. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws and such fee shall be suspended while any such challenge is pending.

14. 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.

15. Dangerous Conditions; Authority for City to Abate.

15.1 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.

15.2 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.

16. Safety and Maintenance Standards.

16.1 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.

16.2 Additional standards include:

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

16.2.2 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.

17. 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.

18. Indemnification; Exclusion of Damages.

18.1 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.

18.2 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 18.

18.3 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. Grantee may accept defense of a claim or claims under a reservation of rights in which case, a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) determines that such claim or claims were not subject to Grantee's obligations under this Section, City shall promptly reimburse Grantee for all costs and expenses, including attorneys' fees, incurred in the defense of the claim or claims.

18.4 Grantee understands the intent. Grantee 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.

18.5 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 18 and any other indemnification provision herein shall apply. 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.

18.6 Notwithstanding any other provisions of this Section 18, 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.

18.7 The provisions of this Section 188 shall survive the expiration, revocation, or termination of this Franchise.

18.8 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. 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. Insurance.

19.1 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 blanket 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.

19.2 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 19.1. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

19.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability, and Pollution 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 26. 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.

19.4 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 19.1. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 19.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 19.1 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 23 below, subject to the applicable cure periods.

19.5 Grantee's maintenance of insurance as required by this Section 19 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.

19.6 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.

19.7 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.

20. Security Fund and Liquidated Damages.

20.1 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.

20.2 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.

20.3 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.

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

20.4.1 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;

20.4.2 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;

20.4.3 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

20.4.4 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.

20.5 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.

20.6 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 or expand 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.

26. 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.

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

28. 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:
Ziply Wireless
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033
legal@ziply.com

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 19; and (iii) establishment of the security fund required pursuant to Section 20. 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 0 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

36. 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.

37. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 13, 18, 19, 25, and 36 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.

38. Miscellaneous.

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

38.2 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.

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

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

38.5 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 Ziply Wireless, 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: _____

SUBJECT: Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:

Ziply Wireless approached the City for two separate fiber and telecommunications franchises. Ziply operates under two separate entities/affiliates: Ziply Wireless and Ziply Fiber Pacific. Franchise agreements are formal authorizations to utilize the right of way, but Ziply will still be required to obtain permits prior to all work. The term of this franchise is for 10 years.

COUNCIL COMMITTEE/STUDY SESSION: PW Committee

MEETING/STUDY SESSION DATE: 7/11/2023

COMMITTEE RECOMMENDATION: Do-Pass

STAFF RECOMMENDATIONS/MOTION:

This is a first reading only. This ordinance will be placed on the August 21, 2023 council meeting agenda for final action.

ORDINANCE 2864
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 ZIPLY FIBER PACIFIC, LLC ("GRANTEE"). THE CITY AND GRANTEE ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES."

WHEREAS, Ziplly Fiber Pacific, LLC dba Ziplly Fiber, a limited liability company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services ("Wireline Communications 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 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") but subject to applicable law; 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 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 (the “Franchise Area”).

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 (as defined 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 the Franchise Area, consistent with 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 to Cable Services or small wireless facilities.

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 as set forth in SMC Section 12.90.240 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) or unless any delays are caused by a force majeure event. 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 (unless delays are caused by a force majeure event) 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 its Facilities 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 to perform any location services necessary to locate Grantee’s 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. The City shall take into account payment by third parties of relocation costs or expenses in establishing or extending the Relocation Date.

9.5 Contractor Delay Claims. Grantee shall be responsible for the actual third party costs, City incurred expenses, and/or damages incurred by the City for delays in a Public Improvement Project to the extent the delay is caused by or arises out of Grantee’s failure to comply with the final agreed upon schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any other reason outside of Grantee’s reasonable control. 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 and 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: tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 0 and Section 18; or

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, hold harmless and defend the City, in accordance with the provisions of Section 20, against any all claims, suits, actions, damages, or liabilities for delays to the extent caused by or arising out of the failure of Grantee to remove or relocate its facilities as required in this Section 9; provided that Grantee shall not be responsible for indemnifying, holding harmless or defending City for any claims due to delays not caused by grantee or to the extent caused by the negligence, willful misconduct or unreasonable delay of the City or any third party.

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 or expand the City's authority under federal, law, or local laws, to require the undergrounding of utilities, including without limitation RCW 35.99.

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 0 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. 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 Grantee shall promptly commence to 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. Any 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 Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition reasonably 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. The City may extend such time 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.

13. 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. Reservation of Rights.

13.1 Grantee's 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 of these statutes and other federal law, the City will not impose a franchise fee under the terms of this Franchise. The parties shall, in good faith, negotiate a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the s prohibitions of RCW 35.21.860 or federal law no longer apply, or if prohibitions on the imposition of such fees are removed. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws and such fee shall be suspended while any such challenge is pending.

14. 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.

15. Dangerous Conditions; Authority for City to Abate.

15.1 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.

15.2 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.

16. Safety and Maintenance Standards.

16.1 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.

16.2 Additional standards include:

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

16.2.2 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.

17. 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.

18. Indemnification; Exclusion of Damages.

18.1 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.

18.2 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 18.

18.3 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. Grantee may accept defense of a claim or claims under a reservation of rights in which case, a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) determines that such claim or claims were not subject to Grantee's obligations under this Section, City shall promptly reimburse Grantee for all costs and expenses, including attorneys' fees, incurred in the defense of the claim or claims.

18.4 Grantee understands the intent. Grantee 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.

18.5 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 18 and any other indemnification provision herein shall apply. 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.

18.6 Notwithstanding any other provisions of this Section 18, 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.

18.7 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise.

18.8 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. 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. Insurance.

19.1 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 blanket 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.

19.2 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 19.1. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

19.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability, and Pollution 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 26. 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.

19.4 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 19.1. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 19.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 19.1 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 23 below, subject to the applicable cure periods.

19.5 Grantee's maintenance of insurance as required by this Section 19 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.

19.6 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.

19.7 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.

20. Security Fund and Liquidated Damages.

20.1 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.

20.2 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.

20.3 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.

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

20.4.1 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;

20.4.2 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;

20.4.3 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

20.4.4 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.

20.5 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.

20.6 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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 or expand 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.

26. 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.

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

28. 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:
Ziply Fiber
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033
legal@ziply.com

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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 19; and (iii) establishment of the security fund required pursuant to Section 20. 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 0 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

36. 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.

37. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 13, 18, 19, 25, and 36 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.

38. Miscellaneous.

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

38.2 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.

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

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

38.5 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 Ziply Fiber Pacific, 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:_____