



Members: Councilmembers Clerget, Elfers, Reinke, Alt. Kenna

Staff: Michael Kosa, Alisa O’Haver-Ayala, Ryan Johnstone, Andrew Leach, Robert Wright, Andria Hannegan, Courtney Littrell, Drew McCarty, Gursimran Singh, Thi Le and Kelsey White

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 (First Floor Conference Room), or virtually by using the meeting access link below:

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

Meeting ID: 232 432 910 936 Passcode: 6uHEd4

[Download Teams](#) | [Join on the web](#)

Or call in (audio only) [+1 323-886-6453,,539397162#](#) United States, Los Angeles

Phone Conference ID: 539 397 162#

[Find a local number](#) | [Reset PIN](#)

CALL TO ORDER

COMMITTEE BUSINESS

1. Hops Alley Temporary Construction Easement - Nicholson's Pharmacy
2. Heritage Park Remediation - Consultant Contract Amendment
3. Operations Facility - Security and Access Control Contract Award
4. Fryar Ave Trail Partial Land Acquisition- K & E Investments
5. Sumner - Brightnight (Gree) Easement

REPORTS

1. Project Status Report

ADJOURNMENT

SUBJECT: Hops Alley Temporary Construction Easement - Nicholson's Pharmacy

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$6,000.00

Within Budget Allocation: Yes

ATTACHMENTS:

1. Temporary Construction Easement

STAFF CONTACT: Drew McCarty, Assistant Engineering Manager

SUMMARY BACKGROUND:

As part of the Hops Alley Project, a Temporary Construction Easement (TCE) was required with the adjacent Nicholson's Pharmacy property (Parcel 7985000540 at 910 Alder Ave) to construct the new curb and trash enclosure. The work requires setting concrete formwork, which requires access five (5) feet onto Nicholson's property. During negotiations for the TCE, the property owner requested pavement improvements within their entire parking lot. To finalize the agreement and secure the necessary TCE, the City agreed to fund ten (10) feet of asphalt paving into the Nicholson parking lot. Per an asphalt quote received, the estimated cost to pave the approximately 10' x 120' area is \$5,700 to \$6,300. During negotiations, the property owner agreed to a cost of \$6,000 in exchange for agreeing to the Temporary Construction Easement.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 9/2/2025

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion authorizing the Mayor to execute any and all necessary easement documents with Nicholsons Pharmacy, as part of the Hops Alley project (CIP 24-10), substantially in a form approved by the City Attorney and ratify and confirm any and all prior acts consistent with this approval.

Excise Tax Exempt

Pierce County, WA

08/21/2025 9:59 AM

Electronically Submitted

XTINOCO

202508210144

Electronically Recorded

Pierce County, WA XTINOCO

08/21/2025 9:59 AM

Pages: 6 Fee: \$308.50

After Recording Mail To:

City of Sumner
1104 Maple Street #200
Sumner, Washington 98390

TEMPORARY CONSTRUCTION EASEMENT

Grantors: Teresa Austin, an individual and as Personal Representative of the Estate of Richard W. Austin, deceased and Martin Hubbard, an individual

Grantee: City of Sumner, a Washington Municipal Corporation

Abbreviated Legal: The North 5 Feet, The Southwest Quarter Of Section 24, Township 20 North, Range 04 East, Of The Willamette Meridian.

Tax Parcel No.: 7985000540

THIS INSTRUMENT is made this 8th day of July, 2025 ("Effective Date"), by and between Teresa Austin, an individual and as Personal Representative of the Estate of Richard W. Austin, deceased, and Martin Hubbard, an individual, collectively the "Grantor", and the City of Sumner, a Washington Municipal Corporation, hereinafter called the "Grantee".

WITNESSETH:

1) **Grant of Easement.** The Grantor, for and in consideration of the sum of six thousand dollars (\$6,000.00) and other valuable consideration, does by these presents, convey and warrant unto the Grantee a temporary construction easement (the "Easement") for access over, through, across, under and upon that portion of real estate situated in the County of Pierce, State of Washington and described in **Exhibit A**, attached hereto and incorporated herein, (the "Easement Area"), for the placement of personnel and equipment for construction of improvements to Hops Alley, as more fully described in Section 2 and depicted on **Exhibit B**, attached hereto and incorporated herein.

2) **Purpose of Easement.** The Grantee, its contractors, agents, and permittees, at Grantee's sole cost and expense, shall have the right at such times as may be necessary during the term of this easement, to enter upon the Easement Area, including entry into private improvements located in the Easement Area for the purpose of constructing those portions of the Hops Alley improvement project that are located adjacent to Grantor's property, including repairing, altering or reconstructing a pre-existing sidewalk. Grantee shall have the right to re-grade slopes and/or make cuts and

fills to match grade. In the event Grantee's improvements require access to Grantor property in addition to the Easement Area, Grantee shall have the right to enter into such additional property, with prior written notice to Grantor, and such entry shall be governed by the terms of this Easement. Grantee shall exercise its rights under this Easement in a manner that minimizes any disturbance to Grantor's Property, or any adjacent property owned by Grantor or its affiliates, and its occupants. At no time when Grantor's business is open shall Grantee block either any parking stall or the entry to the property.

The rights herein granted shall include all incidental rights, including but not limited to, right of ingress and egress from the common streets, roadways and driveways of Grantor's property to properly perform the work indicated for construction of the project. The use of the Grantor's property for vehicle parking or storage, or other storage, is not permitted. Nor shall the Grantee access the property with any construction vehicles. Grantee and those entitled to exercise the rights granted herein shall exercise all due diligence in their activities upon the property, and Grantee does hereby agree to indemnify and hold harmless the Grantor against and from any and all liability for losses, damages and expenses on account of damage to property or injury to persons resulting from or arising out of the rights herein granted to Grantee and/or its contractors, employees, agents, successors or assigns.

3) Improvements. In the event private improvements in the Easement Area are disturbed or damaged by Grantee's use of the Easement, on or before the end of the Term, they shall be restored or replaced in as good a condition as they were immediately before Grantee entered the Easement Area, including restoring any pavement to a better condition. During the Term, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition. Grantee will provide Grantor with as-is documentation prior to the commencement of Grantee's work.

4) Grantor Right to Use Easement Area. Grantor shall retain the right to use and enjoy the Easement Area, including the right to use existing private improvements located in the Easement Area, so long as such use does not interfere with Grantee's construction of the public improvements described in this Easement.

5) Term of Easement. The term of this Easement is ninety days (the "Term") or until completion of construction and restoration of the property, whichever occurs first. The Term shall commence upon execution of this agreement by both parties. Grantee shall provide seven (7) days written notice to the Grantor prior to commencement of construction in the Easement Area. This Easement may be extended by mutual written consent of the Grantor and Grantee.

6) No Liens. Grantee shall keep the Grantor's Property free and clear of all liens, charges, and other monetary encumbrances arising out of the use of the Easement Area that may be claimed or asserted by any third party.

7) Binding Effect. The Easement granted hereby is solely for the benefit of Grantee, and is personal to Grantee, its successors in interest and assigns. Grantee shall have the right to permit third parties to enter upon the Easement Area to accomplish the

purposes described herein, provided that all such parties abide by the terms of this Easement. The Easement granted hereby, and the duties, restrictions, limitations and obligations herein created, shall run with the land, shall burden the Easement Area and shall be binding upon and the Grantor and its respective successors, assigns, mortgagees and sub lessees and each and every person who shall at any time have a fee, leasehold, mortgage or other interest in any part of the Easement Area.

8) Sale of Property. Should the undersigned owner (Grantor), sell the property described herein during the Term of this agreement, Grantor shall promptly disclose and notify the buyer of this agreement.

9) Notice. Any notice sent to the parties pursuant to this Agreement shall be in writing and sent by email.

Grantor:

Grantee:

Teresa Austin & Martin Hubbard
910 Alder Ave
Sumner, WA 98390
nicholsonsumnerpharmacy@yahoo.com

City of Sumner, Washington
Attn: Alisa O'Haver-Ayala
1104 Maple St.
Sumner, WA 98390
alisao@sumnerwa.gov

10) Payment. Subject to the terms and conditions of this Agreement, Grantee agrees to make a one-time payment to the Grantor of \$6,000.00. Payment of the Funds will be made within 45 days of the effective date of this Agreement. Grantee shall make payment by check.

Dated this 8th day of July, 2025.

GRANTOR:

GRANTEE:

Teresa Austin

Kathy Hayden

By: Teresa Austin, Grantor as an Individual and as Personal Representative of the Estate of Richard W. Austin

City of Sumner, a Washington Municipality
By: Kathy Hayden, Mayor

DATE: 7/8/25

DATE: 08/07/25

Martin Hubbard

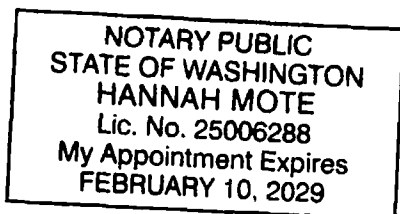
By: Martin Hubbard, Grantor

DATE: 7/8/25

GRANTORS

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

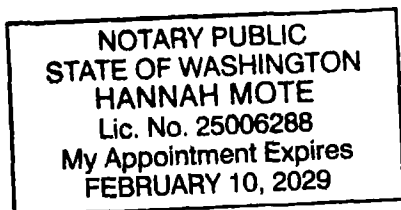
On this 8th day of July, 2025, before me, a Notary Public in and for the State of Washington, personally appeared Teresa Austin as an individual and as Personal Representative of the Estate of Richard W. Austin, and to me known to be the individual who executed the foregoing instrument and acknowledged it to be her free and voluntary act for the uses and purposes mentioned in this instrument, and on oath stated that she is authorized to execute said instrument.



Hannah Mote
(Signature of Notary)
Hannah Mote
(Print or stamp name of Notary) NOTARY
PUBLIC in and for the State of Washington,
residing at: Pierce County
My appointment expires 2-10-2029

STATE OF WASHINGTON)
)ss.
County of Pierce)

On this 8th day of July, 2025, before me, a Notary Public in and for the State of Washington, personally appeared Martin Hubbard, who I know or have satisfactory evidence that is the person who appeared before me, and said individual acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.



Hannah Mote
(Signature of Notary)
Hannah Mote
(Print or stamp name of Notary) NOTARY
PUBLIC in and for the State of Washington,
residing at: Pierce County
My appointment expires 2-10-2029

GRANTEE

STATE OF WASHINGTON)
)ss.
County of Pierce)

I certify that I know or have satisfactory evidence that Kathy Hayden is/are the person(s) who appeared before me, and said individual/s acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 8/7/2025

Michelle Converse
Notary Public in and for the State of Washington
Residing at Pierce County, WA
My appointment expires 7/20/28

APPROVED AS TO FORM ONLY:

Andrea Marquez
For By: Andrea Marquez
City Attorney

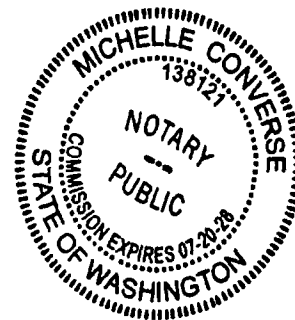


EXHIBIT A
LEGAL DESCRIPTION

THE NORTH 5 FEET OF LOT 9 BLOCK 2 OF THE SUMNER (ADDITION) PLAT, LOCATED
IN THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 20 NORTH, RANGE 04
EAST, OF THE WILLAMETTE MERIDIAN.

SUBJECT: Heritage Park Remediation - Consultant Contract Amendment

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$35,162.58

Within Budget Allocation: N/A

ATTACHMENTS:

1. Amendment w/ Scope & Fee

STAFF CONTACT: Alisa O'Haver-Ayala , Deputy Public Works Director

SUMMARY BACKGROUND:

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

The City contracted with APEX Companies, LLC (formerly known as PBS Engineering and Environmental, Inc.) through a qualification-based selection process. APEX completed the Voluntary Cleanup Program Application, which was submitted to the Department of Ecology in August 2024 and is further contracted to complete a Feasibility Study. The previous Amendment (#4) added funds for the consultant to collect additional information to respond to the Department of Ecology's comments on the City's Voluntary Cleanup Program Application. After approval of Amendment #4 the City of Sumner, APEX, and the Department of Ecology (DOE) had a meeting to confirm that the direction the City was proceeding in was in alignment with DOE's expectations for moving this site towards resolution. DOE's expectations resulted in an additional day of drilling effort. Additionally, one existing Monitoring Well (MW-1) was in conflict with the Heritage Park Phase 2 Improvements. The costs to decommission MW-1 and install a replacement monitoring well are captured in this amendment. The previous contract amount was \$435,423.00 and this amendment adds \$35,162.58 for a total contract cost of \$470,585.58.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 9/2/2025

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion approving a supplement to PBS's Consultant Services Contract for the Heritage Park Remediation project (CIP 22-04), increasing the contract amount by \$35,162.58 to a total authorized amount not-to-exceed \$470,585.58, and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the amendment, substantially in a form as approved by the City Attorney.



AMENDMENT NO. 5

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

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

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

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

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

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

See Exhibit A

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

Original Contract Sum, <i>including applicable WSST</i>	\$104,773.00
Net Change by Previous Amendments <i>including applicable WSST</i>	\$330,650.00
Current Contract Amount <i>including all previous amendments</i>	\$435,423.00

Current Amendment Sum	\$35,162.58
Applicable WSST Tax on this Amendment	\$N/A
Revised Contract Sum	\$470,585.58

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

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

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

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

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

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



August 26, 2025

Alisa O'Haver-Ayala, PE, CCM
Public Works Deputy Director—Engineering/City Engineer
City of Sumner
1104 Maple Street, Suite 260
Sumner, Washington 98390

Via email: alisao@sumnerwa.gov

Regarding: Revised Proposal for Scope Revisions and MW-1 Well Decommissioning/Replacement
Sumner Texaco Heritage Park Remediation
914 Kincaid Avenue
Sumner, Washington
Apex Proposal 25006034

Dear Alisa:

Apex Companies, LLC, by and through its wholly owned subsidiary PBS Engineering and Environmental LLC (Apex), is pleased to submit this proposal to the City of Sumner (City) to provide environmental services at Sumner Texaco Heritage Park in Sumner, Washington.

This proposal outlines our project approach, scope of work, schedule, and budget for Apex services based on our understanding of the project, information provided to us to date, and experience with similar projects.

BACKGROUND

The Site is currently being redeveloped for park improvements. Apex previously conducted a site walk with representatives from the City and prepared a proposal for the supplemental subsurface investigation. Apex and the City subsequently met with the Washington State Department of Ecology (Ecology) on July 15, 2025, to informally discuss the proposed scope of work. Conclusions from the meeting with Ecology resulted in the potential addition of one soil boring that would be completed as a monitoring well. In addition to changes in scope, monitoring well MW-1 was previously decommissioned ahead of scheduled structural boring activities at the Site.

SCOPE OF WORK

The scope of work includes Task 4 for additional services required to complete the scope of work covered in the Revised Proposal for Supplemental Subsurface Investigation, dated April 24, 2025, and covered under Amendment No. 4, Task 4. The additional scope of work includes labor for both the driller and Apex for one additional day of work (3 days instead of 2). This change is based on driller quotes received in April that estimated 2 days of drilling and well installation instead of 3. The driller that was used (Cascade) had correctly estimated 3 days of drilling to conduct the work.

Apex has also included some additional labor for a field geologist onsite during drilling to log soils, as successfully staffing this field project required more experienced field personnel and additional staff on site to keep up with

the work activities during utility locating, logging soils during drilling and collecting soil samples. Although Ecology requested one additional boring location that would be completed as a monitoring well, due to utility obstructions and other site constraints, an additional well was not able to be completed in the field and is not included in the additional scope of work.

Apex had initially requested quotes from three drillers, and two of them (Holt and Holocene) had provided similar quotes when our proposal for the supplemental subsurface investigation was prepared, and they were slightly lower than Cascade Drilling’s quote. When we were trying to schedule this work in July, Holt was non-responsive when we were trying to schedule the work, so we reached out to Cascade, and they were able to get us on their schedule for the week of July 21st, however their costs are slightly higher and included an extra day of drilling activities, which is realistic for this scope of work. We have included the increased costs for Cascade.

This proposal also includes costs for a traffic control plan and signage required for the ROW permit to conduct the work. This was inadvertently left out of the revised proposal.

In addition, Task 9 is included in this proposal for the decommissioning and replacement of monitoring well MW-1, which was decommissioned to mitigate conflicts during Heritage Park construction activities.

REMAINING BUDGET FROM OLDER CONTRACT TASKS

There are some remaining funds on select tasks in previously awarded Amendments (A) 1 and 2 that will not be used. Those funds will be zeroed out on the original awarded task and will be transferred to cover costs in this proposal as follows:

Amendment/Task No.	Task Description	Amount Remaining
A1, Task 2	Remedial Injection Pilot Test	\$1,218.40
A1, Task 4	Soil Vapor Sampling	\$28.43
A1, Task 5	Remedial Pilot Test Report	\$25.00
A1, Task 6	IDW Disposal	\$3,314
A2, Task 1	Data Gaps Site Characterization	\$1,105.09
A2, Task	Data Gaps/Supplemental RI Reporting	\$17.50
Total		\$5,708.42

LIMITATIONS OF SCOPE

This study will be limited to the tests and/or locations indicated in the previously described scope of work. The site as a whole may have other concerns that will not be characterized by this study. Further study may be recommended. The findings and conclusions of this work are not scientific certainties, but probabilities based on professional judgment concerning the significance of the data gathered during the course of this investigation. Apex is not able to represent conditions on the site beyond those detected or observed by Apex.

This work will be limited to added supplemental subsurface investigation scope and well replacement and development activities.

ASSUMPTIONS

Apex endeavors to avoid damage to subsurface utilities during drilling and site work by filing a public one call “call before you dig” ticket and subcontracting a private utility locator to mark subsurface utilities on the site. Damage to subsurface utilities due to subsurface investigation and site work are ultimately the liability of the

Client. Apex can conduct nondestructive digging methods (i.e., hand-digging) at the request of the Client for an additional fee.

COMPENSATION ESTIMATE

Apex proposes to provide the scope of work on a time and materials basis. The following outlines the estimated costs associated with the scope services.

Task 2: Additional Scope for Additional Investigation

Engineer VII (2 hours at \$235/hr)	\$470
Senior Geologist II (20 hours at \$180/hour)	\$3,600
Project Geologist II (20 hours at \$145/hour)	\$2,900
Staff Scientist (8 hours at \$110/hour)	\$880
Drilling Contractor (Additional Costs)	\$9,026
Laboratory (2 additional samples)	\$865
Traffic Control Plan and Signage	\$2,200
Reimbursable Expenses	\$150
Estimated Sales Tax for Drilling	\$780
Task 4 Estimated Subtotal	\$20,871

Task 7: Well Decommissioning (MW-1)

Engineer VII (2 hours at \$235/hour)	\$470
Senior Geologist II (8 hours at \$180/hour)	\$1,440
Project Geologist II (8 hours at \$145/hour)	\$1,160
Project Administrator I (2 hours at \$105/hour)	\$210
Drilling Contractor	\$1,725
Reimbursable Expenses	\$100
Estimated Sales Tax for Driller/Well Decommissioning	\$145
Task 9 Decommissioning Estimated Subtotal	\$5,250

Task 8: Well Installation (Replacement of MW-1)

Engineer VII (2 hours at \$235/hour)	\$470
Senior Geologist II (6 hours at \$180/hour)	\$1,080
Project Geologist II (12 hours at \$145/hour)	\$1,740
Drilling Contractor	\$8,350
Utility Locator	\$400
Laboratory (2 soil samples plus duplicate)	\$750
Investigation Derived Waste	\$935
Reimbursable Expenses	\$300
Estimated Sales Tax for Drilling/Well Installation	\$725
Task 9 Well Installation Estimated Subtotal	\$14,750
Task 9 Estimated Total	\$20,000

Subtotal Estimated Cost Including Tax	\$40,871
Less Remaining Budget from Amendments 1 and 2	-\$5,708.42
Total Estimated Cost Including Tax	\$35,162.58

This cost estimate includes all labor, materials, transportation, equipment, and other expenses required to complete the work described.

The estimated cost provided in this proposal is valid for 60 days from the date of this proposal, after which line items are subject to potential revision to reflect current market conditions and other external factors that may impact the accuracy of the total estimated costs.

The fees and terms under which these services are provided will be in accordance with the attached Standard Terms and Conditions for Professional Services (Rev. 09/2024). The Terms and Conditions and this proposal constitute the entire agreement (Agreement) between the parties and may not be changed without prior written consent of the parties.

The pricing and other information contained in this proposal document are proprietary and shall not be duplicated, used, or disclosed, in whole or in part, to other parties without the permission of Apex.

JOBSITE SAFETY

At Apex, we are committed to keeping our employees, clients, contractors, and communities safe and healthy. All work that Apex employees perform is conducted following federal, state, and local safety guidelines.

APPROVAL

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

Please feel free to contact me at 206.766.7640 or melanie.young@apexcos.com with any questions or comments.

Sincerely,

Melanie Young, PE
Senior Environmental Engineer
Apex Companies, LLC

ACCEPTED BY:
City of Sumner

Signature of Authorized Representative

Name (Please Print)

Title

Date

cc: Drew McCarty

Attachment: Standard Terms and Conditions for Professional Services (Rev. 09/2024)
2025 Hourly Rate Schedule

BG:MY

Standard Terms and Conditions for Professional Services

These Standard Terms and Conditions for Professional Services ("Terms and Conditions") are attached to and made part of the letter proposal and scope of work (collectively, the "SOW") from Apex Companies, LLC, by and through its wholly owned subsidiary PBS Engineering and Environmental LLC ("Company") to Client (as defined in the letter proposal). The Terms and Conditions and the SOW (collectively, the "Agreement") represent the entire and integrated agreement between Client and Company. This Agreement supersedes all prior negotiations, representations, or agreements, written or oral. If there are any inconsistencies between the SOW and the Terms and Conditions, the SOW shall control. Any services outside the SOW will be considered an "extra" and billed directly to the Client, outside of the contract amount, on a "Time and Materials" basis in accordance with Company's currently established bill rates and these Terms and Conditions.

The Agreement memorializes the contractual obligations of Company and Client with respect to Company's delivery of professional consulting services to Client as an engineer, consultant, or owner representative.

RECITALS

NOW, THEREFORE, in consideration of the mutual agreements, representations, promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. SCOPE OF SERVICES; ACCESS TO PROPERTY; SITE CONDITIONS.

(a) **Scope of Services** – The scope of Services to be provided by Company for Client shall be specified in the Proposal. Company's employees shall not be retained as expert witnesses except by separate written agreement. Client agrees to pay Company's legal expenses, administrative costs and fees pursuant to Company's then current fee schedule for Company to respond to any subpoena.

(b) **Access to Property; Permits** – Client grants or shall obtain for Company, its subcontractors, affiliates, agents, directors, officers, and employees (individually, a "Company Party", and collectively, "Company Parties") authority to enter upon Client's property and the property of others and shall provide all access as necessary, including access for all necessary equipment, to perform the Services. Client warrants that it has obtained (or will obtain prior to performance of the Services) all necessary permits required in connection with the performance of the Services.

(c) **Site Conditions** – Client hereby acknowledges and agrees that (i) Company is not, and has no responsibility as an owner, handler, generator, operator, treater, storer, arranger, transporter or disposer of hazardous or toxic substances found or identified during the performance of the Services; and (ii) Client shall undertake to arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified. Client further acknowledges and agrees that (i) Client may be requesting Company to undertake services or work for the benefit of Client involving the presence or potential presence of hazardous substances; and (ii) Company may be exposed to claims arising out of, or involving actual, alleged, or threatened discharge, disposal or release or escape of hazardous or potentially hazardous pollutants including, but not limited to, solid, liquid, gaseous or thermal irritants or contaminants including smoke, water, vapor, soot, fumes, acids, alkalis, chemicals, wastes, and waste materials, and Client understands and agrees that Company shall only be responsible for losses which directly result from Company's negligence.

2. Company's RESPONSIBILITIES; COMPENSATION; TERMS OF PAYMENT.

(a) **Company's Responsibilities** – Except as otherwise provided in a specific Proposal, Company shall furnish all labor, materials, tools, equipment and supervision necessary to perform the Services. Company shall be responsible for the means and methods used in performing the Services and shall be responsible only for its activities and those of the Company Parties.

(b) Compensation – Client shall pay Company, as compensation for Services, the fees and costs specified in the applicable Proposal. Services performed by any subconsultants or subcontractors will be invoiced at cost plus 15 percent (15%). Examples of services that may be subcontracted include other professional disciplines, soil boring, well installation, heavy and specialty equipment operators, geophysical surveys, commercial database search providers, and computer programming. Remediation, Abatement, General Construction and Software services will be invoiced as quoted.

(c) Terms of Payment – All billing and expense submissions shall be submitted by Company to Client monthly. If Client objects to all or any portion of any invoice, Client shall notify Company in writing within fifteen (15) days after Client's receipt of such invoice, giving the reasons for Client's objection. The parties shall cooperate in good faith to resolve any disputed invoice amounts as expeditiously as possible. Payment on undisputed invoice amounts is due upon receipt of invoice by Client and is past due thirty (30) days from the date of the invoice. Client shall pay an additional charge of one and one-half percent (1.5%) per month on past due accounts. If requested by Client in writing, Company shall provide appropriate lien waivers from Company and, if applicable, its subcontractors and affiliates, for Services performed, contingent upon receipt of payment in full for such Services. There will be a 3% fee charged to Client in addition to the invoiced amount for any payments made by credit card. Client agrees to pay attorneys' fees, legal costs and all other collection costs incurred by Company in pursuit of past due payment. In addition, any amounts due or to become due under this Agreement and /or any property of Client in possession of Company may be set off by Company and applied to the payment, in whole or in part, of any amounts owed by Client to Company, whether such amounts are owed under this Agreement or any other agreements or circumstances. Company's right to set off shall be without obligation to do so and shall be in addition to any other rights or remedies available to Company.

(d) Retainer Fee for Services – If required in the Proposal, Client shall pay a retainer to Company for the Services in the amount of _____ (\$_____) upon entering into this Agreement. This retainer is non-refundable. Company shall bill first to the retainer. Upon depletion of the retainer, Client shall pay additional fees and costs, if any, upon presentment of an invoice by Company as set forth in **(b)** and **(c)** above.

(e.) Personal Guarantee – If required by the Proposal, Client's principals shall execute the PERSONAL GUARANTEE AGREEMENT, attached as Exhibit A and incorporated herein by reference.

3. INDEPENDENT CONTRACTOR. Company shall act solely as an independent contractor in performing the Services, and nothing in this Agreement shall at any time be construed to create the relationship of employer and employee, principal and agent, partners or joint ventures between Client and Company. Except as otherwise provided in this Agreement or in a specific Proposal under which Company is performing Services, Company shall have no right or authority to act for Client. Company shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of Company and its employees.

4. CONFIDENTIALITY. Each party shall use commercially reasonable efforts to keep confidential all data and information furnished by the other party under this Agreement. This confidentiality obligation shall not apply to data or information: (i) within the public domain; (ii) previously known to the receiving party prior to its disclosure; (iii) obtained from third parties without violating any confidentiality agreement; (iv) required, in the opinion of legal counsel, to be produced by any law, subpoena, or court order; or (v) required, in the opinion of legal counsel, to be produced in the defense of any claim. If, in the opinion of legal counsel, a party is required to produce information by subpoena or court order, such party shall first provide prompt notice to the other party in order to allow the party an opportunity to seek a protective order or other appropriate remedy. Client agrees that Company shall be permitted to use Client's name and logos in Company's marketing materials unless advised or prohibited against it by the Client in writing. The technical and pricing information contained in any proposal or other documents submitted to Client by Company is to be considered confidential and proprietary and shall not be released or disclosed to a third party without Company's written consent. All confidential or proprietary reports, drawings, specifications and other technical documents provided to Company by Client pursuant to this Agreement

shall be treated as confidential, and Company shall not disclose such materials, or any contents thereof, to others without Client's prior written consent. All such materials shall be returned to Client on request. Each party shall make its respective agents, directors, officers, employees and affiliates having access to such materials aware of this obligation of confidentiality.

5. INSURANCE. Company, at its expense, shall provide and maintain in effect at all times during the term of this Agreement the following insurance, with limits of liability not less than stated below:

(a) Worker's Compensation, Occupational Disease, Employer's Liability, Disability Benefit and other similar employee benefit insurance in compliance with the statutory limits of the state where the Services are being performed.

(b) Comprehensive General Liability Insurance providing a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000. Such insurance shall include Client as an additional insured for activities arising out of the performance of the Services if so requested by Client.

(c) Comprehensive Automobile Liability Insurance providing a minimum combined single limit for bodily injury (including death) and property damage of \$1,000,000.

(d) Professional Liability/Errors and Omissions Insurance with a minimum limit of \$1,000,000 per any one claim and in the aggregate.

6. DATA AND INFORMATION; OWNERSHIP OF DOCUMENTS.

(a) Ownership of Client Data. Client shall provide all Client Data relevant to the Services provided by Company to Client. Company shall be entitled to rely upon the Client Data provided by Client or others in performing the Services and, Company assumes no responsibility or liability for the accuracy or completeness of such. Client waives any claim against Company, and agrees to defend, indemnify and hold Company harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in the Client Data provided to Company by Client or its agents. As between Client and Company, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject only to the limited license granted in Section 6(b).

(i) For purposes of this Agreement, "Client Data" means any and all information, data, materials, works, reports, studies, plans, specifications, documents, expressions, or other information, including any that are (1) uploaded, submitted, posted, transferred, transmitted, or otherwise provided or made available by or on behalf of Client or any authorized user for use in performing the Services, or (2) collected, downloaded, or otherwise received by Company in connection with the Services from Client or any authorized user pursuant to this Agreement or any Change Order or at the written request or instruction of Client or such authorized user. All output, copies, reproductions, improvements, modifications, adaptations, translations, and other derivative works of, based on, derived from, or otherwise using any Client Data are themselves also Client Data. For the avoidance of doubt, Client Data includes all data from or regarding authorized users, but does not include any Company Materials.

(ii) For purposes of this Agreement, "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(iii) For purposes of this Agreement, "Company Materials" means the Services, and any and all other information, plans, studies, specifications, data, documents, all devices, documents, data, know-how, methods, processes, systems, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, studies, reports, or other writings that are provided or used by Company or any subcontractor in connection with the Services or otherwise comprise or relate to the Services.

(b) Limited License to Use Client Data. Subject to the terms and conditions of this Agreement, Client hereby grants Company a limited, royalty-free, fully paid up, non-exclusive, transferable, and sublicensable license to Process the Client Data in the United States strictly as instructed by Client or an authorized user and solely as necessary to provide the Services for Client's benefit as provided in this Agreement for so long as Client or any authorized user uploads or stores such Client Data for Processing by or on behalf of the Company on any Company systems.

(i) For purposes of this Agreement, "Process" means to perform any operation or set of operations on any data, information, material, work, expression, or other content, including to (1) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other improvements or derivative works, (2) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or (3) block, erase, or destroy. "Processing" and "Processed" have correlative meanings.

(c) Company Data and Information. If the Services include the collection of samples and data relative to Client's contemplated purchase, sale or development of certain property, then the Services are performed by Company with Client's understanding of the subsurface risks. Therefore, although Company will be responsible for data which is directly the product of its sampling effort, Company will not be responsible for the independent conclusions, interpretations, interpolations and/or decisions of Client, or others, which are the result of this effort. Company does not undertake any Services which would result in any recommendation, advice or direction by Company as to whether Client should or should not proceed to purchase, sell or develop the site in question, but it is understood that Client intends to utilize the data provided by Company to make its own independent judgment in this respect.

(d) Ownership of Company Materials. As between Client and Company, Company is and will remain the sole and exclusive owner of all right, title, and interest in and to the Company Materials, including all Intellectual Property Rights relating thereto, subject only to any authorization or license granted to Client in the Proposal or a separate license agreement between Company and Client. If Company terminates the Agreement in accordance with the provisions hereof, any license granted by Company to the Client, prior to termination and subject to the payment of applicable fees, shall continue.

(e) No Implied Rights. Except for the limited license expressly provided: (i) in Section 6(b), nothing contained in this Agreement shall be construed as granting Company or any third party any right, title, or interest in or to any Client Data; or (ii) in the Proposal or a separate license agreement between Company and Client, nothing contained in this Agreement shall be construed as granting Client or any third party any right, title, or interest in or to any Company Materials, in each case (clause (i) and (ii)) whether by implication, estoppel, or otherwise.

7. STANDARD OF CARE; INDEMNITY.

(a) **Standard of Care** – Company shall perform the Services in a competent, professional manner, consistent with the customary standards of performance by professionals in Company's profession performing under similar conditions at the same time and locality. Client acknowledges and agrees that Company has made no other implied or expressed representation, warranty, or condition with respect to the Services performed or provided in accordance with this Agreement. If Company's services under this Agreement do not include observation or review of contractor performance during construction phase, Company services are deemed complete on the date the design is completed or if applicable, the date when the approving authority approves the design. Client assumes all responsibility for the application and interpretation of the construction phase review of design.

(b) **Indemnity** – The following indemnity provisions shall control this Agreement:

(i) Subject to the limitation of liability set forth in paragraph (3) below, Company shall indemnify and hold Client and its agents, officers, directors, and employees (individually, a "Client Party" and collectively, "Client Parties") harmless from and against any and all claims, liabilities, damages, demands, losses, costs and expenses, including reasonable attorneys' fees and court costs, to the extent directly and

proximately caused by : (1) the negligent or wrongful acts or omissions of Company or an Company Party while performing the Services; or (2) any breach of this Agreement by Company. Company's indemnification obligation shall not arise until an actual finding of negligence or the parties agree prior to an actual finding of negligence.

(ii) Client shall indemnify, defend and hold Company and the Company Parties harmless from and against any and all claims, liabilities, damages, demands, losses, costs and expenses, including reasonable attorneys' fees and court costs, to the extent attributable to: (1) the negligent or wrongful acts or omissions of Client or a Client Party; or (2) any breach of this Agreement by Client.

(iii) Notwithstanding anything else in this Agreement to the contrary, the total aggregate liability of Company and Company Parties hereunder shall not exceed the greater of (1) \$50,000 or (2) Company's total fee (excluding expense reimbursements) paid for the applicable Services during the immediately preceding twelve (12) month period.

(iv) In the event liability is shared by the parties to this Agreement, each party shall contribute in the amount of its proportionate share for all actions, claims, liability, damages, losses, expenses or judgments. Company's indemnification obligation shall not arise until an actual finding of negligence or the parties agree prior to an actual finding of negligence.

(v) In no event shall either party be liable or responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, or other special, indirect, incidental, punitive or consequential damages.

8. FORCE MAJEURE. Except for Client's obligation to pay Company for Services rendered, no liability shall attach to either party from delay in performance or nonperformance caused by circumstances beyond the control of the party affected, including without limitation acts of God, fire, flood, explosion, war, sabotage, labor disputes or shortages, accidents, pandemics, epidemics, action or demand of governmental authority, inability to obtain power, material, equipment or transportation, injunction, labor strikes, and any other similar or dissimilar contingency. An event of force majeure shall extend the completion date of any obligation specified in a Proposal for a time equal to the time the event of force majeure is in existence.

9. CHANGE ORDERS. Following execution of a Proposal, Client may at any time, by written notice to Company (a "Change Order"), request in good faith changes to the Services covered by such Proposal, consisting of additions, deletions, substitutions or other revisions. Any such additions, deletions, substitutions or other revisions that modify the obligations of Company must be agreed upon in writing by the parties (along with any adjustment in the compensation to Company or timing of completion required thereby) before Company shall proceed with such additions, deletions, substitutions or other revisions. If after a good faith effort by Company to negotiate modifications to the scope of Services, the schedule, and/or the cost estimate, an agreement has not been reached with the Client, then Company shall have the right to terminate the applicable Proposal upon written notice to the Client, and Client shall pay Company for all Services performed and expenses incurred through the date of termination.

10. TERMINATION. Either party may terminate this Agreement at any time and for any reason, upon thirty (30) days prior written notice to the other party. Client shall pay Company for all Services performed and all expenses incurred in performing the Services prior to any such termination of this Agreement plus all reasonable demobilization costs incurred by Company if Client terminates this Agreement before Company has completed its Services. In addition to and/or in lieu of terminating this Agreement, if Client has failed to act on an application for payment from Company within thirty (30) days after it is submitted, Company shall have the right to suspend all Services, without prejudice, upon seven (7) days' prior written notice to Client until Company has received payment of all amounts then due. All reasonable demobilization and other costs incurred by Company as the result of any such suspension will be paid by Client.

11. SUBSURFACE OPERATIONS. Client shall provide Company with the identity and location of all subsurface structures, utilities and obstructions known to Client at the applicable property locations. Client agrees to indemnify, defend and hold Company and the Company Parties harmless from and against any and all damages, delays, costs, injuries, death, or any claims or demands or causes of action for any of the foregoing, including costs of defense, arising from associated with any subsurface structures, utilities or obstructions that were not called to Company's attention and correctly shown on the plans furnished to Company. Client waives any claim against Company, and agrees to defend, indemnify, and hold Company harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not called to Company's attention or accurately located. In addition, Client agrees to compensate Company for any time spent or expenses incurred by Company in defense of any such claim with compensation to be based upon Company's prevailing fee schedule and expense reimbursement policy.

12. WASTE MATERIALS.

(a) Removal of Non-Hazardous Waste – If requested by Client in writing, Company will remove surplus non-hazardous unregulated waste materials generated by Company in the course of performing the Services, and will lawfully dispose of same, unless otherwise specified by Client in writing. Except for samples collected or obtained by Company, Company shall have no obligation to remove or dispose of hazardous materials from sites where Services are performed, except to the extent that such materials are brought onto the site by Company or an Company Party.

(b) Contamination – Client acknowledges that it is impossible for Company to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. As a result, there is a risk that drilling and sampling may result in contamination of certain subsurface areas. Although Company will take reasonable precautions to avoid such an occurrence, Client waives any claim against, and agrees to defend, indemnify and save Company harmless from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. In addition, Client agrees to compensate Company for any time spent or expenses incurred by Company in defense of any such claim with compensation to be based upon Company's prevailing fee schedule and expense reimbursement policy.

(c) Pre-Existing Waste – As used herein, the term "Pre-Existing Waste" shall mean any hazardous or non-hazardous wastes, substances or materials existing at the applicable sites prior to the date that Services are initiated. Client hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed Company. If applicable to the Services, Client shall furnish to Company all documents and information known to Client that relate to the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials, on or under the site. Upon request, Company may assist Client in the proper handling, storage, transportation and/or disposal of Pre-Existing Waste in accordance with applicable federal, state and local laws and regulations. Client shall provide appropriate disposal identification numbers, select the disposal site(s) and sign all required manifests, disposal contracts and other documentation necessary to allow Company to complete such Services in a timely manner. Client agrees to look solely to the disposal facility and/or transportation concern for any damages arising from improper transportation or disposal of Pre-Existing Waste. In no event shall Company take title to or be liable for disposal or remediation costs associated with Pre-Existing Waste.

(d) Discovery of Hazardous Waste – Client recognizes that anticipated or unanticipated hazardous materials or suspected hazardous materials may be discovered on the project site property, whether or not owned by Client, or on any adjacent property to the site. Client recognizes that it is Client's responsibility, and not Company's, to inform the Owner of any affected property not owned by Client of such discovery. Client also recognizes that any such discovery may result in a significant reduction of the property's value. Client agrees that discovery of unanticipated hazardous materials may constitute a changed condition for which Company shall be fairly compensated. If after a good faith effort by Company

to negotiate modifications to the scope of Services, the schedule, and/or the cost estimate, an agreement has not been reached with the Client, then Company shall have the right to terminate the applicable Proposal upon written notice to the Client.

13. NON-SOLICITATION OF EMPLOYEES. During the term of this Agreement, and for a period of two (2) years thereafter, neither party shall, directly or indirectly, for such party's own benefit or for the benefit of others, solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have performed Services under this Agreement, without the other party's express written consent. The parties further agree that loss of any such employee would involve considerable financial loss of an amount that could not be readily established. Therefore, in the event that a party should breach this provision and without limiting any other remedy that may be available the breaching party shall pay a sum equal to the employee's current annual salary plus 12 additional months of the employee's current annual salary for training of a new employee as liquidated damages. For the avoidance of doubt, newspaper, periodical or Internet-based listings of employment opportunities by a party shall not be considered solicitation of an employee of the other party.

14. CONTROLLING AGREEMENT; MODIFICATION. Any terms and conditions contained in Client's solicitation of proposals, scope of work descriptions, purchase orders, compensation transmittals or any other subordinate agreements (each, a "Subordinate Agreement") that are inconsistent with any terms and conditions contained in this Agreement shall be superseded and governed by this Agreement. This Agreement, including all attachments, contains the entire understanding between the parties with respect to the subject matter hereof, and all prior or contemporaneous promises, representations, agreements or understandings are expressly merged herein and superseded hereby. This Agreement may not be modified, altered, amended or revoked except in writing duly executed by both parties.

15. NOTICES. Any notice required or permitted to be given hereunder shall be in writing, and shall be either personally delivered to the party to whom it is to be sent, or sent by overnight courier service (such as Federal Express) or by US certified or registered mail, return receipt requested, postage prepaid, to the respective addresses of the parties set forth below:

If to Client:

Attn: _____

Facsimile No.: (_____) _____ - _____

If to Company:

Apex Companies, LLC
4412 S Corbett Avenue
Portland, OR 97239
503-248-1939

or to such other place as Client or Company may from time designate by notice to the other. Any such notice shall be deemed given and effective upon receipt thereof by the party to which it is to be sent, provided, however, that (i) notice sent by overnight courier service shall be deemed given and effective upon the next business day after such notice is delivered to or picked up by the overnight courier service, and (ii) notice sent by certified or registered mail shall be deemed given and effective upon the third business day after mailing.

16. GOVERNING LAW; VENUE. This Agreement shall be deemed to be made under and construed in accordance with the laws of the State in which the Services are performed.

17. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL. All claims, disputes, controversies or matters in question arising out of, or relating to, this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence, except those disputes which arise out of or are related to collection matters or fees alone under this Agreement, (collectively "Disputes") shall be submitted to mediation before and as a condition precedent to pursuing any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and Company shall select a neutral mediator by mutual agreement. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and Company within ten (10) calendar days, a mediator shall be chosen as specified in the Mediation Rules of the American Arbitration Association then in effect, or any other appropriate rules upon which the parties may agree. Any cause of action brought against Company shall be brought within one (1) year of the work or services performed under this Agreement. If Client makes a claim against Company for any alleged error, omission, or other act arising out of the performance of its professional services, then to the extent the Client fails to prove such claim, Client shall pay all costs including attorney's fees incurred by Company in defending the claim. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

18. PREVAILING WAGE. This Agreement specifically excludes compliance with any project labor agreement or other union or apprenticeship requirements. In addition, unless explicitly agreed to in the body of the proposal, this Agreement specifically excludes compliance with any State or Federal prevailing wage law or associated requirements, including the Davis Bacon Act. Due to the professional nature of its services, Company is generally exempt from the Davis Bacon Act and other prevailing wage schemes. It is agreed that no applicable prevailing wage classification or wage rate has been provided time to Company, and that all wages and cost estimates contained herein are based solely upon standard, non-prevailing wage rates. Should it later be determined by the Client or any applicable agency that in fact prevailing wage applies, then it is agreed that the contract value of the applicable Proposal shall be equitably adjusted to account for such changed circumstance. These exclusions shall survive the completion of any Services and shall be merged into any subsequently executed documents between the parties, regardless of the terms of such agreement. Client will reimburse, defend, indemnify and hold harmless Company from any liability resulting from a subsequent determination that prevailing wage regulations cover the Services, including all costs, fines and reasonable attorney's fees.

19. LIMITATION/DISCLAIMER (MOLD). When Services include mold survey/inspection services, such scope of work is, in addition to all other terms and conditions set forth herein, expressly subject to the following disclaimer:

Client hereby acknowledges and agrees: (i) Company makes no claims that all areas of mold growth will be identified during the Work; (ii) if present, hidden mold, such as behind walls, ceilings, floors and other enclosures, may be impossible to locate without performing complete destruction of all walls, ceilings, floors and enclosures; and (iii) the scope of the Work does not include such destructive testing. Company's findings and recommendations will be based solely upon the Work performed at the time of site inspection(s). Because water damage, leaks and moisture problems can occur at any time and from time to time, Company can only comment on findings visually apparent and discovered during the site inspection(s). Company and Client will jointly determine the manner in which the Work is to be performed and the specific hours during which Company is to work. Client

acknowledges and agrees that the Work performed and the evaluation provided of mold is only valid at the time the Work is performed since mold is naturally occurring and its presence, quantities and scope may change over time and from time to time. In addition to the disclaimer of warranties set forth herein, neither Company nor its subcontractor laboratories can guarantee that all mold spores in any particular sample location will survive or replicate in sufficient numbers to be detected. The Work performed and the evaluation conducted shall be only with respect to those areas listed in the agreement between the parties, unless agreed otherwise in writing by both Company and Client. Prior to Work being performed, Client shall notify Company in writing of any deficiencies in the structure at the location(s) to be evaluated whereby moisture can or may infiltrate into the structure and initiate the growth of mold, fungus or other allergens. Client hereby acknowledges and agrees that the Work will not include identification and correction of water intrusion.

20. MISCELLANEOUS.

(a) Assignment – This Agreement may not be assigned by Company or Client, either voluntarily, involuntarily or by operation of law, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent is required in the event of an assignment to a corporate affiliate or successor of either party, and further provided that Company has the right to subcontract any of the Services in its reasonable professional judgment without Client's consent.

(b) Third-Party Beneficiaries – It is expressly intended and agreed that no third-party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement. Client agrees that all work product produced by Company or an Company Party shall be used solely by Client and that only Client is allowed to rely on such work product. If a third party relies on the work product without Company's written permission, then Client agrees to indemnify and hold Company harmless for any claims or actions brought as a result of such reliance.

(c) Severability – The provisions of this Agreement or the application thereof to any parties or circumstances that are, to any extent, unenforceable, invalid or contrary to law, or the inclusion of which would affect the validity, legality or enforcement of this Agreement, shall be of no effect and, in such case, all the remaining terms and provisions of this Agreement or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable shall be interpreted according to the terms of this Agreement as though any such unenforceable, invalid or contrary to law provision had never been included herein.

(d) Waiver – No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.



Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement.

PROFESSIONAL TECHNICAL STAFF

ENGINEERING

Table listing various engineering roles and their hourly rates, including Engineering Technician, Engineer IV-VIII, Structural Project Engineer, Design Technician, and Landscape/Planning roles.

SURVEY

Table listing various survey roles and their hourly rates, including Survey I-VII and Unmanned Aerial Sys Operator I-III.

INDUSTRIAL HYGIENE

Table listing various industrial hygiene roles and their hourly rates, including Industrial Hygienist/Monitor, AHERA Inspectors, and Project Manager (IH).

Personnel may charge time exceeding eight hours per day and weekends at 125% of the regular hourly rate. Court and arbitration time may be charged at two times the above rate.



Our compensation will be determined on the basis of time and expenses in accordance with the following schedule unless a lump sum amount is so indicated in the proposal or services agreement.

PROFESSIONAL TECHNICAL STAFF

ENVIRONMENTAL

Table listing environmental staff roles and rates, including Field Technician, Staff Scientist, Project Scientist, Sr. Scientist, Principal Scientist, Environmental Regulatory Specialist, Environmental Compliance Monitor, Staff Geologist, and Sr. Geologist.

TECHNICAL SUPPORT STAFF

Table listing technical support staff roles and rates, including Administration, Project Administrator, CAD/MicroStation Tech, CAD Manager, Writer/Editor, Graphic Artist, IT/Database Management, GIS Analyst, Grant Writer, and Public Involvement.

Personnel may charge time exceeding eight hours per day and weekends at 125% of the regular hourly rate. Court and arbitration time may be charged at two times the above rate.

SUBJECT: Operations Facility - Security and Access Control Contract Award

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$508,346.09

Within Budget Allocation: Yes

ATTACHMENTS:

1. Public Works Small Works Contract

STAFF CONTACT: Drew McCarty, Assistant Engineering Manager

SUMMARY BACKGROUND:

The Operations Facility project includes the construction of a new public works facility with approximately 102,100 sf of total building space over 6 buildings on a 6.2 Acre site at 14320 29th Street East. The facility will house Public Works, Parks, and Facilities and will include an administration building, vehicle storage, fleet washing, and material storage. The project will also include frontage improvements, landscaping, site lighting and stormwater management.

In order to complete construction of the Operations Facility, Security Solutions Northwest (SSNW) will need to provide access control and security services to the project located at 14320 29th St. E. Security Solutions Northwest will be installing cameras, card readers, etc to serve the new facility. This contract was procured using a cooperative purchasing agreement with pre-negotiated rates.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee

MEETING/STUDY SESSION DATE: 9/2/2025

COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:

A motion authorizing the Mayor to execute any and all necessary easement documents with Security Solutions Northwest, as part of the Operations Facility project (CIP 17-13), substantially in a form approved by the City Attorney and ratify and confirm any and all prior acts consistent with this approval.

PUBLIC WORKS SMALL WORKS ROSTER CONTRACT

between City of Sumner and

Security Solutions Northwest, Inc.

THIS CONTRACT is made and entered into this day _____, by and between the City of Sumner, a Washington municipal corporation (hereinafter the "City"), and Security Solutions Northwest, Inc. organized under the laws of the State of Washington, located and doing business at 1619 N State Street, Bellingham, WA 98225, Tom McKellar, 206-513-3405 (hereinafter the "Contractor").

CONTRACT

The parties agree as follows:

I. DESCRIPTION OF WORK.

Contractor shall perform the services for the City as specifically described in Exhibit "A" Scope and Schedule of Work, attached hereto and incorporated herein by reference.

See Exhibit A – Operations Facility (CIP 17-13)

a. Contractor represents that the services furnished under this Contract will be performed in accordance with generally accepted professional practices within the Puget Sound region in effect at the time such services are performed.

b. The Contractor shall provide and furnish any and all labor, materials, tools, equipment and utility and transportation services along with all miscellaneous items necessary to perform this Contract except for the following items which will be furnished by the City:

N/A

c. All work shall be accomplished in a workmanlike manner in strict conformity with the attached plans and specifications including any and all Addenda issued by the City, City Regulations and Standards, other Contract Documents hereinafter enumerated. In addition, the work shall be in conformance with the following documents which are by reference incorporated herein and made part hereof:

- (i) the Standard Specifications of the Washington State Department of Transportation (WSDOT) (current edition);
- (ii) the American Public Works Association (APWA) (current edition);
- (iii) the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways (current edition);
- (iv) the Standard Plans for Road, Bridge and Municipal Construction (as prepared by the WSDOT/APWA current edition);

- (v) the American Water Works Association Standard (AWWA) (current edition), and;
- (vi) shall perform any changes in the work in accord with the Contract Documents.

d. Any inconsistency in the parts of the Contract and the documents referenced in section I c above shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Terms and provisions of the Contract
2. Addenda,
3. Proposal Form,
4. Special Provisions, including APWA General Special Provisions, if they are included,
5. Contract Plans,
6. Amendments to the Standard Specifications,
7. WSDOT Standard Specifications for Road, Bridge and Municipal Construction,
8. Contracting Agency's Standard Plans (if any), and
9. WSDOT Standard Plans for Road, Bridge, and Municipal Construction.

II. TIME OF COMPLETION. The parties agree that work on the tasks described in Section I above and more specifically detailed in Exhibit A attached hereto will begin immediately upon execution of this Contract. Upon the effective date of this Contract, the Contractor shall complete the work described in Section I **by 12/31/2026**. If said work is not completed within the time specified, the Contractor agrees to pay the City the sum specified in Section VI - Liquidated Damages of this contract.

III. COMPENSATION. The City shall pay the Contractor a total amount not to exceed **\$508,346.09, which includes Washington State Sales Tax**, for the work and services contemplated in this Contract. If the work and services to be performed as specified in Exhibit A "Scope and Schedule of Work" is for street, place, road, highway, etc. as defined in WAC 458-20-171, then the applicable Washington State Retail Sales Tax on this contract shall be governed by WAC 458-20-171 and its related rules for the work contemplated in this Contract. The Contractor shall invoice the City monthly. The City shall pay to the Contractor, as full consideration for the performance of the Contract, an amount equal to the unit and lump sum prices set forth in the bid. The Contractor will submit requests for Progress payments on a monthly basis and the City will make progress payment within 45 days after receipt of the Contractor's request until the work is complete and accepted by the City. Any payment by the City shall not constitute a waiver of the City's right to final inspection and acceptance of the project.

- A. Retainage. The City shall hold back a retainage in the amount of five percent (5%) of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to the City and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by the City.
- B. Defective or Unauthorized Work. The City reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized

work includes, without limitation: work and materials that do not conform to the requirements of this Contract; and extra work and materials furnished without the City's written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the City may complete the work by contract or otherwise, and Contractor shall be liable to the City for any additional costs incurred by the City. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by the City beyond the maximum Contract price specified above. The City further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, the City's payment to contractor for work performed shall not be a waiver of any claims the City may have against Contractor for defective or unauthorized work.

- C. Final Payment: Waiver of Claims. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CONTRACTOR'S CLAIMS, EXCEPT THOSE PREVIOUSLY, TIMELY AND PROPERLY MADE AND IDENTIFIED BY CONTRACTOR AS UNSETTLED AT THE TIME FINAL PAYMENT IS MADE AND ACCEPTED.

IV. INDEPENDENT CONTRACTOR. The parties understand and agree that Contractor is a firm skilled in matters pertaining to construction and will perform independent functions and responsibilities in the area of its particular field of expertise. Contractor and its personnel, subcontractors, agents and assigns, shall act as independent contractors and not employees of the City. As such, they have no authority to bind the City or control employees of the City, contractors, or other entities. The City's Public Works Director or his or her designated representative shall have authority to ensure that the terms of the Contract are performed in the appropriate manner.

The Contractor acknowledges that all mandatory deductions, charges and taxes imposed by any and all federal, state, and local laws and regulations shall be the sole responsibility of the Contractor. The Contractor represents and warrants that all such deductions, charges and taxes imposed by law and/or regulations upon the Contractor are, and will remain, current. If the City is assessed, liable or responsible in any manner for those deductions, charges or taxes, the Contractor agrees to indemnify and hold the City harmless from those costs, including attorney's fees.

V. TERMINATION. The City may terminate this Contract for good cause. "Good cause" shall include, without limitation, any one or more of the following events:

- A. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the Contract work.
- B. The Contractor's failure to complete the work within the time specified in this Contract.
- C. The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.
- D. The Contractor's persistent disregard of federal, state or local laws, rules or regulations.
- E. The Contractor's filing for bankruptcy or becoming adjudged bankrupt.
- F. The Contractor's breach of any portion of this Contract.

If the City terminates this Contract for good cause, the Contractor shall not receive any further money due under this Contract except those amounts authorized and satisfactorily completed prior to the termination date. After termination, the City may take possession of all records and data within the Contractor's possession pertaining to this project which may be used by the City without restriction.

VI. LIQUIDATED DAMAGES. This section of the Contract shall apply only in the event of a delay in the completion of the work within the timeframe specified in the Contract. This being a Public Works project performed for the benefit of the public, and there being a need for the completion of the project in the time specified in the Contract, City and Contractor agree that damages for delay in the performance or completion of the work are extremely difficult to ascertain. However, City and Contractor agree that due to the expenditure of public funds for the work specified in this Contract, and the need to provide the work for the benefit of the health, safety and welfare of the public, the failure to complete the work within the time specified in the Contract will result in loss and damage to City. City and Contractor agree that a delay will result in, but not be limited to, expense to the City in the form of salaries to City employees, the extended use of City equipment, delays in other portions of the project on which Contractor is working, increased cost to the City for the project, delays in other projects planned by City, and loss of use and inconvenience to the public.

Although difficult to quantify and ascertain, City and Contractor agree that the sum listed as liquidated damages represents a fair and reasonable forecast of the actual damage caused by a delay in the performance or completion of the work specified in the Contract. In addition, City and Contractor agree that the liquidated damages set forth below are intended to compensate the City for its loss and damage caused by delay. The liquidated damages are not intended to induce the performance of Contractor.

Contractor declares that it is familiar with liquidated damages provisions, and understands their intent and purpose. By signing this Contract, Contractor further declares that it understands the liquidated damages provision of this contract, that it is a product of negotiation, and that it is a fair estimation of the damage and loss that City will suffer in the event of delay.

City and Contractor further agree that the contractor shall not be charged with liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the contractor, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes.

City and Contractor agree that for each day beyond the completion date specified in the Contract that the project is not completed, the sum of **\$245.97** shall be deducted from the amount to be paid Contractor and shall be retained by City as damages.

In the event that the Contract is terminated by City for cause pursuant to the general conditions of the contract, this liquidated damages section shall apply, but only to the extent that the contract is delayed. In addition to liquidated damages, City shall be permitted to recover from Contractor the cost of completion of the work if the cost of completion exceeds the original sum of money agreed upon.

VII. PREVAILING WAGES. Contractor shall file a "Statement of Intent to Pay Prevailing Wages," with the State of Washington Department of Labor & Industries prior to commencing the

Contract work. The Statement of Intent to Pay Prevailing Wages," shall include Contractor's registration certificate number and the prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020, and the estimated number of workers in each classification.

For small public works projects under \$2,500 inclusive of tax, the City may permit the Contractor to submit a combined Intent to Pay and Affidavit of Wages Paid form (the "Combined Form"). The Combined Form does not have a corresponding form/filing fee. Before commencing work on the Contract, the Contractor is required to request the use of the Combined Form. If the City authorizes the Contractor to utilize the Combined Form process, the Contractor shall obtain the pre-approved L&I Combined Form directly from the City. Contractor shall complete and submit the Combined Form to the City together with its final invoice at the completion of the Contract work. Upon receipt, the City will review and approve the form before causing it to be filed with L&I within thirty (30) days of receipt from the Contractor.

Irrespective of the above process, Contractor shall pay prevailing wages in effect on the date the bid is accepted or executed by Contractor, and comply with Chapter 39.12 of the Revised Code of Washington, as well as any other applicable prevailing wage rate provisions. The latest prevailing wage rate revision issued by the Department of Labor and Industries must be submitted to the City by Contractor. It shall be the responsibility of Contractor to require all subcontractors to comply with Chapter 39.12 RCW and this section of the Contract.

VIII. HOURS OF LABOR. Contractor shall comply with the "hours of labor" requirements and limitations as set forth in Chapter 49.28 RCW. It shall be the responsibility of Contractor to require all subcontractors to comply with the provisions of Chapter 49.28 RCW and this section of the Contract. The Contractor shall pay all reasonable costs (such as over-time of crews) incurred by the City as a result of work beyond eight (8) hours per day or forty (40) hours per week. Additional hours beyond a forty (40)-hour workweek will be pro-rated against contractual workdays.

IX. COMPLIANCE WITH WAGE, HOUR, SAFETY, AND HEALTH LAWS. The Contractor shall comply with the rules and regulations of the Fair Labor Standards Act, 29 U.S.C. 201 et seq, the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq, the Washington Industrial Safety and Health Act, Chapter 49.17 RCW, and any other state or federal laws applicable to wage, hours, safety, or health standards.

X. DAYS AND TIME OF WORK. The working hours for this project will be limited to Monday through Friday from 7:00 a.m. to 6:00 p.m. unless otherwise approved by the City.

XI. WORKER'S COMPENSATION. The Contractor shall maintain Workmen's Compensation insurance in the amount and type required by law for all employees employed under this Contract who may come within the protection of Workmen's Compensation Laws. In jurisdictions not providing complete Workmen's Compensation protection, the Contractor shall maintain Employer's Liability Insurance in the amount, form and company satisfactory to the City for the benefit of all employees not protected by Workmen's Compensation Laws.

The Contractor shall make all payments arising from the performance of this Contract due to the State of Washington pursuant to Titles 50 and 51 of the Revised Code of Washington.

Whenever any work by the Contractor under the authority of this Contract is on or about navigable waters of the United States, Workers' Compensation coverage shall be extended to include United States Longshoreman and harbor worker coverage. The Contractor shall provide the City with a copy of the necessary documentation prior to the start of any activity.

XII. CHANGES. The City may issue a written change order for any change in the Contract work during the performance of this Contract. If the Contractor determines, for any reason, that a change order is necessary, Contractor must submit a written change order request to the person listed in the notice provision section of this Contract, section XV(D), within fourteen (14) calendar days of the date Contractor knew or should have known of the facts and events giving rise to the requested change. If the City determines that the change increases or decreases the Contractor's costs or time for performance, the City will make an equitable adjustment. The City will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. However, if the parties are unable to agree, the City will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving either a written change order from the City or an oral order from the City before actually receiving the written change order. If the Contractor fails to require a change order within the time specified in this paragraph, the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the contract work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided in subsections A through E of Section VIII, Claims, below.

The Contractor accepts all requirements of a change order by: (1) endorsing it, (2) writing a separate acceptance, or (3) not protesting in the way this section provides. A change order that is accepted by Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect and consequential costs, including costs of delays related to any work, either covered or affected by the change.

VIII. CLAIMS. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the City, including any direction, instruction, interpretation, or determination by the City, the Contractor may file a claim as provided in this section. The Contractor shall give written notice to the City of all claims within fourteen (14) calendar days of the occurrence of the events giving rise to the claims, or within fourteen (14) calendar days of the date the Contractor knew or should have known of the facts or events giving rise to the claim, whichever occurs first. Any claim for damages, additional payment for any reason, or extension of time, whether under this Contract or otherwise, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Contract.

At a minimum, a Contractor's written claim shall include the information set forth in subsections A, items 1 through 5 below.

FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM OR CAUSED BY THAT DELAY.

- A. Notice of Claim. Provide a signed written notice of claim that provides the following information:
1. The date of the Contractor's claim;
 2. The nature and circumstances that caused the claim;
 3. The provisions in this Contract that support the claim;
 4. The estimated dollar cost, if any, of the claimed work and how that estimate was determined; and
 5. An analysis of the progress schedule showing the schedule change or disruption if the Contractor is asserting a schedule change or disruption.

- B. Records. The Contractor shall keep complete records of extra costs and time incurred as a result of the asserted events giving rise to the claim. The City shall have access to any of the Contractor's records needed for evaluating the protest.

The City will evaluate all claims, provided the procedures in this section are followed. If the City determines that a claim is valid, the City will adjust payment for work or time by an equitable adjustment. No adjustment will be made for an invalid protest.

- C. Contractor's Duty to Complete Protested Work. In spite of any claim, the Contractor shall proceed promptly to provide the goods, materials and services required by the City under this Contract.
- D. Failure to Protest Constitutes Waiver. By not protesting as this section provides, the Contractor also waives any additional entitlement and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).
- E. Failure to Follow Procedures Constitutes Waiver. By failing to follow the procedures of this section, the Contractor completely waives any claims for protested work and accepts from the City any written or oral order (including directions, instructions, interpretations, and determination).

IX. LIMITATION OF ACTIONS. CONTRACTOR MUST, IN ANY EVENT, FILE ANY LAWSUIT ARISING FROM OR CONNECTED WITH THIS CONTRACT WITHIN 120 CALENDAR DAYS FROM THE DATE THE CONTRACT WORK IS COMPLETE OR CONTRACTOR'S ABILITY TO FILE THAT CLAIM OR SUIT SHALL BE FOREVER BARRED. THIS SECTION FURTHER LIMITS ANY APPLICABLE STATUTORY LIMITATIONS PERIOD.

X. WARRANTY. Upon acceptance of the contract work, Contractor must provide the City a two-year warranty bond in the amount of 20% of the total consideration paid to the Contractor under this Contract and in a form acceptable to the City. The Contractor shall correct all defects in workmanship and materials within two (2) years from the date of the City's acceptance of the Contract work. In the event any parts are repaired or replaced, only original replacement parts shall be used—rebuilt or used parts will not be acceptable. When defects are corrected, the warranty for that portion of the work shall extend for one (1) year from the date such correction is completed and accepted by the City. The Contractor shall begin to correct any defects within seven (7) calendar days of its receipt of notice from the City of the defect. If the Contractor does not initiate or complete the corrective work within a reasonable time in the sole discretion of the City, the City may elect to complete the identified defect(s) and pass through any and all costs of correction to the Contractor. By signature hereon, Contractor agrees to be responsible for any and all costs expended by the City to correct identified defects in Contractor's work within the above warranty periods.

XI. DISCRIMINATION. In the hiring of employees for the performance of work under this Contract or any sub-contract, the Contractor, its sub-contractors, or any person acting on behalf of the Contractor or sub-contractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

XII. INDEMNIFICATION. Contractor shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney fees, arising out of or in connection with the

Contractor's performance of this Contract, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONTRACTOR'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

The provisions of this section shall survive the expiration or termination of this Contract.

The City's inspection or acceptance of any of Contractor's work when completed shall not be grounds to avoid any of these covenants of indemnification.

XIII. INSURANCE. The Contractor shall, at least ten (10) days prior to the commencement of work, obtain and keep in force during the term of the Contract, insurance against claims for property damage or personal injury which may arise from or in connection with the performance of the contract work by the Contractor, their agents, representatives, employees, or subcontractors as follows:

No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance and Builders Risk:

1. The Contractor's insurance coverage shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Contractor's Insurance for Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Waiver of Subrogation

The Contractor and the City waive all rights against each other any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extend covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

F. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.

G. Subcontractors

Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor (with the exception of Builders Risk insurance). Upon request by the City, the Contractor shall provide evidence of such insurance.

XIV. WORK PERFORMED AT CONTRACTOR'S RISK. Contractor shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

XV. BOND. Pursuant to Chapter 39.08 RCW, the Contractor shall, prior to the execution of the Contract, furnish a performance and payment bond to the City in the full amount of the bid with a surety company as surety, ensuring that the Contractor shall faithfully perform all the provisions of this Contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such Contractor or subcontractors with provisions and supplies for the carrying on of such work. Such bond shall provide that any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original Contractor. In addition, the surety company providing such bond shall agree to be bound to the laws of the state of Washington, and subjected to the jurisdiction of the state of Washington and the Pierce County Superior Court in any proceeding to enforce the bond. This Contract shall not become effective until said bond is supplied and approved by the Engineer and filed with the City Clerk.

In the event that the Compensation called for in Section III of this Contract is less than \$150,000.00, which sum shall be determined after the addition of applicable Washington State sales tax, the Contractor may, prior to the execution to this contract and in lieu of the above mentioned bond, elect to have the City retain 10% of the contract amount for a period of either thirty (30) days after final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

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

XVII. MISCELLANEOUS PROVISIONS.

A. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained in this Contract, or to exercise any option conferred by this Contract in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

B. Resolution of Disputes and Governing Law.

1. Alternative Dispute Resolution. If a dispute arises from or relates to this Contract or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written Contract of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Contract or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

2. Applicable Law and Jurisdiction. This Contract shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method as set forth above, in the event any claim, dispute or action arising from or relating to this Contract cannot be submitted to arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the City's right to indemnification under Section VII of this Contract.

C. Written Notice. All communications regarding this Contract shall be sent to the parties at the addresses listed on the signature page of the Contract, unless notified to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract or such other address as may be hereafter specified in writing.

D. Assignment. Any assignment of this Contract by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Contract shall continue in full force and effect and no further assignment shall be made without additional written consent.

E. Modification. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by a duly authorized representative of the City and Contractor.

F. Compliance with Laws. The Contractor agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Contractor's business, equipment, and personnel engaged in operations covered by this Contract or accruing out of the performance of those operations.

G. Counterparts. This Contract may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Contract.

H. Business License. Contractor shall comply with the provisions of Title 5 Chapter 5.04 of the Sumner Municipal.

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

For contracts of \$35,000 or more the Contractor and any subcontractors shall comply with E-Verify as set forth in Sumner Municipal Code Chapter 3.30. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Contractor shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation in E-Verify throughout the course of the Contractor's contractual relationship with the City. If the Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. Upon execution of this Contract, the Contractor shall provide proof of compliance with this section by filling out and signing the attached Certification of Compliance with Sumner's Municipal Code 3.30 "E-Verify" attached hereto as Exhibit [Insert Exhibit number containing the Certificate]

J. Entire Contract. The written provisions and terms of this Contract, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Contract. All of the above documents are hereby made a part of this Contract. However, should any language in any of the Exhibits to this Contract conflict with any language contained in this Contract, then the order of precedence shall be in accordance with Section I c of this Contract.

K. Severability. If any one or more sections, sub-sections, or sentences of this Contract are held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this Contract and the remainder shall remain in full force and effect.

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

IN WITNESS, the parties below execute this Contract, which shall become effective on the last date entered below.

CONTRACTOR: By: _____ <i>(signature)</i> Print Name: _____ Its _____ <i>(Title)</i>	CITY OF SUMNER: By: _____ <i>(signature)</i> Print Name: <u>Kathy Hayden</u> Its <u>Mayor</u> <i>(Title)</i> DATE: _____
---	---

System Proposal

Scope of Work

Thank you for the opportunity to quote the Sumner Operations Facility project. This proposal provides parts, smarts, and trim pricing per drawings dated Dec 17 2024 and addendum's 33/48.

- Access Control (Salto) - INCLUDES: parts, smarts, and trim - Includes power supplies
- Video Cameras (Avigilon Unity) - INCLUDES: parts, smarts, and trim
- Intrusion (Bosch) - INCLUDES: parts, smarts, and trim
- Wireless Access Points - INCLUDES: labor only to trim out 42 devices by owner

This quote is based on the following assumptions:

- Access Control - EXCLUDES: Pathway, wiring, and door hardware equipment/install labor
- Video Cameras - EXCLUDES: Pathway, wiring, servers, and PoE switches
- Intrusion - EXCLUDES: Pathway and wiring
- Gate Pedestals are by others
- All wiring + Long run cables (fiber/game changer/media converters) is by others
- Excludes all 120v work
- Excludes NEMA enclosures (if needed for exterior located control boards)

NOTE: SEE THE INCLUSIONS/EXCLUSIONS TABLE IN THIS PROPOSAL FOR ADDITIONAL INCLUSIONS AND EXCLUSIONS, ALONG WITH THE PRODUCT-SPECIFIC ONES LISTED ABOVE

The pricing in this proposal adheres to WSIPC state contract: www.wsipc.org - SSNW RFP # 22-05

City of Sumner
Drew McCarty

Operations Facility
14415 29th St E
Sumner, WA 98390

July 29, 2025

Page 2 of 3

ACCESS SYSTEM COMPONENTS:

<u>Qty</u>	<u>Description</u>
11	POWER SUPPLY ENCLOSURE
9	SALTO PANEL READER
60	SALTO WALL READER
15	SALTO MAIN CONTROLLER BOARD
24	SALTO DUAL DOOR BOARD
4	NEDAP UPASS GO OSDP LONG RANGE UHF READER - 33'
50	PROX VEHICLE CREDENTIAL
53	REX ABOVE DOOR
3	SALTO G3 PADLOCKS
9	2N IP FORCE INTERCOM w/ CAMERA
7	1 DOOR RELEASE AND 6 LOCKDOWN BUTTONS
1	PERMIT & FREIGHT FEES
1	LABOR FOR DESIGN, TRIM, COMMISSIONING, & TESTING

ACCESS SYSTEM TOTAL: \$277,130

+ sales tax

CAMERA SYSTEM COMPONENTS:

<u>Qty</u>	<u>Description</u>
30	Unity 8 Licensing
11	H6A Bullet Camera - 8.0C-H6A-BO1-IR
3	H6A fisheye Camera - 12.0C-H6A-FE-360-DO1-IR
6	H6M minidome Camera - 5.0C-H6M-DO1-IR
10	H5A Multi-Sensor Camera - 24C-H5A-3MH
10	Mounting - WLMT-1001, AD-PEND1, DO-COVR1, CRNR-1
10	IR Illuminator for Multi-Sensor - POE-INJ2-95W-NA & AD-IRIL1
1	LIFT RENTAL - 1 WEEK
1	PERMIT & FREIGHT FEES
1	LABOR FOR DESIGN, TRIM, COMMISSIONING, & TESTING

CAMERA SYSTEM TOTAL: \$127,820

+ sales tax

INTRUSION SYSTEM COMPONENTS:

<u>Qty</u>	<u>Description</u>
4	B9512G-CV - KIT (B9512G, B8103, B444-V, D1640, D101)
6	B942W - COLOR GRAPHIC TOUCH SCREEN KEYPAD WITH PROX (WHITE)
106	D9127U - POPIT WITH NO TAMPER SWITCH
1	B520-B - B520 POWER SUPPLY WITH TR1850 TRANSFORMER AND B10 ENCLOSURE
16	ISC-PDL1-WA18G - 60' PROFESSIONAL SERIES PIR/MICROWAVE TRITECH WITH MULTI-POINT ANTIMASK
16	B328 - SWIVEL MOUNTING BRACKET
1	B299 - POPEX MODULE FOR B9512G
90	DPDT DOOR CONTACTS
1	PERMIT & FREIGHT FEES
1	LABOR FOR DESIGN, TRIM, COMMISSIONING, & TESTING

INTRUSION SYSTEM TOTAL: \$47,970

+ sales tax

City of Sumner
Drew McCarty

Operations Facility
14415 29th St E
Sumner, WA 98390

July 29, 2025

Page 3 of 3

SUBTOTAL FOR ALL:	\$452,920.00
	<i>+ sales tax</i>
P & P BOND	\$11,323.00
	<i>+ sales tax</i>
Sales tax @ 9.5%	\$44,103.09
	<i>+ sales tax</i>
TOTAL w/ Bond	\$508,346.09
	<i>+ sales tax</i>

THESE ITEMS ARE **EXCLUDED** UNLESS MARKED YES:

Included in Scope:	Yes:	Included in Scope:	Yes:	Included in Scope:	Yes:
Shop Drawings	X	Panel	X	Fire Permit	
As-Built Drawings	X	Panel Install	X	Electrical Permit	X
REVIT LOD Design		Panel Program /Test	X	WA Prevailing Wages	X
Data Submittals	X	Fire Stopping		Davis Bacon Wages	
Wire Supply		Door Lock Hardware		P & P Bond	
Wire Installation		Door Lock Hardware Install		Programming	X
Conduit & Installation		120v Power Material & Install		Fire System Testing	
Coring		Provide Lift(s)	X	Training - On-site 8 hr	X
Devices	X	POE Switches		Training - Remote 1 hr	
Devices Install	X	Magnetic Door Holders		Training - Remote 4 hr	
Devices Program/ Test	X				

TERMS AND CONDITIONS:

- Proposal is valid for 10 days from the date on this proposal, however, SSNW may adjust prices in this proposal should costs increase due to new or higher tariffs, duties, or government levies imposed after the acceptance date. Price adjustments must be proportional to SSNW's increased costs and will be communicated to the Customer in writing with supporting documents.
- An authorized purchase order and/or contract will be required to commence work
- A system with monitoring or cloud hosting will require a monitoring contract to activate
- Additional work beyond the scope of this proposal will be billed at a time & material rate
- Customer must provide a strong and robust Wi-Fi connection if components require cellular communication. If the cellular signal is found to be too weak, additional charges will be applied at time & material rate.
- Proposal is based on plans noted above. If plans are found to be incorrect or incomplete during the design process, we will bill for the additional time.
- Existing wiring or equipment integrated into this scope of work is assumed to be in working order and supported by the manufacturer, any work and parts needed to upgrade or fix will be billed at a time and material rate
- Proposal Labor rates apply to work performed Monday-Friday 8:00 - 4:30, excluding holidays unless noted
- All parts and labor are warranted for one year
- Work will be billed each month in increments proportionate to progress toward completion of the project
- Balance to be billed at the completion of installation, payments are due at net 30 days from invoice date
- Pay Portal Fees are not included and will be billed to customer with a 10% markup

Presented by: _____
Tom McKellar - 206.513.3405

Acceptance: _____
(please sign here)

Date

EXHIBIT B
CITY OF SUMNER

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

As the person duly authorized to enter into such commitment for

Security Solutions Northwest, Inc.

I hereby certify that the Company or Organization named herein will

(check one box below)

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

OR

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

NAME

TITLE

DATE

EXHIBIT C

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

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

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

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

(C) Equal Employment Opportunity. Pursuant to applicable federal law, federal regulations and/ or a final and binding Presidential Executive Order 11473, all federally funded construction project contractors shall ensure compliance with federal antidiscrimination laws, including the Equal Employment Opportunity regulations as currently written or subsequently modified or repealed.

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

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

- (a)(10)) shall apply:
 - (1) Minimum wages.

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

Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

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

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

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

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

ceased.

(3) Payrolls and basic records.

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

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

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

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

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

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

(C) The weekly submission of a properly executed certification set forth on the reverse

side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

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

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

(4) Apprentices and trainees.

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman

wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with federal antidiscrimination laws, including the Equal Employment Opportunity regulations as currently written or subsequently modified or repealed.

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition

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

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

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

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

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

U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

SUBJECT: Fryar Ave Trail Partial Land Acquisition- K & E Investments

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: \$100,800.00

Within Budget Allocation: Yes

ATTACHMENTS:

1. Acquisition Documents -K&E Investments

STAFF CONTACT: Andrew Leach, Senior Associate City Engineer

SUMMARY BACKGROUND:

The Fryar Trail Project will construct approximately 3,300 linear feet of shared use path that parallels Fryar Avenue from West Main Street to Puyallup Street. In order to construct the project, partial acquisitions and/or easements are needed from twenty-three parcels along the project corridor. These twenty-three parcels are owned by thirteen different property owners. The City of Sumner was awarded \$655,143 in Federal CMAQ funding for right of way purchases and \$5,000,000 in WSDOT Pedestrian & Bicycle Safety Program state funds for completing the design, right of way, and construction of the project.


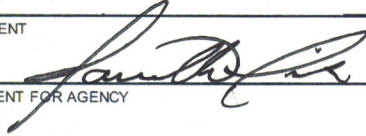
As part of the project, the City is required to perform a row acquisition from K & E Investment Properties LLC. These documents are to approve acquisitions from the property owner, including one small portion of fee simple property from parcel 0420246004, one fee simple from parcel 0420246005, and one temporary construction easement from parcel 0420246005. The total cost of these acquisitions is \$100,800 to compensate K & E Investment Properties LLC. This acquisition was thoroughly negotiated, and the compensation is reasonable and prudent.

<p>COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee MEETING/STUDY SESSION DATE: 9/2/2025 COMMITTEE RECOMMENDATION: Do Pass</p>
--

STAFF RECOMMENDATIONS/MOTION:

A motion approving the acquisition of the K & E Investment Properties, LLC property for a total amount of \$100,800.00 and authorizing the Mayor or Public Works Director to execute any and all documents necessary to effectuate the purchase transaction.

REAL PROPERTY VOUCHER

AGENCY NAME <p style="text-align: center;">City of Sumner 1104 Maple Street Sumner, WA 98390</p>		I hereby certify under penalty of perjury that the items and amounts listed herein are proper charges against the Agency, that the same or any part thereof has not been paid, and that I am authorized to sign for the claimant.	
		SIGNATURE (IN INK) FOR EACH CLAIMANT <div style="text-align: center;">  Name: Erik Vossman Title: President </div>	DATED <div style="text-align: right;"> 07/28/2014 </div>
GRANTOR OR CLAIMANT (NAME, ADDRESS) K & E Investment Properties LLC 1710 Fryar Avenue, Suite 102 Sumner, WA 98390		TIN/SSN: 85-3810536 X	
PROJECT NO. AND TITLE Fryar Avenue Shared Use Trail A15.0029		X Name: Title:	
FEDERAL AID NO. TAP 1270(012)	PARCEL NO. 0420246005 & 0420246004	Name: Title:	
In full, complete and final payment and settlement for the title or interest conveyed or released, as fully set forth in:		DATED	\$ AMOUNT
Warranty Deed, Temporary Easement			
LAND: Fee Acquisition: 3,072 SF total Temporary Easement: 467 SF		+	\$92,300.00 \$2,200.00
IMPROVEMENTS: Gravel, Asphalt Pavement, Grass Lawn		+	\$6,300.00
DAMAGES: Cost to Cure Proximity Other		+ + +	
SPECIAL BENEFITS			
JC (Just Compensation) Amount			\$100,800.00
REMAINDER: Uneconomic Remnant Excess Acquisition		+ +	
ADMINISTRATIVE SETTLEMENT		+	
STATUTORY EVALUATION ALLOWANCE		+	
ESCROW FEE		+	
REAL ESTATE EXCISE TAX		+	
OTHER:		+	
ACQUISITION AGENT <div style="text-align: center;">  AUTHORIZED AGENT FOR AGENCY </div>	DATE 7/28/25	Voucher No.	TOTAL AMOUNT PAID \$100,800.00

LPA-321 10/2014

After recording return document to:

City of Sumner
1104 Maple Street
Sumner, WA 98390

Document Title: Warranty Deed
Grantor: K & E Investment Properties LLC
Grantee: City of Sumner
Legal Description: Ptn. Lot 1, City of Sumner SP No. 82-1, Rec No. 8206220279
Additional Legal Description is on Page 4 of Document
Assessor's Tax Parcel Number: Ptn. 0420246004

WARRANTY DEED

CITY OF SUMNER FRYAR AVENUE SHARED USE TRAIL

The Grantor, K & E Investment Properties LLC, a Washington limited liability company, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby convey(s) and warrant(s) to the City of Sumner, Grantee, the following described real property situated in Pierce County, in the State of Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain, together with any after acquired interest of the grantor:

For legal description and additional conditions
See Exhibit A and B attached hereto and made a part hereof.

Also, the undersigned hereby requests the Assessor and Treasurer of said County to set over to the remainder of the herein described Parcel "A" the lien of all unpaid taxes, if any, affecting the property hereby conveyed, as provided by RCW 84.60.070.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Sumner unless and until accepted and approved hereon in writing for the City of Sumner, by its authorized agent.

WARRANTY DEED

Date: July 28th, 2025

Erik Vossman

Name: Erik Vossman

Title: President of K & E Investment Properties LLC

Accepted and Approved

City of Sumner

By: _____

Kathy Hayden

Mayor of the City of Sumner

Date: _____

EXHIBIT A
PARCEL NO. 0420246004
RIGHT OF WAY ACQUISITION

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A" LYING EASTERLY OF A LINE THAT IS 39.00 FEET WESTERLY OF AND PARALLEL WITH THE "RwF" LINE AS SHOWN ON CITY OF SUMNER "FRYAR AVENUE SHARED USE TRAIL RIGHT OF WAY PLANS" ON FILE WITH THE CITY, SAID LINE ALSO BEING THE CENTERLINE OF FRYAR AVENUE.

CONTAINING 270 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER CHICAGO TITLE COMPANY ORDER NO. 242506, DATED JULY 19, 2024)

LOT 1, OF CITY OF SUMNER SHORT PLAT NO. 82-1, RECORDED JUNE 22, 1982 UNDER RECORDING NUMBER 8206220279, RECORDS OF PIERCE COUNTY, WASHINGTON.

09/24/24



NW 1/4, SEC. 24, T. 20 N., R. 4 E., W.M.

TAX LOT NUMBER
0420242057

EXISTING RIGHT OF WAY



N.T.S.

28+00

37'
ROW

PROPERTY LINE

②
TAX LOT NUMBER
0420246004

RIGHT OF WAY
AREA = 270 S.F.±



39.00'

PROPERTY LINE

RwF (FRYAR AVE)

30'
ROW

TAX LOT NUMBER
0420246005

27+00

DATE: SEPTEMBER 3, 2024

FILE: 20.DWG



Seattle
3131 Elliott Avenue, Suite 400
Seattle, WA 98121 206.286.1640
Tacoma | Wenatchee | KPG.com

EXHIBIT B
PARCEL 0420246004
RIGHT OF WAY ACQUISITION

After recording return document to:

City of Sumner
1104 Maple Street
Sumner, WA 98390

Document Title: Warranty Deed
Grantor: K & E Investment Properties LLC
Grantee: City of Sumner
Legal Description: Ptn. Lot 2, City of Sumner SP No. 82-1, Rec No. 8206220279
Additional Legal Description is on Page 4 of Document
Assessor's Tax Parcel Number: Ptn. 0420246005

WARRANTY DEED

CITY OF SUMNER FRYAR AVENUE SHARED USE TRAIL

The Grantor, K & E Investment Properties LLC, a Washington limited liability company, for and in consideration of the sum of TEN AND NO/100 (\$10.00) Dollars, and other valuable consideration, hereby convey(s) and warrant(s) to the City of Sumner, Grantee, the following described real property situated in Pierce County, in the State of Washington, under the imminent threat of the Grantee's exercise of its rights of Eminent Domain, together with any after acquired interest of the grantor:

For legal description and additional conditions
See Exhibit A and B attached hereto and made a part hereof.

Also, the undersigned hereby requests the Assessor and Treasurer of said County to set over to the remainder of the herein described Parcel "A" the lien of all unpaid taxes, if any, affecting the property hereby conveyed, as provided by RCW 84.60.070.

It is understood and agreed that delivery of this deed is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Sumner unless and until accepted and approved hereon in writing for the City of Sumner, by its authorized agent.

WARRANTY DEED

Date: July 28th, 2025

Erik Vossman

Name: Erik Vossman

Title: President of K & E Investment Properties LLC

Accepted and Approved

City of Sumner

By: _____

Kathy Hayden

Mayor of the City of Sumner

Date: _____

EXHIBIT A
PARCEL NO. 0420246005
RIGHT OF WAY ACQUISITION

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A" LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT A POINT OPPOSITE STATION Rwf 27+46.51, AS SHOWN ON CITY OF SUMNER "FRYAR AVENUE SHARED USE TRAIL RIGHT OF WAY PLANS" ON FILE WITH THE CITY, 39.00 FEET WESTERLY THEREFROM;

THENCE SOUTHERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 26+89.50, 39.00 FEET WESTERLY THEREFROM;

THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+72.00, 48.00 FEET WESTERLY THEREFROM;

THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+40.98, 48.00 FEET WESTERLY THEREFROM, AND THE TERMINUS OF SAID DESCRIBED LINE.

CONTAINING 2,802 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER CHICAGO TITLE COMPANY ORDER NO. 242506, DATED JULY 19, 2024)

LOT 2, OF CITY OF SUMNER SHORT PLAT NO. 82-1, RECORDED JUNE 22, 1982 UNDER RECORDING NUMBER 8206220279, RECORDS OF PIERCE COUNTY, WASHINGTON.

09/24/24



NW 1/4, SEC. 24, T. 20 N., R. 4 E., W.M.

TAX LOT NUMBER
0420246004

PROPERTY LINE

POB

27+46.51,
39.00' L

30'
ROW



①
TAX LOT NUMBER
0420246005

26+89.50,
39.00' L

EXISTING RIGHT OF WAY

RIGHT OF WAY
AREA = 2802 S.F.±

27+00

RwF (FRYAR AVE)

25+72.00,
48.00' L

26+00

PROPERTY LINE

25+40.98,
48.00' L

TAX LOT NUMBER
0420246006

DATE: SEPTEMBER 3, 2024

FILE: 19.DWG



Seattle
3131 Elliott Avenue, Suite 400
Seattle, WA 98121 206.286.1640
Tacoma | Wenatchee | KPG.com

EXHIBIT B
PARCEL 0420246005
RIGHT OF WAY ACQUISITION

After recording return document to:

City of Sumner
1104 Maple Street
Sumner, WA 98390

Document Title: Temporary Easement
Grantor: K & E Investment Properties LLC
Grantee: City of Sumner
Legal Description: Ptn. Lot 2, City of Sumner SP No. 82-1, Rec No. 8206220279
Additional Legal Description is on Page 4 of Document
Assessor's Tax Parcel Number: Ptn. 0420246005

TEMPORARY EASEMENT

CITY OF SUMNER FRYAR AVENUE SHARED USE TRAIL

The Grantor, K & E Investment Properties LLC, a Washington limited liability company, for and in consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration, conveys and grants unto the City of Sumner, and its assigns, Grantee, under the imminent threat of the Grantee's exercise of its right of Eminent Domain, the right, privilege and easement over, upon, and across the hereinafter described lands for the purpose of ingress, egress, for any and all purposes incidental to constructing, installing, and inspecting slopes, walls, sidewalks, curbs, gutters, drainage and other related road and utility construction activities, including driveway reconnection.

Said lands being situated in Pierce County, State of Washington, and described in Exhibit A and B, attached hereto, and made a part hereof.

The term of this Temporary Easement shall commence on the date of acceptance of this Temporary Easement by Grantee and shall terminate on January 31, 2027, hereinafter the "Term".

Grantee shall provide Grantor written notice no less than 14 days in advance of Grantee's intent to exercise its rights under this Temporary Easement.

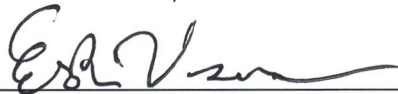
TEMPORARY EASEMENT

It is further agreed that this Temporary Easement may be extended by up to one (1) year at the Grantee’s option. The rate associated with this extension shall be at the same rate as the original Temporary Easement, or at the newly established rate determined by an updated appraisal; whichever is higher. Grantee shall notify Grantor in writing, and render payment, prior to exercising this option.

All project improvements shall be constructed entirely within the public right of way. In the event private improvements in the Easement Area are disturbed or damaged by Grantee’s use of the Easement, on or before the end of the Term, they shall be restored or replaced in as good or better condition as they were immediately before Grantee entered the Easement Area. During the Term, Grantee may on an interim basis, restore the Easement Area to a reasonably safe and convenient condition.

It is understood and agreed that delivery of this temporary easement is hereby tendered and that the terms and obligations hereof shall not become binding upon the City of Sumner unless and until accepted and approved hereon in writing for the City of Sumner, by its authorized agent.

Dated: July 28th, 2025



Name: Erik Vossman
Title: President of K & E Investment Properties LLC

Accepted and Approved

City of Sumner

By: _____

Name: Michael Kosa
Title: Public Works Director

Date: _____, 20____

EXHIBIT_A
PARCEL NO. 0420246005
TEMPORARY CONSTRUCTION EASEMENT

THAT PORTION OF THE HEREINAFTER DESCRIBED PARCEL "A" DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT OPPOSITE STATION Rwf 26+18.00, AS SHOWN ON CITY OF SUMNER "FRYAR AVENUE SHARED USE TRAIL RIGHT OF WAY PLANS" ON FILE WITH THE CITY, 49.92 FEET WESTERLY THEREFROM;

THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 26+04.66, 50.16 FEET WESTERLY THEREFROM;

THENCE WESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 26+02.13, 59.66 FEET WESTERLY THEREFROM;

THENCE NORTHERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 26+15.98, 61.32 FEET WESTERLY THEREFROM;

THENCE EASTERLY TO THE POINT OF BEGINNING.

CONTAINING 106 SQUARE FEET, MORE OR LESS.

TOGETHER WITH:

BEGINNING AT A POINT OPPOSITE STATION Rwf 25+85.90, 49.40 FEET WESTERLY THEREFROM;

THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+72.00, 48.00 FEET NORTHWESTERLY THEREFROM;

THENCE SOUTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+53.00, 48.00 FEET NORTHWESTERLY THEREFROM;

THENCE NORTHWESTERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+53.00, 58.85 FEET NORTHWESTERLY THEREFROM;

THENCE NORTHERLY IN A STRAIGHT LINE TO A POINT OPPOSITE STATION 25+80.00, 63.64 FEET WESTERLY THEREFROM;

THENCE EASTERLY TO THE POINT OF BEGINNING.

CONTAINING 361 SQUARE FEET, MORE OR LESS.

TOTAL TEMPORARY CONSTRUCTION EASEMENT CONTAINING 467 SQUARE FEET, MORE OR LESS.

PARCEL "A":

(PER CHICAGO TITLE COMPANY ORDER NO. 242506, DATED JULY 19, 2024)

LOTS 2, OF CITY OF SUMNER SHORT PLAT NO. 82-1, RECORDED JUNE 22, 1982 UNDER 04/04/2025
RECORDING NUMBER 8206220279, RECORDS OF PIERCE COUNTY, WASHINGTON.

19-TCE.DOCX



NW 1/4, SEC. 24, T. 20 N., R. 4 E., W.M.

TAX LOT NUMBER
0420246004

PROPERTY LINE

R.O.W. ACQUISITION

30'
ROW



N.T.S.

①9
TAX LOT NUMBER
0420246005

TOTAL TEMPORARY CONSTRUCTION
EASEMENT CONTAINING 467 S.F.±

26+18.00,
49.92' L

26+15.98,
61.32' L

TEMPORARY CONSTRUCTION
EASEMENT AREA = 106 S.F.±

26+02.13,
59.66' L

26+04.66,
50.16' L

TEMPORARY CONSTRUCTION
EASEMENT AREA = 361 S.F.±

25+80.00,
63.64' L

25+85.90,
49.40' L

25+53.00,
58.85' L

25+72.00,
48.00' L

PROPERTY LINE

TAX LOT NUMBER
0420246006

25+53.00,
48.00' L

26+00

27+00

RwF (FRYAR AVE)

EXISTING RIGHT OF WAY

DATE: APRIL2, 2025

FILE: 19.DWG



Seattle
3131 Elliott Avenue, Suite 400
Seattle, WA 98121 206.286.1640
Tacoma | Wenatchee | KPG.com

EXHIBIT B
PARCEL 0420246005
TEMPORARY CONSTRUCTION EASEMENT

SUBJECT: Sumner - Brightnight (Gree) Easement

CATEGORY: Consent

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Easement

STAFF CONTACT: Doug Ruth, Deputy City Attorney

SUMMARY BACKGROUND:

Brightnight is a battery energy storage system (BESS) company. In 2024, Sumner issued Brightnight a conditional use permit to build a BESS near the old Dieringer school, on Dieringer School District and Western Storage property, which are on the east side of East Valley Highway. The PSE station that will accept Brightnight's stored electricity is on the west side. So, Brightnight is in need of an easement over East Valley Highway in which to string the company's transmission lines. The easement on the agenda provides a 31-year easement to the company with the option for two 10-year extensions. The easement may be terminated by the City if Brightnight loses their lease on the school district and Western Storage properties. Brightnight will post a bond for the cost to remove the lines.

The company must maintain the lines, and if they fail to do so, the City may perform the maintenance and charge the cost to Brightnight. All work in the highway must be conducted by permit. Brightnight is able to mortgage the easement rights as a means to obtain financing. Boilerplate provisions are also included.

<p>COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee MEETING/STUDY SESSION DATE: 9/2/2025 COMMITTEE RECOMMENDATION: Do Pass</p>
--

STAFF RECOMMENDATIONS/MOTION:

A motion authorizing the Mayor to execute any and all necessary easement documents with GREE (Brightnight), substantially in a form approved by the City Attorney, to permit use of the airspace above East Valley Highway for the stringing of electrical transmission lines.

RETURN TO:
City of Sumner
Public Works Department
1104 Maple Street, Suite 260
Sumner WA 98390-1423

Please make no mark in the margin space - Reserved for County Auditor's use only.

TYPE OF DOCUMENT:	Easement Agreement (“Agreement”)
GRANTOR(S):	City of Sumner, a Municipal Corporation
GRANTEE:	GREE bn, LLC, a Delaware limited liability company
LEGAL DESCRIPTION:	Exhibit “A” of this document
ABBREVIATED LEGAL DESCRIPTION:	East Valley Highway
ASSESSOR TAXPARCEL I.D. NUMBERS:	N/A
NAME OF PROJECT	Greenwater BESS
REFERENCE DOCUMENTS	N/A

Commented [AM1]: Is this correct?

1. Grant of Easement. The Grantor, **CITY OF SUMNER**, a Washington Municipal Corporation (hereinafter the “City” or “Grantor”), for and in consideration of mutual benefits, does hereby convey and warrant unto **GREE bn, LLC**, a Delaware limited liability company (hereinafter “Grantee”), its successors and assigns, an aerial easement for use of Grantor’s airspace over, through, and above the real property in Pierce County, Washington more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Air Easement Area”).
2. Purpose. Said easement being only for the purpose of constructing, installing, repairing, replacing, operating and maintaining pre-approved overhead electric utility and telecommunication lines and related aerial equipment (collectively, the “Improvements”) within the Air Easement Area as approximately depicted on Exhibit “A” attached hereto. The rights granted within this Agreement are specific to Grantee’s use of the air space within the Air Space Easement for Grantee’s Improvements pursuant to CUP-2024-0003. This Agreement is granted subject to the following terms and conditions:
3. Use of Air Easement Area. Grantor shall retain the right to use the Easement Area as long as such use does not unreasonably impede the easement rights granted to the Grantee.

Commented [AM2]: Redundant with replacing.

Commented [AM3]: Air Easement Area? Or what is this document?

Additionally, Grantor shall not have the right to:

- a. Erect or maintain any buildings or structures within or upon the Air Easement Area that may cause damage to or interfere with Grantee’s Improvements and/or

would unreasonably increase the costs to the Grantee of restoring the Air Easement Area; or

b. Develop, landscape, or beautify the Air Easement Area in any way that may cause damage to or interfere with Grantee's Improvements and/or would unreasonably increase the costs to the Grantee of restoring the Air Easement Area.

4. Successors and Assigns. This Agreement shall run with the Grantor's land described herein. The Parties acknowledge and agree that the rights and indemnity conferred in this Agreement are intended to, and do, constitute covenants that touch and concern both the servient estate and Grantee's leasehold interests and shall be binding upon the parties, their heirs, successors in interest and assigns. Grantor warrants that it is the lawful holder of the East Valley Highway right-of-way ("Right-of-Way") over which this Agreement shall run and that it has a good and lawful right to execute this Agreement.

5. Work in the Right-of-Way.

a. Grantee shall obtain a right-of-way use permit pursuant to Sumner Municipal Code 12.28 for any work, including constructing, reconstructing, installing, repairing, replacing, operating, and maintaining Grantee's Improvements, either on the surface area of the Right-of-Way or in the air space above that Right-of-Way. In performing work in the Right-of-Way, Grantee will follow prudent practices and meet all requirements imposed under applicable permits and other governmental requirements. Grantee shall not use the Grantor's Right-of-Way for the staging of materials, vehicles or equipment. Prior to work in the Right-of-Way, Grantee shall contact 811 or the applicable Utility Notification Center to have located all utilities in the Right-of-Way that may be affected by the work and provide advance notice of the work to any applicable located utilities.

b. The Parties acknowledge that construction activities may cause certain disturbances to the City's properties, such as construction dust, debris, noise, and the like. Grantee, or its agents, performing construction activities shall complete the same in a reasonably good and workmanlike manner.

c. Grantee shall have the right to cut, remove and dispose of any and all brush, trees or other vegetation in the Air Easement Area that may interfere with Grantee's Improvements. Further, with at least three (3) weeks prior written notice to Grantor (or upon the applicable notice timeframe, if any, required by the right-of-way use permit obtained by Grantee pursuant to Section 5.a.), Grantee shall have the right to cut, trim remove and dispose of any trees located in the Right-of-Way that could, in Grantee's sole judgment, reasonably interfere with or create a hazard to Grantee's Improvements. Grantee shall also have the right to control on a continuing basis and by any prudent and reasonable means, the establishment and growth of brush, trees

or other vegetation in the Right-of-Way. Grantee shall, prior to the exercise of such rights, obtain any permit(s) required by the City of Sumner and identify such trees (except that Grantee shall have no obligation to identify such trees or give Grantor such prior notice when trees are cut, trimmed, removed or otherwise disposed of in response to emergency conditions).

d. Grantor makes no warrant or representation that the Right-of-Way is suitable for the Grantee's use and Grantee acknowledges that it has satisfied itself thereof.

6. **Maintenance & Repair.** Grantee, as owner of its Improvements located within the Air Space Easement Area, shall at its sole cost and expense maintain all of its Improvements in a safe, and structurally sound condition. If the Grantor determines that repairs or maintenance of Grantee's Improvements is necessary to prevent property damage, to protect public infrastructure, or for public safety, and after reasonable notice from Grantor of the repairs or maintenance, Grantee shall immediately repair or correct or cause to be repaired or corrected or perform maintenance to correct the identified hazard posed by Grantee's Improvements. Unless human safety is substantially at risk, Grantee shall obtain a right-of-way use permit pursuant to Sumner Municipal Code 12.28 for maintenance and repair that occurs in the Grantor's Right-of-Way. If the Grantee fails to remedy any condition caused by Grantee's Improvements that the City Engineer (or designee) deems a safety hazard within the time specified in written notice from the Engineer, Grantor, at its discretion, may correct the condition as identified in the written notice, assess the reasonable cost of the work on Grantee, and Grantee shall pay the amount.

7. **Term; Termination; Decommissioning.** The term of this Agreement shall commence on the date this Agreement is fully executed by both parties and shall continue for thirty-one (31) years thereafter, unless terminated or extended as provided herein. Grantee may, at its option and upon written notice to Grantor, extend the term for two (2) additional periods of ten (10) years each. Grantee may terminate this Agreement at any time upon 60-days prior written notice to Grantor, which shall be recorded, and the removal of all encumbrances on the Easement Area. Termination of this Agreement shall otherwise require the written consent of the Parties, or their successors or assigns.

Commented [A4]: Added term to match adjacent project agreements – 31 years with two 10 year extension options

Notwithstanding anything contained herein to the contrary, unless earlier terminated by Grantee as provided above, the term of this Agreement shall automatically terminate upon the date that the last of the Project Agreements expires or is earlier terminated in full. "Project Agreements" means the following agreements, as may be amended, supplemented, exercised, or extended from time to time: (i) Option and Land Lease dated January 11, 2024 by and between Dieringer School, LLC a Washington limited liability company, and GREE bn, LLC, a Delaware limited liability company, a Memorandum of which was recorded on February 26, 2024 in the Official Records of Pierce County Washington as 202402260194, (ii) Option and Land Lease dated January 11, 2024 by

and between Western Self Storage, L.L.C., a Washington limited liability company, and GREE bn, LLC, a Delaware limited liability company, a Memorandum of which was recorded on February 26, 2024 in the Official Records of Pierce County Washington as 202402260195, as amended by First Amendment to Option and Land Lease dated July 1, 2025, and (iii) any new or replacement leases or easements by and between the underlying landowner and Grantee for the purposes of installing, operating, maintaining, and removing Grantee's Battery Energy Storage System upon all or any portion of the properties encumbered by the aforementioned Option and Land Leases.

Prior to the expiration or earlier termination of this Agreement, Grantee shall remove the Improvements from the Air Easement Area. If Grantee fails to complete the removal of the Improvements as aforesaid, then within one hundred twenty (120) days after delivery by Grantor to Grantee of notice of such failure, Grantor shall have the right (but not the obligation), at its option and in its sole discretion, to cause the removal of the Improvements from the Air Easement Area and restoring the Easement Area to its original condition by drawing on the Decommissioning Security (defined below).

Within one hundred and eighty (180) days of the completion of installation of the Improvements within the Air Easement Area, Grantee shall provide Grantor with Decommissioning Security (defined herein) in an amount equal to Grantee's estimated costs to remove the Improvements from the Air Easement Area, , net of any estimated salvage value but in no case less than twenty thousand dollars (\$20,000). The term "Decommissioning Security" means one or more, or any combination, of the following: surety bonds, unconditional letters of credit issued by a surety listed on the US Department of Treasury Circular 570 and licensed in Washington, cash escrows or any other form of security reasonably acceptable to Grantor and Grantee. The Decommissioning Security amount shall be reevaluated and adjusted for inflation according to the Bureau of Labor Statistics Consumer Price Index for Seattle-Tacoma-Bellevue every five (5) years thereafter and shall remain in effect until two (2) years after the date this Agreement expires or terminates, unless (i) the Decommissioning Security is fully drawn upon earlier by Grantor in accordance with its terms, (ii) Grantor provides Grantee with a written notice authorizing the release of the Decommissioning Security or (iii) Grantee has completed its removal of the Improvements from the Air Easement Area. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

8. Indemnification. Grantee assumes the risk of damage to its Improvements and agrees to hold the City harmless from any and all Grantee damages, including consequential damages, arising out of Grantor's exercise of rights under this Agreement or arising out of any public improvement or routine maintenance by Grantor to the Right-of-Way, except to the extent such damage is caused by the sole negligence, willful misconduct or breach of this Agreement by Grantor or its agents, employees, contractors, representatives, invitees, successors and assigns. Grantor agrees to provide reasonable

written notice to Grantee in advance of any activities of Grantor that may interfere with or cause damage to Grantee's Improvements, so that Grantee may have an opportunity to protect its Improvements and/or mitigate any anticipated damage. Further, Grantee shall be responsible for its own actions and the actions of any of its respective agents, employees, contractors and other representatives. Grantee agrees to and does indemnify, defend and hold harmless the City from and against any and all claims, demands, causes of action, damages, liens, liabilities, cost and expenses (including actual attorney's fees and costs) (collectively, "Claims and Costs") to the extent any such Claim or Cost is caused by or arises out of Grantee's use of this Agreement or any actions of the Grantee or Grantee's agents, employees, contractors and other representatives to this Agreement or any breach of this Agreement by Grantee; provided, however, that the foregoing indemnity, defense and hold harmless shall not extend to any Claims and Costs to the extent the same are caused by or arise out of the sole negligence or willful misconduct of Grantor, Grantor's agents, employees, contractors, representatives, invitees, successors and assigns.

Commented [A5]: Would like an opportunity to protect Grantee's improvements in the event damage might occur due to Grantor's activities

Solely to give full force and effect to the indemnities contained herein and not for the benefit of any third party, each party specifically and expressly waives any immunity it may have under Washington State Industrial Act, Title 51 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein. In no event shall either party's obligations hereunder be limited to the extent of any insurance available to or provided by the obligated party.

9. Insurance. Grantee agrees to maintain reasonable and customary liability insurance with coverage limits of no less than \$2,000,000 for personal injury, death, and property damage arising out of, or having to do with Grantee's use, occupancy, and possession of, or acts or omissions on or about, the Grantor's property, including the Air Easement Area and East Valley Highway right-of-way. Commercial general liability insurance will be at least as broad as ISO occurrence form CG 00 01 and will cover liability arising from premises, operations, stop-gap, independent contractors, products-completed operations, personal injury, and liability assumed under an insured contract. Grantor will be named as an additional insured under the Grantee's commercial general liability insurance policy using an additional insured endorsement at least as broad as ISO Additional Insured endorsement CG 20 26. The policies are to contain, or be endorsed to contain, that Grantee's insurance will be primary insurance as respects the Grantor.
 - a. Insurance will be with insurer(s) with a current A.M. Best rating of not less than A:VII.
 - b. The Grantee will furnish the Grantor with original certificates of insurance and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of

this Agreement within 30 days of execution of this Agreement and will provide Grantor with full copies of policies upon request.

- c. Any insurance, self-insurance, or self-insurance pool coverage maintained by the Grantor will be excess of the Grantee's insurance and will not contribute to it. If the Grantee maintains higher insurance limits than the minimums stated in this section, the Grantor will be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Grantee, irrespective of whether the certificate of insurance furnished to the Grantor evidences lower limits of liability.
 - d. The Grantee will provide the Grantor with written notice of any policy cancellation within two business days of their receipt of such notice. Failure by the Grantor to maintain the insurance as required will constitute a material breach of this Agreement, upon which the Grantor may, after giving five (5) business days' notice to the Grantee to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all required premiums, with any sums so expended to be repaid to the Grantor on demand.
10. Payment of taxes; No liens. If the easement rights granted by this Agreement are or become subject to any tax or assessment, including leasehold excise tax, Grantee shall pay to Grantor the amount of the tax within 30 days of Grantor's notice to Grantee of the tax and grantor's tax payment. The Grantee shall not permit any mechanic's, materialmen's or other liens against the City property arising from the performance of work or the provision of materials under the terms of this Agreement, and the Grantee agrees to indemnify and hold the City harmless for any such liens that may arise. This provision shall survive any termination of this Agreement.
11. Waiver. No delay in exercising any right or remedy by any Party shall constitute a waiver thereof, and no waiver of the breach of any provision of this Agreement shall be construed as a waiver of proceedings or succeeding breach of the same or any other covenant or condition of this Agreement.
12. Complete Agreement. This Agreement contains the entire agreement of the parties with respect to this subject matter and supersedes all prior or contemporaneous writings or discussions relating to the easement(s) provided for herein. This Agreement may not be amended except by a written document executed after the date hereof by the duly authorized representatives of Grantor and Grantee.
13. Financing. Grantee may at any time mortgage all or any part of its interest in this Agreement and rights under this Agreement and/or enter into a collateral assignment of all or any part of its interest in the Agreement or rights under this Agreement without the

consent of Grantor. Any such mortgage or assignment shall burden only the easement estate. The term “Lender” hereunder means any person or entity (including any trustee or agent thereof) providing debt or other financing of any kind to or for the benefit of Grantee. A Lender who provides written notice to Grantor of its name and of its address for purposes of notice under this Agreement shall be deemed a “Lender” and shall be entitled to the following protections:

Commented [A6]: Added language to address your comment below in re: requiring notice of the Lender

- (a) Any Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Grantee’s interests subject to the lien of Lender’s mortgage by foreclosure or otherwise assumes the obligations of Grantee directly.
- (b) Grantor and Grantee agree that, once all or any part of Grantee’s interests in this Agreement are mortgaged or assigned to a Lender, they will not modify or terminate this Agreement without the prior written consent of the Lender.
- (c) Grantor agrees that any Lender or investor shall have the right to make any payment and to do any other act or thing required to be performed by Grantee under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent a default under this Agreement and any forfeiture of any of Grantee’s rights under this Agreement as if done by Grantee itself.
- (d) During the time all or any part of Grantee’s interests in this Agreement are mortgaged or assigned to any Lender, if Grantee defaults under any of its obligations and Grantor is required to give Grantee notice of the default, Grantor shall also be required to give Lender notice of the default. If Grantor becomes entitled to terminate this Agreement due to an uncured default by Grantee, Grantor will not terminate this Agreement or exercise any other remedy unless it has first given written notice of the uncured default and of its intent to terminate this Agreement to the Lender and has given the Lender at least ninety (90) calendar days to cure the default to prevent termination of this Agreement (or such longer period of time for a nonpayment default as may be reasonably necessary under the circumstances, provided that Lender is diligently pursuing such cure). If Lender notifies the Grantor that it must foreclose on Grantee’s interest or otherwise take possession of Grantee’s interest under this Agreement in order to cure the default, Grantor shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Grantee’s interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Grantee. The time within which Lender must foreclose or acquire Grantee’s interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.
- (e) If Lender’s mortgage is foreclosed, or if Grantee’s estate in this Agreement is transferred by deed in lieu of foreclosure, to Lender or to a third party (each, a

Commented [A7]: If the city is not notified of the assignment, how does it comply with (b) and (d)?

“Transferee”), then such transfer or foreclosure shall not be deemed a violation of any restrictions on transfer set forth in this Agreement. The acquisition of all or any part of Grantee’s interests in the Agreement by any Transferee through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Grantor nor constitute a breach or default of this Agreement by Grantee, and upon the completion of the acquisition or conveyance, Grantor shall acknowledge and recognize such Transferee as Grantee’s proper successor under this Agreement upon Transferee’s cure of any existing Grantee defaults and assumption of the obligations of Grantee under this Agreement prospectively. Further, to the extent that Grantor has the right to consent or withhold consent to any such foreclosure or transfer, the same is hereby granted.

- (f) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Grantor agrees, upon request by any Lender within sixty (60) calendar days after the rejection or termination, to execute and deliver to Grantee or Lender a new Agreement which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of this Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Grantee or Lender prior to rejection or termination). Prior to the execution and delivery of any such new agreement, Grantee or Lender shall agree in writing to perform or cause to be performed all of the covenants and agreements to be performed by Grantee under this Agreement to the extent Grantee failed to perform them prior to the execution and delivery of the new Agreement.

Grantee hereby provides notice to Grantor of its Lender and such Lender’s notice address, as follows, unless Lender or Grantee later notifies Grantor otherwise in writing:

Royal Bank of Canada
as Administrative Agent
155 Wellington Street West, 8th Floor
Attention: Manager, Agency

- 14. Legal Construction. This Agreement will not be construed more or less favorably between the Parties by reason of authorship as both Parties had an opportunity to have the document reviewed by their counsel. This Agreement may be executed in duplicate original counterparts and all copies of this Agreement so executed shall be deemed to be one agreement.

15. Recording. Grantee shall, at its expense, record this Agreement with the Pierce County Recorder. After this agreement is recorded, Grantee shall provide Grantor with a copy of the recorded Agreement.

IN WITNESS WHEREOF, said Grantor and Grantee have caused this instrument to be executed this _____ day of _____, 2025.

GRANTOR:

CITY OF SUMNER

By: _____ By: _____
Kathy Hayden Mayor Jason Wilson City Administrator

STATE OF WASHINGTON)
) SS
COUNTY OF PIERCE)

On this _____ day of _____, 2025 before me, the undersigned, a Notary Public in the State of Washington, duly commissioned and sworn, personally appeared Kathy Hayden and Jason Wilson, representing themselves as Mayor and City Administrator, respectively, of the City of Sumner, the municipal corporation that executed the foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the same.

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

Printed
Name: _____
NOTARY PUBLIC in and for the State
Washington, residing
at _____
My Commission
Expires: _____

Approved to Form:

ATTEST:

By:

Andrea Marquez

City Attorney

By:

Michelle
Converse

City Clerk

GRANTEE:

GREE bn, LLC,
a Delaware limited liability company

Signature: _____
Print Name: _____
Its: Authorized Representative

STATE OF FLORIDA)
)SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this on this ____ day of _____, 2025, by _____, as the Authorized Representative of GREE bn, LLC, a Delaware limited liability company.

(Seal)

Signature of Notary Public
Print, Type/Stamp Name of Notary

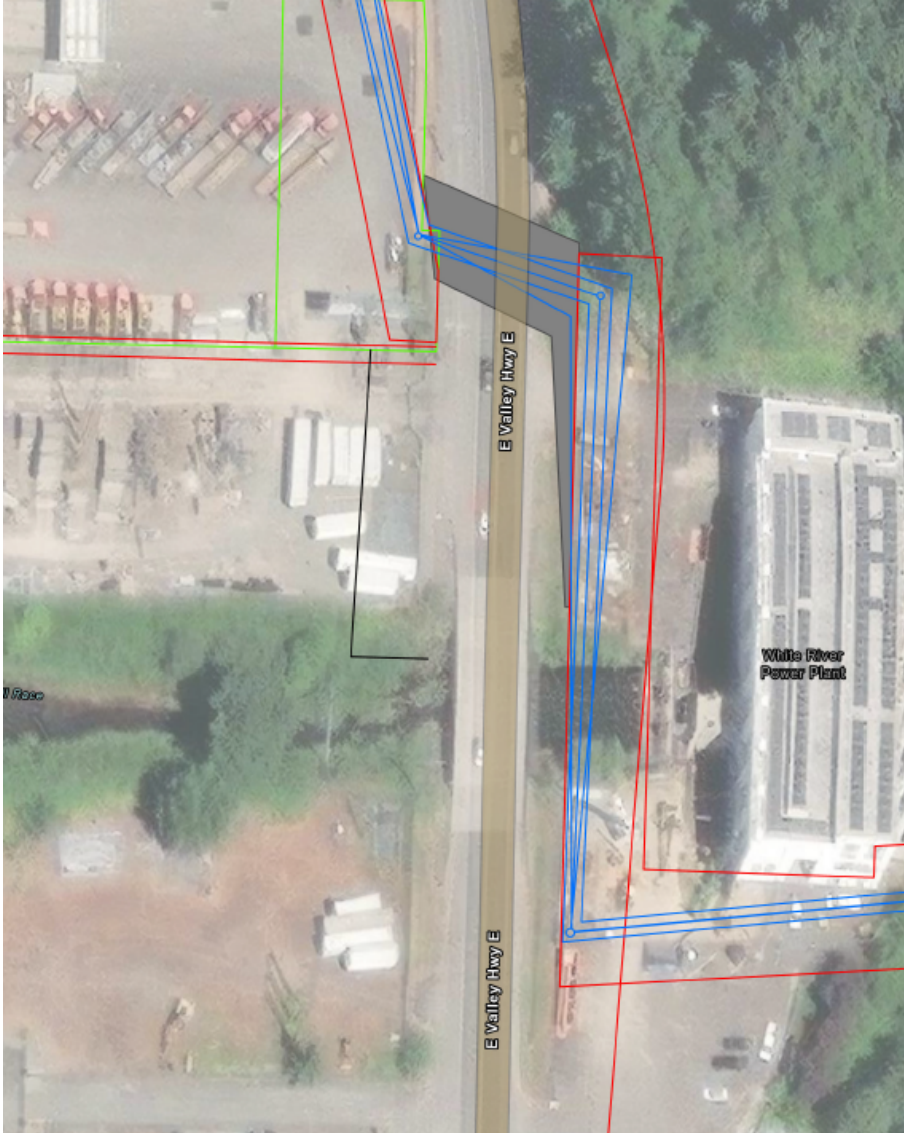
Personally known: _____
OR Produced Identification: _____
Type of Identification Produced: _____

EXHIBIT "A"

The Air Easement Area

The Air Easement Area is sixty feet (60') in width and located within a portion of East Valley Highway, said portion approximately marked in gray in the plan attached below. Following completion of construction of Grantee's Improvements, the Air Easement Area shall be measured as thirty feet (30') on either side of the centerline of Grantee's installed Improvements within the Right-of-Way, which centerline will not be located outside the marked area of the plan.

[see attached plan]



PRIMARY PROJECT TYPE	PROJECT NUMBER	PROJECT NAME	PRE-2025	2025 Q1	2025 Q2	2025 Q3	2025 Q4	2026 Q1	2026 Q2	2026 Q3	2026 Q4	POST-2026	2025-2026 BUDGET	FULL BUDGET	PROJECT MANAGER(S)	NOTES
Facilities	17-13	Operations Facility Main Site											\$ 50,135,300.00	\$ 50,174,600.00	D. McCarty	Construction in Proress
Facilities	18-04	Rainier View Covered Court											\$ 1,717,395.85	\$ 1,717,395.85	A. Leach	Working on Punchlist Items
Facilities	19-07	Ryan House											\$ 150,000.00	\$ 300,000.00	D. McCarty	Project started 7/24. Budget modified in 2025Q2.
Facilities	22-03	Cemetery Operations Facility		C	O	M	P	L	E	T	E		.	\$ 3,000,000.00	D. McCarty	
Facilities	22-04	Heritage Park Remediation											\$ 570,500.00		D. McCarty	Expected Completion Date:
Facilities	23-04	Cemetery Irrigation (Phase 2)											\$ 650,527.57	\$ 650,527.57	A. Leach	Construction under way
Facilities	23-04	Cemetery Potable Water (Phase 1)		C	O	M	P	L	E	T	E		\$ 225,000.00	\$ 225,000.00	A. Leach	Complete
Facilities	24-01	Operations Facility North Parcel		C	O	M	P	L	E	T	E		\$ 1,010,000.00	\$ 3,875,000.00	D. McCarty	Complete & in Closeout
Facilities	24-05	City Hall Solar Panels		C	O	M	P	L	E	T	E		\$ 150,990.00	\$ 272,000.00	D. McCarty	Project Complete. Budget modified in 2025Q1.
Facilities	24-06	City Hall EV Chargers											\$ 50,000.00	\$ 50,000.00	D. McCarty	PSE Up and Go Contract to committee 8/2025. Estimated Start 9/2025
Facilities	24-10	Hops Alley & Heritage Park Phase 2											\$ 3,965,527.00	\$ 5,780,527.00	D. McCarty	Contractor started phase 2 4/14 Heritage Park Phase 3 & 4 construction is unfunded.
Facilities	TBD	City Hall Windows											\$ 160,000.00	\$ 160,000.00	D. McCarty	
Sewer	20-04	Lift Stations 2 & 6 Improvements		C	O	M	P	L	E	T	E		\$ 993,394.00	\$ 1,681,000.00	D. McCarty	Complete
Sewer	21-09	Auto Lane Force Main Upgrade		PAUSED									\$ 393,500.00	\$ 393,500.00	A. Leach	Project on hold until construction in 2026.
Sewer	21-17	WWTF Biosolids Modernization											\$ 18,500,000.00		C. Littrell	
Sewer	24-03	Replace Sewer west of Cherry between Academy and Harrison											\$ 353,000.00	\$ 353,000.00	G. Singh	Contract out to bid. Construction planned for Summer 2025
Sewer	25-06	Harrison/State Side Sewer Connections											\$ 400,000.00		D. McCarty	Working on executed ILA with the Port & Planning project with Gordian
Sewer	T-25-08	WWTF VFD Replacement											\$ 517,000.00	\$ 517,000.00	D. McCarty	RFQ in Progress
Sewer	TBD	Lift Station 3 Improvements											\$ 300,000.00		TBD	Planning in 2026.
Sewer	TBD	Lift Station Improvements											\$ 993,000.00	\$ 993,000.00	D. McCarty	LS 1, 3, 4, 13, 15, 16 cellular coversion. LS 13 replacement. LS 15 gate. LS 10 pump replacement.
Sewer	TBD	WWTF Aeration Basins											\$ 532,000.00	\$ 532,000.00	D. McCarty	G&O to Design
Sewer	TBD	WWTF Biosolids											\$ 415,000.00	\$ 415,000.00	D. McCarty	G&O to Design
Sewer	TBD	WWTF Clarifiers											\$ 100,000.00	\$ 100,000.00	D. McCarty	G&O to Design
Sewer	TBD	WWTF Decant Facility Revisions											\$ 100,000.00		D. McCarty	Budget traded for staffing
Sewer	TBD	WWTF Improvements											\$ 721,000.00	\$ 721,000.00	D. McCarty	
Sewer	TBD	WWTF UV System Replacement											\$ 1,648,000.00	\$ 1,648,000.00	D. McCarty	G&O to Design
Storm	13-11	64th St E Culvert											\$ 10,000.00		TBD	Construction unfunded. Expected Completion Date: TBD
Storm	14-10	White River Restoration: Levees											\$ 1,100,000.00	\$ 30,504,000.00	R. Wright	Expected Construction: 2029
Storm	14-10	White River Restoration Phase 2: Habitat											\$ 42,342,000.00	\$ 62,375,000.00	R. Wright	Expected Completion Date: 2027
Storm	20-01	Salmon Creek Restoration											\$ 188,000.00		TBD	Osborn working on design - permit submittals in 2025. Construction unfunded
Storm	21-21	63rd St Ct E Storm Drainage											\$ 638,000.00	\$ 638,000.00	R. Wright	Awaiting easements prior to construction
Storm	23-11	16th St Property demolitions		C	O	M	P	L	E	T	E		In WRR Budget		R. Wright	Final demolition complete on 16th Street

PRIMARY PROJECT TYPE	PROJECT NUMBER	PROJECT NAME	PRE-2025	2025 Q1	2025 Q2	2025 Q3	2025 Q4	2026 Q1	2026 Q2	2026 Q3	2026 Q4	POST-2026	2025-2026 BUDGET		FULL BUDGET	PROJECT MANAGER(S)	NOTES	
Storm	25-02	2025 Storm CIP Update											\$	54,000.00	\$	302,630.00	R. Wright	Finalizing 250k FCZD Grant. Parametrix starting on existing project review.
Storm	TBD	Drainage District 11 Treatment											\$	406,000.00			R. Wright	Expected Completion Date: Ongoing
Streets	13-08	Stewart Rd Bridge Replacement											\$	19,735,000.00	\$	42,246,000.00	A. Leach	Expected Completion Date: 12/28
Streets	13-11	166th Ave E Widening											\$	1,110,000.00	\$	18,000,000.00	C. Littrell	Design & Environmental permitting in process. ROW funded for 2028. Construction unfunded. Expected Completion Date: TBD
Streets	19-02	Main St & Wood Ave Intersection Improvements		C	O	M	P	L	E	T	E		\$	78,700.00	\$	3,580,000.00	C. Littrell	Working on Closeout.
Streets	19-05	TC: Cherry & Maple Utilities											\$	4,331,000.00	\$	4,331,000.00	A. Leach	Project on hold until construction in 2026.
Streets	21-11	Maple St Pedestrian Signal & Citywide Backplates			SUSPENSION								\$	888,000.00	\$	1,073,000.00	C. Littrell	Expected Completion Date: 2026
Streets	22-07	Valley Ave: SR-410 to Elm											\$	866,000.00	\$	866,000.00	G. Singh	Phase 1: SR-410 to Meade McCumber in design. Construction anticipated 2026. Phase 2: Design for Meade McCumber to Elm grant funded in 2027.
Streets	23-08	Systemic Horizontal Curves		PAUSED									\$	613,000.00	\$	903,000.00	T. Le	30% Design
Streets	23-09	Puyallup St & Tacoma Ave		PAUSED									\$	590,553.00	\$	2,600,000.00	G. Singh	Construction is unfunded.
Streets	24-04	Washington St Reconstruction: Wood Ave to McMillan											\$	2,704,000.00	\$	2,818,000.00	G. Singh	Construction pushed to 2026. Consultant working on 90% Plans
Streets	24-07	Neighborhood Traffic Calming & Intersection Data Collection											\$	150,000.00	\$	150,000.00	TBD	Planning Study in 2026.
Streets	24-08	Roadway Curve Warning & Delineation											\$	457,000.00	\$	457,000.00	T. Le	160th St E/Elm St and 60th St E west of Sumner-Tapps Hwy E. Design 2026. Construction 2027.
Streets	24-09	Main Street Crossings											\$	980,000.00	\$	980,000.00	G. Singh	30% design in progress
Streets	24-11	Stewart Rd ITS											\$	500,000.00	\$	3,500,000.00	C. Littrell	Transpo Group to design. Construction is unfunded.
Streets	25-03	Helping Homeowners Sidewalk Program											\$	128,000.00	\$	128,000.00	C. Littrell	In Design.
Streets	25-03	Sidewalk Maintenance Program											\$	84,000.00	\$	84,000.00	C. Littrell	As needed.
Streets	25-03	Street Tree Program											\$	500,000.00	\$	500,000.00	C. Littrell	In Design.
Streets	N/A	ADA Improvements											\$	80,000.00	\$	80,000.00	C. Littrell	As needed.
Streets	N/A	SR-167 SB HOT Lane			P	A	U	S	E	D							N/A	WSDOT-led project. Project Paused for 2-3 State Bienniums.
Streets	N/A	SR 167 / I-5 Connection Project															N/A	WSDOT-led project
Streets	N/A	SR-410 / SR-162 Interchange Improvements			P	A	U	S	E	D							C. Littrell	WSDOT-led project. Relocation needed for City water mains. Project Paused for 3 State Bienniums.
Streets	TBD	Hunt Avenue Reconstruction: Main St to State St											\$	297,000.00	\$	3,000,000.00	R. Wright	Construction is unfunded.
Streets	TBD	Chip Seal Application											\$	500,000.00	\$	500,000.00	G. Singh	Planned for 2026
Streets	W25-01	Crack Seal Application											\$	161,440.00	\$	161,440.00	G. Singh	Project started on May 27, 2025
Streets	W25-02	Pavement Repairs											\$	142,390.00	\$	142,390.00	G. Singh	Project planned for June 2025
Streets	W25-03	Roadway Paint Line Application											\$	82,000.00	\$	82,000.00	G. Singh	Project planned for Summer 2025
Streets	W25-04	Roadway Plastic Marking Application											\$	118,000.00	\$	118,000.00	G. Singh	Project planned for June 2025

PRIMARY PROJECT TYPE	PROJECT NUMBER	PROJECT NAME	PRE-2025	2025 Q1	2025 Q2	2025 Q3	2025 Q4	2026 Q1	2026 Q2	2026 Q3	2026 Q4	POST-2026	2025-2026 BUDGET	FULL BUDGET	PROJECT MANAGER(S)	NOTES
Trails	14-01	Fryar Ave Trail											\$ 4,006,000.00	\$ 5,416,000.00	A. Leach	ROW in process.
Trails	14-10	White River Restoration Phase 3: Trail											\$ 3,000,000.00		R. Wright	24th Bridge retrofit @ 30% Design. Expected Completion Date: 2027. Design amendment to committee / council in August.
Trails	20-07	Rivergrove Pedestrian Bridge											\$ 1,304,000.00	\$ 12,200,000.00	A. Leach	Construction is partially funded. Expected Completion Date: 12/29
Water	19-11	South Tank Seismic Retrofit											\$ 950,000.00	\$ 3,509,300.00	A. Leach	Construction will pause during summer months
Water	25-05	159th Ave / Riverside Dr to 76th St											\$ 638,000.00	\$ 638,000.00	T. Le	Consultant selected. In Scope and Fee process. Combined with 2025 Water Main Improvements.
Water	25-05	2025 Water Main Improvements: Valley Ave Gary to SR-410, Valley Ave South of SR-410, 16th St Wood to McMillan & 54th W of Wright											\$ 1,151,000.00	\$ 1,151,000.00	T. Le	From 40159434-563417 Replacement of Water Mains
Water	25-05	Viewpoint Tank - 171st Ave Ct E											\$ 188,000.00	\$ 188,000.00	T. Le	Consultant selected. In Scope and Fee process. Combined with 2025 Water Main Improvements.
Water	25-07	Central Well Radio Upgrade											\$ 18,000.00	\$ 18,000.00	D.McCarty	RFP out currently
Water	TBD	Dieringer Well Communication											\$ 18,000.00	\$ 18,000.00	A. Leach	
Water	TBD	South Well Improvements											\$ 300,000.00	\$ 300,000.00	A. Leach	Construction unfunded.
Water	TBD	Sumner Springs Improvements											\$ 85,000.00	\$ 85,000.00	TBD	
Water	TBD	Water Systems Security											\$ 537,000.00	\$ 537,000.00	R. Wright	
Water	W24-14	North Tank Ladder											\$ 240,000.00		T. Le	90% Design Reviewing
Water	W24-19	Watershed Vegetation Management											\$ 150,000.00	\$ 150,000.00	R. Wright	Hazard Trees portion complete March 2025
74													\$ 177,170,217.42	\$ 1,634,538,310.42		

Legend:

- Planning / Design / Right-of-Way
- Construction
- Close-out