



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 and Thi Le

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:

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Meeting ID: 232 432 910 936 Passcode: 6uHEd4

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Phone Conference ID: 539 397 162#

**CALL TO ORDER**

**SPECIAL COMMITTEE BUSINESS**

1. Ordinance 2949 - Franchise Agreement with Forged Fiber 37, LLC
2. Wastewater Treatment Facility Biosolids Modernization - Construction Contract Award

**ADJOURNMENT**

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**SUBJECT:** Ordinance 2949 - Franchise Agreement with Forged Fiber 37, LLC

**CATEGORY:** Ordinance

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**BUDGET IMPACT:**

Expenditure Required: None

Within Budget Allocation: N/A

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**ATTACHMENTS:**

1. Ordinance 2949\_Forged Fiber 37 LLC Wireline Franchise

**STAFF CONTACT:** Andrea Marquez, City Attorney

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**SUMMARY BACKGROUND:**

The City is authorized by law (RCW 35.99 and Federal Law) to grant franchises to utility companies to occupy public rights of way within the City limits for purposes of constructing, operating and maintaining utility facilities. Wireline franchises are in the public interest as they permit and encourage the broad expansion of telecommunication providers within jurisdictions. A franchise agreement is a non-exclusive easement to utilize the rights of way - essentially acting as a master permit - but does not circumvent permit processes or any other land use and development requirements like coordination with other franchises, plan reviews and permit fees, and the requirement to relocate the facilities at the Franchise holder's cost if any public project requires the utility infrastructure to move.

Forged Fiber 37, LLC (ATT&T) is in the process of acquiring all of Lumen's telecommunication facilities, which requires a new franchise agreement between the City and Forged Fiber 37, LLC. However, this agreement maintains the status quo. No new facilities are anticipated to be constructed, unless maintenance or expansion in the future is required. The proposed franchise is for a period of 10 years, is non-exclusive, and requires insurance, bonding (or letter of credit) and indemnification of the City.

This franchise agreement largely mirrors the terms of the recently-adopted Ziplly Fiber franchise agreement, so it is consistent with other similarly situated franchises in Sumner.

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<p><b>COUNCIL COMMITTEE/STUDY SESSION:</b> Special Public Works Committee Meeting <b>MEETING/STUDY SESSION DATE:</b> 11/24/2025 <b>COMMITTEE RECOMMENDATION:</b></p>
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**STAFF RECOMMENDATIONS/MOTION:**

Motion to adopt Ordinance 2949 authorizing the Mayor to execute and grant a Franchise to Forged Fiber 37, LLC on the terms and conditions outlined in the Franchise Agreement and in a form as approved by the City Attorney.

ORDINANCE 2949

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF SUMNER ("CITY") TO FORGED FIBER 37, LLC ("GRANTEE").

WHEREAS, Forged Fiber 37, LLC, a limited liability company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services ("Wireline Communications Services"), which desires to occupy the City of Sumner rights-of-way to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City; and

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

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

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

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

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

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

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

NOW, THEREFORE, THE CITY COUNCIL DOES HEREBY ORDAIN AND APPROVE:

**Section 1. Franchise Agreement Approval.**

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

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

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

4. Telecommunications Facilities.

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

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

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

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

5. Terms, Conditions, and Provisions of SMC Chapter 12.90 Incorporated by Reference. The terms, conditions, and provisions of SMC Chapter 12.90 and Chapter 12.100 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of SMC Chapters 12.90 and 12.100. The terms of this Franchise

shall supplement SMC Chapters 12.90 and 12.100. In the event of a conflict between this Franchise and SMC Chapter 12.90 or Chapter 12.100, the terms of this Franchise shall prevail.

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

7. Location of Facilities. Grantee may locate its Facilities anywhere within the Franchise Area, consistent with the City's applicable Code requirements and the City's Design and Construction Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services to Cable Services or small wireless facilities.

8. Non-Exclusive Grant.

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

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

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

9. Relocation.

9.1 **Relocation Requirement.** The City may require Grantee, and Grantee covenants and agrees, to protect, support, temporarily disconnect, relocate, and remove, its Facilities within the City's rights-of-way as set forth in SMC Section 12.90.240 when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects

shall include any rights-of-way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 9.1 shall be considered a "Public Improvement Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 9.1 shall be borne by Grantee. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

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

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

**9.4 Third Party Requests for Relocation.** The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public Improvement Projects. The City shall take into account payment by third parties of relocation costs or expenses in establishing or extending the Relocation Date.

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

other franchisees and utilities and the City's third-party contractor with respect to the Public Improvement Project. Upon a notification of a delay due to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues and if Grantee breaches its obligations under this Section 9 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option: tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 9.6 and Section 17; or require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

**9.6 Indemnification.** Grantee will indemnify, hold harmless and defend the City, in accordance with the provisions of Section 17, against any all claims, suits, actions, damages, or liabilities for delays to the extent caused by or arising out of the failure of Grantee to remove or relocate its facilities as required in this Section 9; provided that Grantee shall not be responsible for indemnifying, holding harmless or defending City for any claims due to delays not caused by grantee or to the extent caused by the negligence, willful misconduct or unreasonable delay of the City or any third party.

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

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

10. Undergrounding of Facilities.

10.1 The parties agree that this Franchise does not limit or expand the City's authority under federal, law, or local laws, to require the undergrounding of utilities, including without limitation RCW 35.99.

10.2 Whenever all new or existing telephone, cable television, and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground in the manner required by SMC 12.90.120 and/or specified by the City Engineer or designee at no expense or liability to the City. Grantee shall only be required to pay its proportionately fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share

shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

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

11. Facilities for City's Use.

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

12. Recovery of Costs.

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

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

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

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

12.5 Whenever necessary, after construction or maintaining any of Grantee's facilities within the rights-of-way, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface and subsurface disturbed by Grantee to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during

Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights of- way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving fourteen (14) business days prior written demand from the City, the Grantee shall promptly commence to remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public rights-of-way. Any removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition reasonably satisfactory to the City. Any of Grantee's affected equipment or facilities remaining in place after the expiration of the one hundred eighty (180) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time with prior written request from the Grantee, such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon Grantee's permanent abandonment of the equipment or facilities in place, the equipment or facilities shall become the City's property, and the Grantee shall submit an instrument in writing to the Public Works Director, to be approved by the City Attorney, transferring the ownership of such equipment or facilities to the City.

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

12.7 Grantee's operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result of these statutes and other federal law, the City will not impose a franchise fee under the terms of this Franchise. The parties shall, in good faith, negotiate a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the s prohibitions of RCW 35.21.860 or federal law no longer apply, or if prohibitions on the imposition of such fees are removed. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws and such fee shall be suspended while any such challenge is pending.

### 13. Unsafe Working Conditions.

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

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

14. Dangerous Conditions; Authority for City to Abate.

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

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

15. Safety and Maintenance Standards.

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

15.2 Additional standards include:

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

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

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

17. Indemnification; Exclusion of Damages.

17.1 Grantee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, reasonable costs, judgments, awards, or other liability asserted by a third party to the extent related to any injury or death of any person or damage to property caused by or arising out of any negligent, fraudulent, or willful acts or omissions of Grantee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to such claims that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. Notwithstanding the foregoing, Grantee's covenant to indemnify the City and not to bring suit does not apply to claims, costs, judgments, awards or liabilities arising from the City's sole negligence, gross negligence, or willful misconduct.

17.2 Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance by Grantee of any of its obligations under this Section 17.

17.3 The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City, pursuant to this Section 17. Grantee may choose counsel to defend the City subject to this Section 17. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. Grantee may accept defense of a claim or claims under a reservation of rights in which case, a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) determines that such claim or claims were not subject to Grantee's obligations under this Section, City shall promptly reimburse Grantee for all costs and expenses, including attorneys' fees, incurred in the defense of the claim or claims.

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

17.5 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Grantee under the indemnification provisions of this Section 17 and any other indemnification provision herein shall apply. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Grantee for claims made against the City by Grantee's employees. This waiver has been mutually negotiated by the parties.

17.6 Notwithstanding any other provisions of this Section 17, Grantee assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors.

17.7 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise.

17.8 NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES. Grantee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption

damages, lost profits, and consequential damages, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the degree caused by the City's sole negligence, gross negligence or willful misconduct.

18. Insurance.

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

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

18.2 Payment of deductible or self-insured retention shall be the sole responsibility of Grantee. Grantee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 18. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

18.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability, and Pollution Liability obtained by Grantee shall include the City, its officers, officials, employees, representatives, engineers, consultants, agents, and volunteers ("Additional Insureds"), as an additional insured under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 00 01 and/or CG 20 26. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Grantee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Grantee's required insurance and shall not contribute with it.

18.4 Upon receipt of notice from its insurer(s) Grantee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy that is not immediately being replaced, required pursuant to this Section 18. If Grantee does not immediately replace its cancelled policy with one meeting this requirements of this agreement, Grantee shall, prior to the effective date of the notified cancellation, obtain replacement insurance policies meeting the requirements of this Section 18.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 18 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 22 below, subject to the applicable cure periods.

18.5 Grantee's maintenance of insurance as required by this Section 18 shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee. If Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

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

18.7 As of the Effective Date of this ordinance, Grantee is self-insured for Pollution liability and Commercial General Liability property damage. Should Grantee wish to become self-insured for other levels outlined in this Franchise at a later date, Grantee or its affiliated

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

19. Security Fund and Liquidated Damages.

19.1 At the same time as providing acceptance of this Franchise, Grantee shall establish a permanent security fund in the amount of Fifty Thousand Dollars (\$50,000) to guarantee the full and complete performance of the requirements of this Franchise, the requirements of SMC Chapter 12.90, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. The Grantee may provide, in lieu of a cash security deposit to the City, an unconditional letter of credit made out to the City, or bond in the amount of Fifty Thousand Dollars (\$50,000) to secure performance under this Franchise. The letter of credit or bond shall be in the form acceptable to the City Attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

24. City Ordinances and Regulations. Grantee agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Neither the granting of this Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the

time this Franchise is issued or thereafter be obtained. Nothing herein shall be deemed to direct or restrict or expand the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

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

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

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

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

Grantee:  
Forged Fiber 37, LLC c/o AT&T  
Attn.: Legal Dept – Network Operations  
Re: Sumner Franchise Agreement (WA)  
208 S. Akard Street  
Dallas, TX 75202-4206  
FF\_Right\_Of\_Way@att.com

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

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

30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to Grantee by

reason of such vacation. The City shall notify Grantee in writing not less than sixty (60) days before vacating all or any portion of any such area in which Grantee has Telecommunications Facilities. The City may, after sixty (60) days written notice to Grantee, terminate this Franchise with respect to such vacated area.

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

32. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the substantially prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

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

34. Acceptance. Acceptance shall occur upon Grantee's filing with the City Engineer all of the following: (i) this executed Franchise; (ii) certificate of insurance and additional insured endorsement pursuant to Section 18; and (iii) establishment of the security fund required pursuant to Section 19. The effective date of this Franchise shall be the date upon which Grantee has filed all of the acceptance documents listed in the preceding sentence (the "Effective Date").

Acceptance shall occur within sixty (60) days after the approval of the Franchise by the City Engineer. If an administrative fee pursuant to Section 12 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

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

36. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 12.6, 17, 18, 24, and 35 shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its legal representatives, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

37. Miscellaneous.

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

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

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

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

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

**Section 2. Severability.** If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity off the remaining portions of this ordinance. If the provisions of this ordinance are found to be inconsistent with other provisions of the Sumner Municipal Code, this ordinance is deemed to control.

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

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

**Section 5.** The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Passed by the City Council and approved by the Mayor the of the City of Sumner, Washington, at a regular meeting thereof this 5th day of January, 2026.

**IN WITNESS WHEREOF,** this Franchise is entered into and granted on \_\_\_\_\_, 20\_\_\_\_, by and between the City of Sumner ("City"), a Washington municipal corporation, and Forged Fiber 37, LLC ("Grantee"). Grantee accepts all of the terms and conditions of this Franchises as of the Effective Date.

CITY OF SUMNER

GRANTEE: Forged Fiber 37, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:  
SUMNER CITY ATTORNEY:

By: \_\_\_\_\_

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**SUBJECT:** Wastewater Treatment Facility Biosolids Modernization - Construction Contract Award

**CATEGORY:** Consent

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**BUDGET IMPACT:**

Expenditure Required: \$24,274,366.25

Within Budget Allocation: Yes

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**ATTACHMENTS:**

1. Public Works Contract

**STAFF CONTACT:** Courtney Littrell, Assistant Engineering Manager

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**SUMMARY BACKGROUND:**

The City of Sumner, in conjunction with the City of Bonney Lake, operates a Wastewater Treatment Facility (WWTF) that produces a Class A Biosolid that allows for a relatively cost-effective disposal of biological waste materials from the WWTF process. The dryer used in the creation of the Class A Biosolid is approaching the end of its service life.

Eight (8) bids were received on November 20th, 2025 for this project. The lowest responsible bidder was submitted by Rotschy, Inc., with a bid amount of \$24,274,366.25. The engineer's estimate was \$20,629,800.00.

The contractor will have three hundred ninety (390) working days to complete the project.

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<p><b>COUNCIL COMMITTEE/STUDY SESSION:</b> Public Works Committee <b>MEETING/STUDY SESSION DATE:</b> 11/24/2025 <b>COMMITTEE RECOMMENDATION:</b> Do Pass</p>
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**STAFF RECOMMENDATIONS/MOTION:**

A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Rotschy, Inc., in an amount not-to-exceed \$24,274,366.25 for the WWTF Biosolids Modernization Project (CIP 21-17), substantially in a form approved by the City Attorney.

**PUBLIC WORKS CONTRACT**  
**between City of Sumner and**  
**Rotschy, Inc.**

THIS AGREEMENT, made and entered into this day of \_\_\_\_\_, between the City of Sumner under and by virtue of Title 35 RCW (Cities and towns) as amended and Rotschy, Inc., hereinafter called the Contractor.

WITNESSETH:

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

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

Wastewater Treatment Facility Biosolids Modernization (CIP 21-17)

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

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

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

III. **Insurance and Indemnity.** The following insurance and indemnification provisions shall apply to all of the above described work.

The Contractor shall defend, indemnify and hold the Public Entity, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Public Entity.

Should a court of competent jurisdiction determine that this Agreement 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 Public Entity, 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 Agreement.

#### **A. Insurance Term**

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

#### **B. No Limitation**

The Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Public Entity's recourse to any remedy available at law or in equity.

#### **C. Minimum Scope of Insurance**

The Contractor's required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit, using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Public Entity 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 at least as broad 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 Public Entity, the Contractor, Subcontractors, and Sub-subcontractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal, and damage to materials in transit or stored off-site. 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 Public Entity upon written request by the Contractor and written acceptance by the Public Entity. Any increased deductibles accepted by the Public Entity will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until the Public Entity has granted substantial completion of the project. An installation floater may be acceptable in lieu of Builders Risk for renovation projects only if approved in writing by the Public Entity.

#### **D. Minimum Amounts of Insurance**

The 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.

#### **E. Public Entity Full Availability of Contractor Limits**

If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the Public Entity evidences limits of liability lower than those maintained by the Contractor.

#### **F. Other Insurance Provision**

The Contractor's Automobile Liability, Commercial General Liability and Builders Risk insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the Public Entity. Any insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity shall be excess of the Contractor's insurance and shall not contribute with it.

#### **G. 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, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

#### **H. Waiver of Subrogation**

The Contractor and the Public Entity 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 extent 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.

#### **I. Acceptability of Insurers**

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

#### **J. Verification of Coverage**

The Contractor shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, 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 Public Entity a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project. Upon request by the Public Entity, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

#### **K. Subcontractors**

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

#### **L. Notice of Cancellation**

The Contractor shall provide the Public Entity and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

#### **M. Failure to Maintain Insurance**

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the Public Entity may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Contractor from the Public Entity.

#### **N. Additional Insurance**

All insurance policies, with the exception of Workers Compensation, and of Professional Liability and Builder's Risk (if required by this Contract) shall name the following listed entities as additional insured(s) using the forms or endorsements required herein:

- the Contracting Agency and its officers, elected officials, employees, agents, and volunteers

The above-listed entities shall be additional insured(s) for the full available limits of liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this Contract, and irrespective of whether the Certificate of Insurance provided by the Contractor pursuant to describes limits lower than those maintained by the Contractor.

For Commercial General Liability insurance coverage, the required additional insured endorsements shall be at least as broad as ISO forms CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

#### **IV. Contractor's Employees – Employment Eligibility Requirements (E-Verify).**

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

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

VI. 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.

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

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

<p><b>CONTRACTOR:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: _____</p> <p>Its _____  <i>(Title)</i></p> <p>DATE: _____</p>	<p><b>CITY OF SUMNER:</b></p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Kathy Hayden</u>  <u>Mayor</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p>By: _____  <i>(signature)</i></p> <p>Print Name: <u>Jason Wilson</u>  <u>City Administrator</u>  <i>(Title)</i></p> <p>DATE: _____</p> <p>Attest:                      Approved as to form:</p> <p>_____  City Clerk                      City Attorney</p> <p>DATE: _____                      DATE: _____</p>
<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CONTRACTOR:</b>  Drew Rotschy, Vice President  Rotschy, Inc.  7408 NE 113<sup>th</sup> Circle  Vancouver, WA 98662  360-334-3100 (telephone)  estimator@rotschyinc.com</p>	<p><b>NOTICES TO BE SENT TO:</b></p> <p><b>CITY OF SUMNER:</b>  Courtney Littrell, Assistant Engineering Manager  City of Sumner  1104 Maple Street  Sumner, WA 98390  253-299-5710 (telephone)  courtneyl@sumnerwa.gov</p>

Exhibit A

**PROPOSAL**

To: City of Sumner

1. Pursuant to and in compliance with your Advertisement for Bids and the other documents relating thereto, the undersigned Bidder, having familiarized himself with the terms of the project related to those items herein bid, being aware of the local conditions affecting the performance of a Contract covering the items bid, having knowledge of the cost of the work at the place where the work is to be done and having familiarized himself with the Contract Documents, hereby proposes and agrees to perform the work and/or to furnish the equipment, any or all of the labor, materials, tools, expendable equipment and all utility and transportation services necessary to perform a Contract covering any or all of those items herein bid and to complete in a workmanlike manner all work covered by said Contract in connection with the Owner's **WASTEWATER TREATMENT PLANT BIOSOLIDS MODERNIZATION PROJECT, CIP 21-17**, for the amounts stated below.

A. **BID ITEMS** (See Technical Specification 01200 for description of bid items)

<b>Wastewater Treatment Plant Biosolids Modernization Project</b>					
<b>ITEM NO.</b>	<b>ESTIMATED QUANTITY</b>	<b>UNIT</b>	<b>DESCRIPTION OF ITEM</b>	<b>UNIT PRICE</b>	<b>AMOUNT</b>
1.	1	LS	Wastewater Treatment Plant Biosolids Modernization Improvements	\$ 15,064,207.00	\$ 15,064,207.00
2.	1	LS	Mobilization and Demobilization	\$ 1,917,164.00	\$ 1,917,164.00
3.	1	LS	Biosolids Drying System Equipment Supply, Construction Services, and Post Construction Services	\$4,903,000.00	\$4,903,000.00
4.	1	LS	Trench Excavation Safety Systems	\$ 3,500.00	\$ 3,500.00
5.	1	LS	Temporary Bypass Pumping	\$ 70,000.00	\$ 70,000.00
6.	1	LS	Dewatering	\$ 6,500.00	\$ 6,500.00
7.	1	LS	Erosion Control	\$ 50,000.00	\$ 50,000.00
8.	25	CY	Unsuitable Excavation	\$ 160.00	\$ 4,000.00
9.	1	CALC	Minor Change	\$150,000.00	\$150,000.00

**Subtotal (Items 1 through 9) \$** 22,168,371.00

**Sales Tax at 9.5% \$** 2,105,995.25

**Bid Total \$** 24,274,366.25

Subject to any extensions of the Contract time granted under the Contract, the undersigned agrees to substantially complete the Work required under this Contract within 390 working days (the Substantial Completion Date) and to physically complete the Work required under this contract within 430 working days (the Physical Completion Date) from when Contract Time begins.

The undersigned has reviewed and fully understands the provisions in the Contract regarding liquidated damages and agrees that liquidated damages shall be \$1,500.00 per day for each and every working day beyond the Contract time allowed for substantial completion until the Substantial Completion Date is achieved and \$1,500.00 for each and every working day required beyond the Contract Time for physical completion until the Physical Completion Date is achieved.

**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

\_\_\_\_\_,  
Rotschy, 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.