



City Council Regular Meeting Agenda

This City Council meeting will be held in person at the Council Chambers on the 5th floor of City Hall, 333 S. Meridian, and virtually via the Zoom platform.

The meeting can be viewed online via the city website (<http://cityofpuyallup.org/meetings>) on YouTube (<https://bit.ly/45iUPQM>) and on Zoom (<https://puyallupwa-gov.zoom.us/j/84249378881?pwd=FPdhwDDpSAZnd22vGH8X20MbhSYLlp.1>). To listen by phone, call 253-215-8782 and enter webinar ID 842 4937 8881 and passcode 580309.

Written comments will be accepted at info@puyallupwa.gov until 5:30 p.m. and be distributed to the City Council prior to the meeting.

Tuesday, December 5, 2023
6:30 PM

PLEDGE OF ALLEGIANCE

ROLL CALL

1. APPROVAL OF AGENDA

2. CONSIDERATION OF MINUTES

- 2.a **Pg. 4** - Approval of the November 14, 2023 minutes
[November 14, 2023 - draft minutes](#)

3. PRESENTATIONS AND PROCLAMATIONS

- 3.a **Pg. 10** - JBLM Community Connector Program Proclamation
[Proclamation](#)

CITIZEN COMMENTS

4. CONSENT AGENDA

- 4.a **Pg. 11** - Accept the Manorwood Water Main Replacement Phases 2 and 3 as complete
- 4.b **Pg. 12** - Contract with SCJ Alliance Consulting Services for the 5th Avenue NW; 2nd to 3rd Street NW Sewer Main Replacement project
- 4.c **Pg. 13** - Biennial Stormwater Capacity Grant from the Washington State Department of Ecology
- 4.d **Pg. 14** - Contract with BHC Consultants, LLC., for construction management on the Clarks Creek Pump Station
- 4.e **Pg. 15** - Cardiac testing services for the Puyallup Police Department
- 4.f **Pg. 16** - Grant from the Washington Association of Sheriffs and Police Chiefs

- 4.g **Pg. 17** - Resolution approving a sole source contract with Flock Safety
[Resolution](#)
- 4.h **Pg. 20** - Middle Housing grant from the Department of Commerce
- 4.i **Pg. 21** - Amendment to Interagency Agreement with the Department of Corrections
[Amendment](#)
- 4.j **Pg. 24** - Resolution setting a meeting date with the initiators of annexation proceedings related to the Picha/Boerner properties
[Resolution](#)
[Exhibit A - Map](#)
- 4.k **Pg. 28** - Approve accounts payable, payroll, and electronic fund transfers from October 2023
[Voucher Cover Sheet - October 2023](#)
- 4.l **Pg. 30** - Contract with Conquer Clinics, Inc., for health care services at the Puyallup City Jail

5. ORDINANCES

- 5.a **Pg. 31** - Second reading of an ordinance on the proposed 2024 Mid-Biennium Adjustment to the 2023-2024 Biennial Budget
[Ordinance](#)
[Exhibit A](#)
[Exhibit B](#)
[Exhibit C](#)
- 5.b **Pg. 38** - Second reading of an ordinance to amend PMC 3.70, Property Tax Incentives in Residential Targeted Areas, also known as the Multi-Family Tax Exemption program
[Ordinance](#)
[Major Proposed Changes to MFTE Program Table](#)
[Near Term MFTE Expansion Area](#)
[Resolution 2487](#)
- 5.c **Pg. 60** - First Reading of two ordinances granting franchise agreements to Ziplly Fiber
[Ordinance for Ziplly Fiber Pacific, LLC](#)
[Ordinance for Ziplly Wireless, LLC](#)

6. RESOLUTIONS

- 6.a **Pg. 147** - Van Lierop Park Master Plan Update
[Alternatives](#)
- 6.b **Pg. 150** - Resolution adopting the Environment and Sustainability Action Plan (ESAP)
[Resolution](#)
[Memo](#)
[ESAP final draft](#)

CITY MANAGER'S REPORT

COUNCIL REPORTS

MAYOR'S REPORT

EXECUTIVE SESSION

ADJOURNMENT

The City of Puyallup does not discriminate on the basis of disability in any of its programs, activities, or services. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a program, service, or activity of the City of Puyallup should contact the City Clerk's Office (253-841-4321, info@puyallupwa.gov) as soon as possible but no later than 48 hours before the event.

**City of Puyallup
Regular City Council Meeting
November 14, 2023**

COUNCILMEMBERS PRESENT: Mayor Johnson, Deputy Mayor Witting, Councilmember Door, Councilmember Farris, Councilmember Kastama, Councilmember King, and Councilmember Palmer

APPROVAL OF THE AGENDA

Council Action: A motion was made by Councilmember Kastama, and seconded by Councilmember King, to approve the agenda. The motion passed 7-0.

CONSIDERATION OF MINUTES

Council Action: A motion was made by Councilmember King, and seconded by Councilmember Kastama, to approve the minutes of October 24, 2023. The motion passed 7-0.

CITIZEN COMMENTS

Paul Rometsch commented that the proposed plans for Van Lierop Park don't reflect the residents' desire for preservation of the park based on surveys from 2019 and 2023 that showed favor for trails, environmental, and open space. He recommended that the park amenities being considered for Van Lierop be moved to other city parks.

Chris Chisholm requested that utility bills have a better break down of charges. He also spoke about contracting with the Pierce County Jail to keep bookings and the revenue within Pierce County to benefit all Pierce County residents and taxpayers.

John Hopkins spoke on misconceptions related to previous comments about Development and Permitting Services (DPS). He emphasized that the DPS staff is excellent and does a good job, but he has concerns with the portal to include that it is difficult to manage, complicated, and should be a more personal experience to get through the steps. He also discussed alternatives to providing different or upgraded facilities for the police department since Proposition One for the Public Safety Building did not pass.

CONSENT AGENDA

Interlocal Agreement with South Correctional Entity to incarcerate persons on behalf of the City in limited circumstances

Contract with Scotty's General Construction, Inc., for the Puyallup Loop Trail 15th Avenue SW Pedestrian Crossing

Interagency Agreement with Pierce County for sex offender address verification

Woodbine Cemetery Columbarium Expansion

Contract with Scarsella Brothers, Inc., for the Salmon Springs Water Main Replacement Phase 4

Approve accounts payable, payroll, and electronic fund transfers from September 2023

Donation of a trailer and emergency sheltering equipment from Pierce County Department of Emergency Management

Amendment to contract with SirsiDynix for the Integrated Library System

Council Action: A motion was made by Deputy Mayor Witting, and seconded by Councilmember Kastama, to approve the consent agenda. The motion passed 7-0.

PUBLIC HEARINGS

Public hearing and first reading of an ordinance determining and fixing the amount of funds to be raised by regular property taxes for 2024

Finance Director (FD) Barbara Lopez provided the Mid-Biennium Adjustment Process Timeline and steps taken throughout the process. She advised that the next steps included the public hearing on revenue sources, the first reading of the ordinance levying the 2024 property taxes of 1%, and passing the resolution stating the 2024 property tax increase in dollars and percentages.

FD Lopez discussed city-wide revenues and the major sources of that revenue, and the 2024 Property Tax Levy calculation estimated at approximately \$10 million dollars.

Public Hearing was opened. No public comments.

Council discussed the proportionality between the property tax to the sales tax and the discrepancy between increased inflation rates but lower property tax rates.

Council Action: A motion was made by Deputy Mayor Witting, and seconded by Councilmember Palmer, to approve the resolution to levy 1%. The motion passed 7-0.

Council Action: A motion was made by Deputy Mayor Witting, and seconded by Councilmember Kastama, to approve the first reading of the ordinance to set the total levy amount. The motion passed 7-0.

Public hearing and first reading of an ordinance on the proposed 2024 Mid-Biennium Adjustment to the 2023-2024 Biennial Budget

FD Lopez recapped the preliminary adjustments to the 2024 adopted budget totaling \$3,963,715 to include the labor matrix, Tier 3 transfer, capital projects, and staffing additions as well as a \$349,140 adjustment for Lodging Tax Advisory Committee (LTAC) funds.

Public hearing was opened. No public comments.

Council discussed the initial 2024 LTAC funds allocations, the LTAC Committee process, and debated whether additional funds could be awarded by council or needed to be sent back to the LTAC Committee for reconsideration.

Council Action: A motion was made by Councilmember Palmer, and seconded by Councilmember Farris, to approve the first reading of the ordinance. An amendment was made by Councilmember Kastama, and seconded by Councilmember King, to send the LTAC recommendation back to the LTAC Committee for an equal distribution of the \$13,750 deficit of the LTAC funds among all applicants to maintain the allocated budget for LTAC. The amended motion to send back to the LTAC Committee passed 5-2 (Door, Farris). The motion to approve first reading subject to the LTAC Committee reconvening for further discussion on fund allocations passed 6-1 (Farris).

Public hearing and first reading of an ordinance to amend PMC 3.70, Property Tax Incentives in Residential Targeted Areas, also known as the Multi-Family Tax Exemption program

Associate Planner (AP) Rachael Brown presented the updated plans for the Multi-Family Tax Exemption program (MFTE) to include housing challenges, prior council direction on changes to the program, Planning Commission review of the program, and the proposed changes and policy review.

AP Brown provided an overview on the voluntary program and explained the Residential Target Area (RTA) and the tax exemption timeframe options. AP Brown shared several maps highlighting the proposed RTA additions, covered the Planning Commission's review timeline, and addressed the proposed policy changes, an updated MFTE Menu, and fiscal impacts.

Public hearing was opened.

Paul Rometsch spoke in favor of expanding the MFTE program to lower the cost of living and cost of housing.

Council discussion ensued related to the possibility of including a corridor between the South Hill Regional Growth Center and the Downtown Regional Growth Center, the desire to remove the prospective areas from the ordinance, individual preferences for the 8-, 12-, and 20-year time-frame options, and the possibility of doing outreach to gauge interest in the program.

Council requested clarification and additional information on what areas and related maps were part of the proposed ordinance, what the projected fiscal impacts would be for the city, and specific details on the displacement and relocation provisions.

Council Action: A motion was made by Councilmember Palmer, and seconded by Councilmember Farris, to move the first reading of the ordinance to the November 21, 2023 council meeting. The motion failed 3-4 (King, Witting, Kastama, Farris).

Council Action: A motion was made by Councilmember King, and seconded by Councilmember Palmer, to approve the first reading of the ordinance. Motion passed 7-0.

ORDINANCES

Second reading of an ordinance amending the Puyallup Municipal Code pertaining to utility rates, billing procedures, and certain water regulations

Council Action: A motion was made by Councilmember Farris, and seconded by Councilmember King, to approve second reading of the ordinance. With a roll call vote, the motion passed 7-0.

Second reading of an ordinance amending code provisions related to appeal of City of Puyallup State Environmental Policy Act (SEPA) decisions

Council Action: A motion was made by Councilmember Farris, and seconded by Councilmember King, to approve second reading of the ordinance. With a roll call vote, the motion passed 7-0.

First reading of an ordinance pertaining to routine 2023 budget adjustments

Council Action: A motion was made by Councilmember Farris, and seconded by Councilmember Door, to approve first reading of the ordinance. The motion passed 7-0.

First reading of an ordinance pertaining to a rezone of four parcels along the west side of South Meridian between 17th and 19th Avenue SW from Professional Office to Limited Mixed Use

Senior Planner (SP) Chris Beale provided an overview of a request for a rezone of four parcels along South Meridian. He advised that the Hearing Examiner held a public hearing on October 10, 2023, issued an approval which was not appealed, and council's approval was required to ratify the Hearing Examiner's decision.

Council expressed the need for more residential and mixed-use facilities, and due to the current narrow definition for this property this rezoning is beneficial. Clarification was requested for what the current allowed use was and what the rezone would allow, and what councils role was in the decision since the Hearing Examiner already approved.

Council Action: A motion was made by Councilmember Farris, and seconded by Councilmember King, to approve first reading of the ordinance. The motion passed 7-0.

First reading of an ordinance addressing temporary and nuisance parking restrictions

City Attorney Joe Beck presented information on the proposed ordinance which would provide the City Manager the ability to designate temporary no parking areas to address parking issues related to temporary events, projects, construction, and nuisance and criminal behavior.

Council commented that they agreed with giving the City Manager the authority to make these decisions and inquired how a complaint would be made to the city by a citizen. Some specific scenarios were discussed if they could be addressed under this ordinance and the question of what defined a temporary timeframe was discussed.

Council Action: A motion was made by Councilmember Farris, and seconded by Councilmember Kastama, to approve first reading of the ordinance. The motion passed 7-0.

CONSIDERATIONS AND REQUESTS

Van Lierop Park Master Plan Update

Parks and Recreation Director Cody Geddes introduced Consultant Andrew Cirillo, Senior Associate and Civil Engineer with BCRA.

Mr. Cirillo provided an update on the progression for the Van Lierop Master Plan, shared public and Parks and Recreation Board recommendations, and requested feedback from council on the three alternatives provided for Van Lierop Park. He discussed results from the public survey from August 2023 that garnered over 1,000 responses, 84% which were city residents, that centered on three common themes of open space, a pump track, and pickleball courts. The three alternatives provided represented the concepts of most active, mixed active and passive use, and most passive.

He shared that the public meeting feedback from October 2023 varied from the online survey results and was represented by a larger percentage of people who lived near the park but were outside the city limits. The themes present from this meeting were support for more parking, passive lawns and trails, improvements to the road system, and opposition to the sport courts and pump track.

Council asked about the actual uses of the pump track, shared individual preferences for the alternatives provided, and provided suggestions for some minor changes. Several councilmembers were interested in removing the skate park but keeping the pump track and most wanted ample, but not excessive, parking. After considerable discussion, the alternative with mixed active and passive use was suggested by council with some minor changes.

OTHER BUSINESS

Environment and Sustainability Action Plan update

SP Beale provided an overview of the Environment and Sustainability Action Plan (ESAP) survey results and advised that the next steps in the process include final adoption, resolution, and implementation. He provided feedback from the survey, which was promoted through several online sources, email, and newsletter. This included concerns and support for topics of Overarching and Municipal, Buildings and Energy, Transportation, Ecosystem Health, Consumption and Waste, and Community Resilience and Wellbeing.

Council discussed cost concerns and the likelihood of grant funds to pay for the work related to the ESAP.

CITY MANAGER'S REPORT

City Manager Steve Kirkelie congratulated Chief of Police Scott Engle and the Puyallup Police Department on their official accreditation with the Washington Association of Sheriffs and Police Chiefs (WASPC).

ADJOURNMENT – 10:07 p.m.

DRAFT

PROCLAMATION

WHEREAS, for generations, citizens of the City of Puyallup have proudly served our nation during times of conflict and peace where brave service members, their families, and their loved ones have made great sacrifices to protect the freedoms we enjoy; and

WHEREAS, 43,000 individuals reside in the City of Puyallup, approximately 4,000 of whom are service members and families and over 4,100 of whom are military veterans and families choosing Puyallup as a place to stay, work, play, and learn; and

WHEREAS, the population with veteran status bring work experience and valuable skills to the workplace such as leadership, decision making, dependability, and attention to detail, as well as technical skills that are often in high demand; and

WHEREAS, more than 25 of Puyallup's business are military-affiliated or veteran-owned continuing their efforts to honor, fortify, empower, and positively impact the lives of service members, veterans, and their families; and

WHEREAS, throughout the year, we recognize our Puyallup service members, veterans, and families through dedicated events, sponsorship, and programs, remembering with deep gratitude the men and women who have given their lives in defense of our freedom; and

WHEREAS, this program will bolster our connection to our citizens further building upon strong relationships and rich military history to ensure understanding, trust, and cooperation between the City of Puyallup and our military partners;

NOW, THEREFORE, be it proclaimed by the Puyallup City Council that we recognize December 5, 2023, as the official start of the **COMMUNITY CONNECTOR PROGRAM** with **22D CORPS SIGNAL BRIGADE** in the City of Puyallup and call this day to the attention of all citizens.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Puyallup to be affixed this 5th day of December 2023.

Dean Johnson, Mayor



City Council Agenda Item Report

Submitted by: Michelle Gehring
Submitting Department: Engineering
Meeting Date: December 5, 2023

Subject:

Pg. 11 - Accept the Manorwood Water Main Replacement Phases 2 and 3 as complete

Presenter:

Hans Hunger, City Engineer

Recommendation:

Authorize the City Manager to accept the Manorwood Water Main Replacement Phases 2 and 3 with Pape and Sons Construction, Inc., as complete in the final contract amount of \$1,440,519.02 and begin the one-year warranty period.

Background:

In April 2023 the City Council awarded Pape & Sons Construction, Inc., a contract in the amount of \$1,677,890.

The work on this project included approximately 3,200 linear feet of 4- and 8-inch diameter water main including services and hydrants. There was additional work elements that included replacing any non-conforming curb ramps, restoring trench patches, roadway grinding and overlay, spot repair of curb and gutters, sidewalk/driveway approaches, and restoration at back of walkways.

Fiscal Impacts:

The original contract awarded for this project was \$1,677,890, this included the base bid of \$1,525,354.55 plus an additional 10% contingency of \$152,535.45. This project had three minor changes for a total of \$11,832.55. The total final contract amount is \$1,440,519.02, which is under the original contract award amount.

Funds for this project were paid from the existing allocated Federal American Rescue Plan Act (ARPA) Funds in the amount of \$1,184,265.87, and from the existing allocated Street Funds in the amount of \$256,253.15.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Michelle Gehring
Submitting Department: Engineering
Meeting Date: December 5, 2023

Subject:

Pg. 12 - Contract with SCJ Alliance Consulting Services for the 5th Avenue NW; 2nd to 3rd Street NW Sewer Main Replacement project

Presenter:

Hans Hunger, City Engineer

Recommendation:

Authorize the City Manager to execute a contract with SCJ Alliance Consulting Services in the amount of \$124,781.95 for the 5th Avenue NW; 2nd to 3rd Street NW Sewer Main Replacement project, in a form as approved by the City Attorney.

Background:

The 5th Avenue NW sewer main was originally installed as a concrete clay pipe in the 1950's. At its current state this sewer is failing, resulting in problems along 5th Avenue NW. Many small sections of this sewer have already been replaced and the current section is expected to be replaced between 2nd Street and 3rd Street due to surface cracking and sinkholes that are the results of sewer main separation and gasket failures. The section of this sewer between 5th Avenue NW and 2nd Street is approximately 14 feet deep and has seven connections along 5th Avenue NW.

This project will be to design the replacement of approximately 340 feet of sewer main and reconstruct the roadway surface. In addition to the sewer line replacement, work will include the design of Americans with Disabilities Act (ADA) compliant sidewalk ramps at four corners at 2nd Street and four corners at 3rd Street, and replace the asphalt across the roadway prism to full depth.

Fiscal Impacts:

The total cost for this project is \$113,438.14 and the City is adding a 10% contingency of \$11,343,81, for a total contract award amount of \$124,781.95. Funds for this project will be paid from the existing Capital Sewer budget.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Michelle Gehring
Submitting Department: Engineering
Meeting Date: December 5, 2023

Subject:

Pg. 13 - Biennial Stormwater Capacity Grant from the Washington State Department of Ecology

Presenter:

Hans Hunger, City Engineer

Recommendation:

Authorize the City Manager to accept the 2023-2025 Biennial Stormwater Capacity Grant from the Washington State Department of Ecology (DOE) in the amount of \$130,000, in a form as approved by the City Attorney, and amend the budget as necessary.

Background:

This grant will be used to reimburse the City for costs related to the implementation of the Department of Ecology Phase II Municipal Stormwater Permit, which is related to ensuring adherence with requirements of the National Pollutant Discharge Elimination System (NPDES).

The purpose of the programs are to improve water quality and protect certain habitats and ecosystems by reducing the amount of pollutants discharged to natural waters.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Michelle Gehring
Submitting Department: Engineering
Meeting Date: December 5, 2023

Subject:

Pg. 14 - Contract with BHC Consultants, LLC., for construction management on the Clarks Creek Pump Station

Presenter:

Hans Hunger, City Engineer

Recommendation:

Authorize the City Manager to award a contract to BHC Consultants, LLC., in the amount of \$209,971.30 for construction management of the Clarks Creek Pump Station Project, in a form as approved by the City Attorney.

Background:

BHC Consultants, LLC., has served as the original design engineering firm on the Clarks Creek Pump Station project. The original contract was for design services, including assistance with bid ready preparation. BHC Consultants, LLC., has been selected to oversee construction management of this project for the Clarks Creek Pump Station.

The construction management work BHC Consultants, LLC., will be performing includes review and assistance with incoming Requests for Information (RFI), reviews of directives, contractor pay requests, and assistance with any possible change orders. BHC Consultants, LLC., will also provide assistance to the project manager out in the field. This field support will include part-time daily inspection and providing daily reports of onsite work done by the selected contractor.

Fiscal Impacts:

The total cost for this contract is \$190,883 and the City is including a 10% contingency of \$19,088.30. This brings the total award amount to \$209,971.30. Funds for this project will be paid from existing Capital Sewer Funds.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Nichole McNiven
Submitting Department: Police Department
Meeting Date: December 5, 2023

Subject:

Pg. 15 - Cardiac testing services for the Puyallup Police Department

Presenter:

Chief of Police, Scott Engle

Recommendation:

Authorize the City Manager to execute a contract with Life Scan Wellness, in a form as approved by the City Attorney, to authorize up to \$85,000 from the current budget for comprehensive physical exams for Puyallup Police Officers and staff, and amend the budget as appropriate.

Background:

Due to the nature of police work, the life expectancy of law enforcement officers is twenty-two years less than civilian counterparts. In addition to the inherent risks of law enforcement work, officers have higher rate of heart disease, hypertension, diabetes, and obesity. These risks require additional monitoring and tests for predictors of heart attacks and other diseases to ensure that law enforcement employees stay physically and mentally healthy. The inherent nature of policing consists of long periods of routine and sometimes mundane patrol or investigation punctuated by short periods of intense excitement which results in accelerated adrenaline release.

The long-term effects of this stress are harmful, and specialized preventative testing for first responders has become a priority for law enforcement in recent years. Traditional medical insurance plans do not provide for comprehensive life scan expenses because there are no identified symptoms that would justify specialized care. This preventative testing includes ultrasound screening of the internal organs, vascular system and heart, 12-lead cardiac stress test, and comprehensive lab testing.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Nichole McNiven
Submitting Department: Police Department
Meeting Date: December 5, 2023

Subject:

Pg. 16 - Grant from the Washington Association of Sheriffs and Police Chiefs

Presenter:

Chief of Police, Scott Engle

Recommendation:

Authorize the Chief of Police to accept a grant in the amount of \$5,000 from the Washington Association of Sheriffs and Police Chiefs (WASPC) to purchase an upgraded FileOnQ system for the property room, in a form as approved by the City Attorney, and amend the budget as appropriate.

Background:

During the Puyallup Police Department's onsite accreditation walk through, the WASPC assessor recommended changes for efficiency within the property room. The Puyallup Police Department currently uses the FileOnQ system in the property room; however, it lacked a mobile scanner. The scanner greatly increases the efficiency of the property room as inventories can be processed faster and the scanner can be used to capture signatures remotely, eliminating the need for paper property releases. These grant funds would go towards the purchase of a mobile barcode scanner as well as a one-year upgraded subscription for EvidenceOnQ.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Nichole McNiven
Submitting Department: Police Department
Meeting Date: December 5, 2023

Subject:

Pg. 17 - Resolution approving a sole source contract with Flock Safety

Presenter:

Captain Jason Visnaw, Puyallup Police Department

Recommendation:

Adopt a resolution designating Flock Safety as a sole source provider and authorize the City Manager to execute a two year contract, in a form as approved by the City Attorney, to purchase the equipment and software in the total amount of \$246,550.

Background:

Flock Safety is a system of license plate reading (LPR) cameras, permanently mounted at locations around the city. The cameras read license plates and vehicle information, take photographs of the rear of vehicles, and do not record any personal identification information. The primary purpose of the Flock system is to provide a public safety operating system to enable law enforcement and the community to work together to collect visual, audio, and situational evidence across the city to solve and prevent crime. The system provides real-time information on stolen vehicles, vehicles wanted in connection with crimes, or vehicles in connection with Amber and Silver alerts. There are 40 agencies currently using Flock in Washington state and many more throughout the country. Those agencies with Flock in use have seen a reduction in crime and an increase in success with solving crime.

Fiscal Impacts:

This purchase can be covered within the existing General Fund budget for Police.

ATTACHMENTS

[Resolution](#)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, waiving the state competitive bidding requirement for the America Recovery Plan funded purchase of Flock Safety, a technology platform to improve police department efficiencies with real-time intelligence solutions.

WHEREAS, the Puyallup Police Department (Department) strives to be efficient and effective in its pursuit to reduce crime, solve crime and enhance community safety; and

WHEREAS, the Department has sought a technology platform that can improve operational efficiency and accelerate case clearance with a single real-time intelligence solution with the utilization of license plate readers and video; and

WHEREAS, the Department has identified Flock Safety as the only source that provides the platform that combines the necessary elements that the Department prioritized; and

WHEREAS, Flock Safety does not license or allow third-party resale of its software solutions or services and strictly adheres to these policies, coupled with its status as the only provider of an organizational management system for law enforcement agencies results in sole source status; and

WHEREAS, RCW 39.04.280(1)(a) provides that competitive bid requirements may be waived by the governing body of a municipality for purchases that are clearly and legitimately limited to a single source of supply

NOW THEREFORE, the City Council of the City of Puyallup hereby resolves as follows:

Section 1. Based upon the preceding legislative findings, the City Council hereby declares that the purchase of the Flock Safety platform, an organizational management system, is clearly and legitimately limited to a single source of supply and that the sole source of that supply for this project is Flock Safety.

Section 2. Based on the preceding legislative findings, and pursuant to RCW 39.04.280(1)(a), the competitive bidding requirements for the City of Puyallup are hereby waived and the City Manager is authorized to execute a contract for the purchase of Flock Safety cameras and software in the amount of \$246,550.00.

Section 3. Severability – Construction: If a section, subsection, paragraph, sentence, clause, or phrase of this resolution is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this resolution.

Section 4. Effective Date: This resolution shall take effect and be in force immediately upon its passage.

Adopted by the City Council of the City of Puyallup, Washington, on the 5th day of December, 2023.

Dean Johnson
Mayor

Approved as to form:

Attest:

Joseph Beck
City Attorney

Dan Vessels Jr.
City Clerk

Published:

Effective:



City Council Agenda Item Report

Submitted by: Katie Baker

Submitting Department: Development & Permitting Services

Meeting Date: December 5, 2023

Subject:

Pg. 20 - Middle Housing grant from the Department of Commerce

Presenter:

Katie Baker, Planning Manager

Recommendation:

Authorize the City Manager to accept a \$50,000 grant from the Washington State Department of Commerce to implement middle housing requirements, in a form as approved by the City Attorney, and amend the budget as appropriate.

Background:

The 2022 Washington State Legislature created the Middle Housing Grant Program to support the adoption of middle housing types in the Puget Sound region. The City received \$100,000 in the 2022-2023 grant award cycle, and used those funds for housing-related public engagement and equity analysis. This second award will be used to complete audits of comprehensive plan policy and development regulations related to middle housing, and work will be completed by June 30, 2025. This grant provides funding for work already anticipated as part of the city's 2024 Comprehensive Plan Periodic Update.

Fiscal Impacts:

This grant provides funding for work already anticipated as part of the 2024 Comprehensive Plan Periodic Update.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Nichole McNiven
Submitting Department: City Council
Meeting Date: December 5, 2023

Subject:

Pg. 21 - Amendment to Interagency Agreement with the Department of Corrections

Presenter:

Scott Engle, Chief of Police

Recommendation:

Authorize the City Manager to approve and sign an Amendment to an Interagency Agreement with the Department of Corrections, in form as approved by the City Attorney.

Background:

On June 7, 2022 the City entered an Interagency Agreement with the Department of Corrections (DOC) to incarcerate DOC offenders who violate community supervisions requirements in the Puyallup jail, if there is available capacity. This Amendment continues the Interagency Agreement through 2025, and modifies the per diem billing rate per DOC Offender.

ATTACHMENTS

[Amendment](#)



Washington State
Department of Corrections

Contract No. K12784
Amendment No. 1

This Amendment is made between the Washington State Department of Corrections, hereinafter referred to as "Department" or "DOC," and the City of Puyallup, hereinafter referred to as "Contractor," for the purpose of amending the above-referenced Contract, heretofore entered into between Department and Contractor.

WHEREAS the purpose of this Amendment is to extend the Term and increase the Per Diem Billing rate.

NOW THEREFORE, in consideration of the terms and conditions contained herein, or attached and incorporated and made a part hereof, the Department and Contractor agree as follows:

Replacement of Terms. All occurrences of the term "Offender" and "offender" in the Agreement shall be replaced with the term "Incarcerated Individual." All such replacements shall be applicable for the singular, plural, and possessive forms of the respective terms thereof.

Article II, TERM OF THE CONTRACT/PAYMENT is hereby amended, in part, as follows:

Section 2.1 Term. This Contract supersedes all previous oral and written contracts and agreements between the parties relating to the confinement, care, and treatment of Department offenders. This Contract commences on January 1, 2022, and continues through (~~December 31, 2023~~) December 31, 2025, unless terminated by either party pursuant to this Contract.

Section 2.4 Per Diem Billing. The per diem rate is eighty-nine dollars and twenty-five cents (\$89.25) per Department offender. The rate starting on January 1, 2024, to December 31, 2024, is \$93.71 per Department incarcerated individual. The rate starting on January 1, 2025, to December 31, 2025, is \$98.40 per Department incarcerated individual. [...]

Additions to this text are shown by underline and deletions by (~~strikeout~~). All other terms and conditions remain in full force and effect. The effective date of this Amendment is January 1, 2024.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

THIS AMENDMENT, consisting of two (2) pages, is executed by the persons signing below who warrant that they have the authority to execute this Amendment.

CITY OF PUYALLUP

DEPARTMENT OF CORRECTIONS

(Signature) (Date)
Steve Kirkelie

(Printed Name)
City Manager

(Title)

(Signature) (Date)
Daryl Huntsinger

(Printed Name)
Contracts Administrator

(Title)

Approved as to Form: This Amendment format was approved by the office of the Attorney General. Approval on file.

(Signature) (Date)
Czarina A. Francisco, CPA

(Printed Name)
Chief Financial Officer, Department of Medicine

(Title)

ATTEST (Clerk):

(Signature) (Date)
Dan Vessels

(Printed Name)
Clerk

(Title)

Approved as to form by

(Signature) (Date)
Shawn Arthur

(Printed Name)
City Attorney

(Title)



City Council Agenda Item Report

Submitted by: Katie Baker

Submitting Department: Development & Permitting Services

Meeting Date: December 5, 2023

Subject:

Pg. 24 - Resolution setting a meeting date with the initiators of annexation proceedings related to the Picha/Boerner properties

Presenter:

Katie Baker, Planning Manager

Recommendation:

Approve a resolution setting a meeting date of January 9, 2024 with the initiators of annexation proceedings related to the Picha/Boerner annexation area.

ATTACHMENTS

[Resolution](#)

[Exhibit A - Map](#)

RESOLUTION NO. _____

A RESOLUTION of the City Council of the City of Puyallup, Washington, setting a meeting with the initiators of annexation proceedings for the Picha Boerner properties.

Whereas, the City received a notice of intention to commence annexation proceedings from owners of property (initiators) that represent not less than ten percent of the assessed value of two properties for which annexation is sought; and

Whereas, the proposed Picha Boerner annexation area is shown in the attached Exhibit “A”; and

Whereas, it appears that said annexation area is contiguous to the City of Puyallup and has not previously been incorporated as a city or town; and

Whereas, the City, in response to the notice from the initiators is required, pursuant to RCW 35A.14.120, to set a date within sixty days to meet with the initiators; and

Whereas, pursuant to RCW 35A.14.120, the purpose of the meeting shall be to address (a) acceptance, rejection, or modification of the geographic area of the proposed annexation; (b) simultaneous adoption of zoning; and (c) any requirement for the annexed assumption of existing city indebtedness; and

NOW THEREFORE, in accordance with RCW 35A.14.120, the City Council of the City of Puyallup, Washington hereby resolves as follows:

A meeting with the Picha Boerner annexation initiators is set to occur at the City Council’s regular meeting on the 9th day of January, 2024, at 6:30 p.m. or soon thereafter as the matter may be heard in the City Council chambers, 333 South Meridian, Puyallup, Washington to consider whether the city will accept, reject, or geographically modify the proposed annexation, whether the City shall require the simultaneous adoption of a proposed zoning regulation, and whether the City shall require the assumption of all or of any portion of existing city indebtedness by the area to be annexed.

ADOPTED by the City Council of the City of Puyallup, Washington, this _____ day of _____, 2023.

Dean Johnson
Mayor

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Dan Vessels Jr.
City Clerk



City Council Agenda Item Report

Submitted by: Barbara Lopez
Submitting Department: Finance
Meeting Date: December 5, 2023

Subject:

Pg. 28 - Approve accounts payable, payroll, and electronic fund transfers from October 2023

Presenter:

Barbara Lopez, Finance Director

Recommendation:

Approve accounts payable, payroll, and electronic fund transfers of \$7,056,079.71; ratify and confirm payments as previously authorized by the finance director.

ATTACHMENTS

[Voucher Cover Sheet - October 2023](#)



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

Accounts Payable warrant numbers:	<u>AP 2320</u>	through	<u>AP 2741</u>	\$	<u>1,362,035.76</u>
Accounts Payable (ACH) warrant numbers:	<u>EF 700616</u>	through	<u>EF 700842</u>	\$	<u>1,867,240.74</u>
Payroll warrant numbers:	<u>PY 107817</u>	through	<u>PY 107835</u>	\$	<u>15,667.05</u>
Payroll (direct deposit) numbers:	<u>EF 90167651</u>	through	<u>EF 90168392</u>	\$	<u>2,002,556.72</u>
Electronic payments / Wire transfers dates:	<u>10/1/2023</u>	through	<u>10/31/2023</u>	\$	<u>1,808,579.44</u>
				Total All Funds \$	<u><u>7,056,079.71</u></u>

Barbara Lopez
Barbara Lopez
Finance Director
City of Puyallup

11/20/2023
Date



City Council Agenda Item Report

Submitted by: Nichole McNiven
Submitting Department: Police Department
Meeting Date: December 5, 2023

Subject:

Pg. 30 - Contract with Conquer Clinics, Inc., for health care services at the Puyallup City Jail

Presenter:

Scott Engle, Chief of Police

Recommendation:

Authorize the City Manager to execute a contract with Conquer Clinics, Inc., in a form as approved by the City Attorney, for inmate healthcare and amend the budget as appropriate.

Background:

The City sent a Request for Proposals (RFP) for Inmate Health Services in December 2022, and received one response. The respondent was disqualified as they failed to meet the necessary qualifications. Due to the lack of response to the RFP, the city elected to remain with the current provider, Healthcare Delivery Systems (HDS). However, in November HDS notified the city that they wished to terminate their contact on December 31, 2023. In response to receiving this termination notice from HDS, the city has identified another medical provider, Conquer Clinics, Inc., to address the needs of our incarcerated individuals. The annual cost of this service with Conquer Clinics, Inc., is \$450,000.

Fiscal Impacts:

This contract represents a cost increase, which will be covered by the General Fund.

ATTACHMENTS



City Council Agenda Item Report

Submitted by: Barbara Lopez
Submitting Department: Finance
Meeting Date: December 5, 2023

Subject:

Pg. 31 - Second reading of an ordinance on the proposed 2024 Mid-Biennium Adjustment to the 2023-2024 Biennial Budget

Presenter:

Barbara Lopez, Finance Director

Recommendation:

Conduct second reading of an ordinance to approve the adjustment.

Background:

Council received the 2024 Preliminary Mid-Biennium Adjustment and held budget study sessions on October 10 and 11, 2023. Based on Council direction at first reading, the additional \$13,750 in Lodging Tax monies has been reallocated and all exhibits updated accordingly.

A summary of the 2022 Mid-Biennium Adjustment is presented in Exhibits A and B. Lodging Tax awards as modified by the Lodging Tax Advisory Committee on 11/21/2023 are shown in Exhibit C.

ATTACHMENTS

[Ordinance](#)
[Exhibit A](#)
[Exhibit B](#)
[Exhibit C](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, relating to the mid-biennial review and modification of the 2023-2024 biennial budget as required by RCW 35A.34.130 and adopting certain modifications to the 2024 budget.

Whereas, the City Council adopted Ordinance No. 3263 on November 22, 2022, adopting the 2023-2024 biennial budget; and

Whereas, a mid-biennial review and modification process is required by RCW 35A.34.130; and

Whereas, prior to adoption of the mid-biennial adjustments, the City Council held a public hearing, preliminary budget hearings, a final budget hearing as required by law; and

Whereas, the City council finds that the proposed mid-biennial adjustments set forth herein are in the best interest of the City;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP HEREBY ORDAINS AS FOLLOWS:

Section 1. The final 2024 mid-biennium adjustment of the City of Puyallup, which is identified as the City of Puyallup, Washington, 2024 Mid-Biennium Adjustment, is adopted and incorporated herein by this reference.

Section 2. A summary of the final budget totals of estimated revenues and appropriations for each separate fund and the aggregate totals for all such funds combined is set forth in Appendix A of this ordinance, with detailed changes from the 2024 Adopted Budget as listed in Appendix B of this ordinance and 2024 Lodging Tax awards as listed in Appendix C of this ordinance.

Section 3. The budget includes a 5% COLA as applied to the 2024 salary schedule for non-represented employees. All employees who are members of a bargaining unit shall receive such pay and benefits as provided in the applicable collective bargaining agreement.

Section 4. The 2024-2029 Capital Facilities Plan for the City of Puyallup is hereby adopted and incorporated as part of the City's 2024 Mid-Biennium Adjustment.

Section 5. If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance unless the whole purpose and intent of this ordinance is

destroyed. If the provisions of this ordinance are found to be inconsistent with the other provisions of the Puyallup Municipal Code, this ordinance is deemed to control.

Section 6. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 7. The City Clerk shall transmit a complete copy of the final budget as adopted to the State Auditor, and to the Association of Washington Cities.

Section 8. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication in accordance with law.

PASSED at an open public meeting by the City Council of the City of Puyallup on the _____ day of _____, 2023.

Dean Johnson
Mayor

Approved as to form:

Attest:

Joseph N. Beck
City Attorney

Dan Vessels Jr.
City Clerk

Published:
Effective Date:

**2024 Mid-Biennium Adjustment
Exhibit A**

Fund Name	Projected Beginning Balance	Revenues	Expenditures	Ending Balance	Change in Balance
General Funds					
General Fund	12,218,200	58,075,619	60,181,375	10,112,444	(2,105,756)
Budget Stability Reserves Fund	4,027,480	1,602,060		5,629,540	1,602,060
Radio Replacement Fund	465,500	103,450	103,000	465,950	450
Donations to Puyallup	53,300		35,000	18,300	(35,000)
LEOFF I Retiree Benefits Fund	1,343,360	351,310	555,150	1,139,520	(203,840)
Firemen's Pension Fund	1,009,270	148,430	180,500	977,200	(32,070)
Special Revenue Funds					
Seizure & Forfeiture Fund	104,150	80,100	69,250	115,000	10,850
Motel Tax Fund	2,204,500	1,273,060	924,310	2,553,250	348,750
Trial Court Improvement Fund	12,430	21,530	20,000	13,960	1,530
LIFT Fund	227,450	1,003,650	1,000,000	231,100	3,650
First 1/4% REET	579,870	1,231,670	1,100,000	711,540	131,670
Second 1/4% REET	584,870	1,231,670	1,100,000	716,540	131,670
DUI Cost Recovery	185,650	68,400	18,350	235,700	50,050
American Rescue Plan Act	2,970,280		1,271,256	1,699,024	(1,271,256)
Affordable Housing Sales Tax	725,870	210,070		935,940	210,070
Debt Service Funds					
Non Voted Debt Service		3,004,550	3,004,550		-
Capital Projects Funds					
Street Capital Fund	2,584,660	14,454,080	15,907,103	1,131,637	(1,453,023)
Parks Capital Fund	1,793,030	2,590,230	3,252,600	1,130,660	(662,370)
Facility Capital Projects	1,596,970	2,270		1,599,240	2,270
Enterprise Funds					
Sanitation	913,770	318,170	306,313	925,627	11,857
Water Fund	1,034,790	10,988,730	10,584,977	1,438,543	403,753
Sewer Fund	4,595,710	19,995,312	19,903,225	4,687,797	92,087
Stormwater Fund	1,457,500	9,757,824	10,399,515	815,809	(641,691)
Pavilion Fund	115,330	307,680	348,282	74,728	(40,602)
Internal Service Funds					
Equipment Rental	615,520	3,052,000	3,408,424	259,096	(356,424)
Insurance Fund	946,770	3,625,270	3,165,690	1,406,350	459,580
Info Tech And Communications	609,030	4,429,260	4,678,632	359,658	(249,372)
Healthcare Insurance Fund	3,602,320	8,712,500	8,709,380	3,605,440	3,120
Facility Maintenance Fund	88,710	2,818,710	2,887,718	19,702	(69,008)
Total All Funds	46,666,290	149,457,605	153,114,600	43,009,295	(3,656,995)
Total Budget:		149,457,605	153,114,600		
Less Transfers		(25,503,701)	(25,503,701)		
Less Internal Service Charges		(12,895,370)	(12,895,370)		
Net Budget		111,058,534	114,715,529		

*The Net Budget removes all double counting from Internal Services and Transfers, reflecting the true revenues and expenditures.

**2024 Mid-Biennium Adjustment
Exhibit B**

Fund Name	Projected Beginning Balance	Revenues	Expenditures	Ending Balance	Change in Balance
General Funds					
General Fund	12,218,200	58,051,420	58,051,420	12,218,200	-
Labor Matrix Adjustments			505,756	(505,756)	(505,756)
Transfer out to Budget Stability for Tier 3			1,600,000	(1,600,000)	(1,600,000)
Comm Court Case Mgr - Reimbursed		24,199	24,199	-	-
Subtotal General Fund	12,218,200	58,075,619	60,181,375	10,112,444	(2,105,756)
Budget Stability Reserves Fund	4,027,480	2,060		4,029,540	2,060
Transfer In from General Fund for Tier 3		1,600,000		1,600,000	1,600,000
Subtotal Budget Stability Reserves Fund	4,027,480	1,602,060		5,629,540	1,602,060
Radio Replacement Fund	465,500	103,450	103,000	465,950	450
Donations to Puyallup	53,300		35,000	18,300	(35,000)
LEOFF I Retiree Benefits Fund	1,343,360	351,310	555,150	1,139,520	(203,840)
Firemen's Pension Fund	1,009,270	148,430	180,500	977,200	(32,070)
Special Revenue Funds					
Seizure & Forfeiture Fund	104,150	80,100	69,250	115,000	10,850
Motel Tax Fund	2,204,500	1,273,060	588,920	2,888,640	684,140
Update LTAC Allocation to 45%			185,390	(185,390)	(185,390)
City-Initiated Projects			150,000	(150,000)	(150,000)
Subtotal Motel Tax Fund	2,204,500	1,273,060	924,310	2,553,250	348,750
Trial Court Improvement Fund	12,430	21,530	20,000	13,960	1,530
LIFT Fund	227,450	1,003,650	1,000,000	231,100	3,650
First 1/4% REET	579,870	1,231,670	1,100,000	711,540	131,670
Second 1/4% REET	584,870	1,231,670	1,100,000	716,540	131,670
DUI Cost Recovery	185,650	68,400	18,350	235,700	50,050
American Rescue Plan Act	2,970,280		1,271,256	1,699,024	(1,271,256)
Affordable Housing Sales Tax	725,870	210,070		935,940	210,070
Debt Service Funds					
Non Voted Debt Service		3,004,550	3,004,550		-
Capital Projects Funds					
Street Capital Fund	2,584,660	13,797,086	15,210,115	1,171,631	(1,413,029)
Valley Ave NW Overlay		656,994	696,988	(39,994)	(39,994)
Subtotal Street Capital Fund	2,584,660	14,454,080	15,907,103	1,131,637	(1,453,023)
Parks Capital Fund	1,793,030	2,567,250	3,206,640	1,153,640	(639,390)
5-Mile Loop Trail		22,980	45,960	(22,980)	(22,980)
Subtotal Parks Capital Fund	1,793,030	2,590,230	3,252,600	1,130,660	(662,370)
Facility Capital Projects	1,596,970	2,270		1,599,240	2,270
Enterprise Funds					
Sanitation	913,770	318,170	306,270	925,670	11,900
Labor Matrix			43	(43)	(43)
Subtotal Sanitation Fund	913,770	318,170	306,313	925,627	11,857
Water Fund	1,034,790	10,988,730	10,537,960	1,485,560	450,770
Labor Matrix			47,017	(47,017)	(47,017)
Subtotal Water Fund	1,034,790	10,988,730	10,584,977	1,438,543	403,753
Sewer Fund	4,595,710	19,995,312	19,895,628	4,695,394	99,684
Labor Matrix			7,597	(7,597)	(7,597)
Subtotal Sewer Fund	4,595,710	19,995,312	19,903,225	4,687,797	92,087

**2024 Mid-Biennium Adjustment
Exhibit B**

Fund Name	Projected Beginning Balance	Revenues	Expenditures	Ending Balance	Change in Balance
Stormwater Fund	1,457,500	8,780,988	9,346,116	892,372	(565,128)
Labor Matrix			(19,615)	19,615	19,615
4th St Storm System Upgrade		696,000	696,000	-	-
Storm Comp Plan Update		280,836	377,014	(96,178)	(96,178)
Subtotal Stormwater Fund	1,457,500	9,757,824	10,399,515	815,809	(641,691)
Pavilion Fund	115,330	307,680	346,910	76,100	(39,230)
Labor Matrix			1,372	(1,372)	(1,372)
Subtotal Pavilion Fund	115,330	307,680	348,282	74,728	(40,602)
Internal Service Funds					
Equipment Rental	615,520	3,052,000	3,412,430	255,090	(360,430)
Labor Matrix			(4,006)	4,006	4,006
Subtotal Equipment Rental	615,520	3,052,000	3,408,424	259,096	(356,424)
Insurance Fund	946,770	3,625,270	3,183,590	1,388,450	441,680
Labor Matrix			(17,900)	17,900	17,900
Subtotal Insurance Fund	946,770	3,625,270	3,165,690	1,406,350	459,580
Info Tech & Communications	609,030	4,429,260	4,661,380	376,910	(232,120)
Labor Matrix			17,252	(17,252)	(17,252)
Subtotal Info Tech & Communications	609,030	4,429,260	4,678,632	359,658	(249,372)
Healthcare Insurance Fund	3,602,320	8,712,500	8,709,380	3,605,440	3,120
Facility Maintenance Fund	88,710	2,818,710	2,901,680	5,740	(82,970)
Labor Matrix			(13,962)	13,962	13,962
Subtotal Facility Maintenance Fund	88,710	2,818,710	2,887,718	19,702	(69,008)
Total All Funds	46,666,290	149,457,605	153,114,600	43,009,295	(3,656,995)
Total Budget:		149,457,605	153,114,600		
Less Transfers		(25,503,701)	(25,503,701)		
Less Internal Service Charges		(12,895,370)	(12,895,370)		
Net Budget		111,058,534	114,715,529		

*The Net Budget removes all double counting from Internal Services and Transfers, reflecting the true revenues and expenditures.

Lodging Tax Advisory Committee
Updated Allocation

Organization	2023	2024	2024 LTAC	New Alloc	Diff	Increase vs 2023	
	Awarded	Requested	Original	11/21/2023		Amount	%
All Things Fun Sports	6,320	9,000	9,000	8,833	(167)	2,513	40%
Daffodil 8k	1,500	1,500	1,500				
Mimosa 5k	1,500	1,500	1,500				
Explore Puyallup Scavenger Run	1,500	1,500	1,500				
Gobble Gobble 5k & 10k	1,820	3,000	3,000				
Puyallup Valley Half Marathon & 10k		1,500	1,500				
Arts Downtown	48,650	68,000	68,000	66,738	(1,262)	18,088	37%
Arts Downtown Outdoor Gallery - Marketing	23,650	25,000	25,000				
Arts Downtown Outdoor Gallery - Maintenance	25,000	25,000	25,000				
Arts in the Park - Fall Arts Celebration		18,000	18,000				
Daffodil Festival	34,060	45,000	45,000	44,165	(835)	10,105	30%
Foothills Rails to Trails Coalition	9,730	20,000	20,000	19,629	(371)	9,899	102%
NW Sinfonietta	21,890	25,000	25,000	24,536	(464)	2,646	12%
Puyallup Historical Society @ MM	41,650	53,300	53,300	52,311	(989)	10,661	26%
Tourism Marketing	18,850						
Tourism Facility & Event Venue	14,800	25,300	25,300				
Meeker Days 2024		7,500	7,500				
Cider Squeeze	8,000	8,500	8,500				
Wedding Marketing		12,000	12,000				
Puyallup Main Street Association	125,230	194,500	180,750	191,146	10,396	65,916	53%
Holiday Market/Santa Parade	5,000	5,000	5,000				
Steins and Stems / SIP - two events	6,530	20,000	20,000				
Meeker Days Art and Music Festival	51,500	94,500	80,750				
Farmers Market	62,200	75,000	75,000				
Puyallup Summer Chamber of Commerce	184,705	220,000	220,000	215,919	(4,081)	31,214	17%
Visit Puyallup / Livability Magazine							
Visitor Information Center - Facility Operations							
Tourism Marketing & Visitor Center Operations	44,825	60,000	60,000				
Red, White and Kaboom - July 3-4 Festival	54,880	75,000	75,000				
Culinary Classic	85,000	85,000	85,000				
TRCVB - Travel Tacoma / Mt. Rainier	68,765	95,000	95,000	93,237	(1,763)	24,472	36%
Fred Oldfield Center	15,000	25,000	25,000	24,536	(464)	9,536	64%
Subtotal Organizations	556,000	754,800	741,050	741,050	-	185,050	33%
Funding Available for 2024 Awards		741,050	741,050	741,050			
Remaining Amount		(13,750)	-	-			
City Initiated Requests							
Permanent Outdoor Art Purchase	25,000	25,000	25,000	25,000			
Pavilion - Acoustical & Lighting	500,000						
Civic Center Lighting	100,000						
City Tourism Branding Implementation		125,000	125,000	125,000			
Subtotal City Initiated	625,000	150,000	150,000	150,000			
Grand Total	1,181,000	904,800	891,050	891,050			



City Council Agenda Item Report

Submitted by: Rachael Brown

Submitting Department: Development & Permitting Services

Meeting Date: December 5, 2023

Subject:

Pg. 38 - Second reading of an ordinance to amend PMC 3.70, Property Tax Incentives in Residential Targeted Areas, also known as the Multi-Family Tax Exemption program

Presenter:

Rachael Brown, Associate Planner

Recommendation:

Conduct second reading of an ordinance to implement the expanded Residential Targeted Areas (RTA) and make other programmatic changes to the Multi-Family Tax Exemption (MFTE) program.

Background:

Following the November 14 Public Hearing, staff has provided materials to aid Council in its 2nd reading of the MFTE program expansion. The materials include a map of the citywide, near term MFTE RTAs; a consolidated table of three major items of potential change to the MFTE Program; and cross reference numbering of the three items in the table to the ordinance.

The three proposed major changes under discussion include:

- Expanding the MFTE area;
- Adding a new menu item to the program allowing 20-years of exemption for construction of affordable multi-family home-ownership projects;
- And a discussion of potentially adding an affordability requirement to the 8-year program. The 8-year affordability requirement is not currently proposed in the ordinance.

ATTACHMENTS

[Ordinance](#)

[Major Proposed Changes to MFTE Program Table](#)

[Near Term MFTE Expansion Area](#)

[Resolution 2487](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, AMENDING PMC CHAPTER 3.70 PROPERTY TAX INCENTIVES IN RESIDENTIAL TARGETED AREAS THEREBY AMENDING AND REVISING THE RESIDENTIAL TARGETTED AREA AND THE REGULATIONS GOVERNING THE INCENTIVES.

WHEREAS, the City of Puyallup has codified in Puyallup Municipal Code 3.70 a program called the ‘property tax incentives in residential targeted areas’ commonly known as a ‘multi-family tax exemption’ program; and

WHEREAS, the City of Puyallup has made no review of this program since its original adoption in 2003 and the addition of the 12-year option in 2008.

WHEREAS, the City of Puyallup sees fit to amend the program to better aid the City in furthering its housing goals as described in the City’s adopted Housing Action Plan; and

WHEREAS, the tax incentive program is intended to provide economic incentives enabling increased residential housing choices and opportunities, including affordable housing opportunities, within urban centers designated by the council as targeted residential areas; and

WHEREAS, the tax incentive program is intended to stimulate new construction or rehabilitation of existing vacant and underutilized buildings for multifamily housing in targeted residential areas to increase and improve housing opportunities, including affordable housing; and

WHEREAS, the tax incentive program is intended to increase the supply of mixed-income multifamily housing opportunities within the city;

WHEREAS, the tax incentive program is intended to achieve development densities which are more conducive to transit use in designated urban centers; and

WHEREAS, the tax incentive program is intended to accomplish the planning goals required under the Growth Management Act, chapter 36.70A RCW, as implemented from time to time by the City's current and future comprehensive plans.

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

Section 1. Puyallup Municipal Code 3.70 – property tax incentives in residential targeted areas is hereby amended as set out in Exhibit “A” attached hereto.

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

Section 3. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/ subsection numbers and any references thereto.

Section 4. A summary of this ordinance shall be published as required by law.

Section 5. This ordinance shall take effect and be in force 5 days after its passage, approval, and publication according to law.

ADOPTED by the City Council of the City of Puyallup, Washington, this _____ day of _____, 2023.

Dean Johnson

Mayor

Approved as to form:

Attest:

Joseph N. Beck

City Attorney

Dan Vessels Jr.

City Clerk

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Exhibit A

Chapter 3.70

PROPERTY TAX INCENTIVES IN RESIDENTIAL TARGETED AREAS

Sections:

[3.70.010 Purpose.](#)

[3.70.020 Findings.](#)

[3.70.030 Definitions.](#)

[3.70.040 Residential targeted area ~~designation criteria.~~](#)

[3.70.050 Residential targeted area designated.](#)

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[3.70.080 Application procedures.](#)

[3.70.090 Application review and issuance of conditional certificate.](#)

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[3.70.120 Annual compliance review.](#)

[3.70.130 Cancellation of tax exemption.](#)

[3.70.140 Appeals to hearing examiner.](#)

3.70.010 Purpose.

As provided in RCW [84.14.007](#), it is the purpose of this chapter to encourage increased residential housing opportunities, including affordable housing opportunities, within urban centers within the city of Puyallup where there are insufficient housing opportunities. It is further the purpose of this chapter to stimulate the construction of new ~~multifamily multiple-unit~~ housing and the rehabilitation of existing vacant and underutilized buildings for ~~multifamily multiple-unit~~ housing in urban centers having insufficient housing opportunities that will increase and improve residential opportunities within such urban centers. To achieve these purposes, this chapter provides for special valuations for eligible improvements associated with multiunit housing, including affordable housing, in residentially deficient urban centers located within the city of Puyallup. -

3.70.020 Findings.

The city council has determined that the residential targeted area(s) designated in this chapter are located within an urban center; that they lack sufficient available, desirable, and convenient residential housing to meet the needs of the public who would be likely to live in the urban center, if the desirable, convenient, attractive, affordable, and livable places to live were available; and that providing additional

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housing opportunities in designated areas will assist in achieving one or more of the stated purposes of this chapter. The city council further finds that development of a variety of additional housing units in the city's urban center will attract and maintain residents, thus making the area more vibrant, through better business, entertainment and cultural activities. Development of additional housing within the urban center of the city of Puyallup will help to achieve the planning goals mandated by the Growth Management Act under RCW [36.70A.020](#). The tax incentives provided in this chapter will stimulate the creation of new and enhanced residential structures, opportunities, and uses within the city's urban center, benefiting and promoting the public health, safety and welfare in the city's urban center.

3.70.030 Definitions.

"Affordable housing" means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low- or moderate-income households as defined by Chapter [84.14](#) RCW.

"Area median income" means the annual median family income for the metropolitan statistical area, as published from time to time by the United States Department of Housing and Urban Development (HUD), with adjustments according to household size, which adjustments shall generally be based upon a method used by HUD to adjust income limits for subsidized housing, which for purposes of determining affordability of rents or sale prices shall be based on the average size of household that corresponds to the size and type of the housing unit.

"City" means the city of Puyallup.

"Director" means the city manager or other city staff as may be designated in writing by the city manager.

"Household" means a single person, family, or unrelated persons living together.

"Multiple-unit family housing" means a building or group of buildings having four (4) or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multiple-unit units may result from new construction, or rehabilitation or conversion of vacant or underutilized or substandard buildings to multiple-unit housing. means building(s) having four or more dwelling units designed for permanent residential occupancy resulting from new construction, rehabilitation or conversion of a vacant, underutilized or substandard building.

"Owner" means the property owner of record.

"Permanently Affordable Homeownership" means homeownership that, in addition to meeting the definition of "affordable housing" in RCW 43.185A.010, is:

(1) Sponsored by a nonprofit organization or governmental entity;

(2) Subject to a ground lease or deed restriction that includes:

(a) A resale restriction designed to provide affordability for future low and moderate-income homebuyers;

(b) A right of first refusal for the sponsor organization to purchase the home at resale; and

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(c) A requirement that the sponsor organization must approve any refinancing, including home equity lines of credit; and

(3) Sponsored by a nonprofit organization or governmental entity and the sponsor organization:

(a) Executes a new ground lease or deed restriction with a duration of at least 99 years at the initial sale and with each successive sale; and

(b) Supports homeowners and enforces the ground lease or deed restriction.

“Permanent residential occupancy” means ~~multifamily~~multiple-unit housing that provides either owner occupant housing or rental accommodations that are leased for a period of at least one month on a nontransient basis. This excludes accommodations that offer occupancy on a transient basis such as hotels and motels that predominantly offer rental accommodations on a daily or weekly basis.

“Qualified non-profit organization” means a corporation no part of the income of which is distributable to its members, directors or officers. This also includes any subsidiary or affiliate of such corporation. This corporation, and any of its subsidiaries and affiliates who participate in the program defined in this chapter, must demonstrate to the satisfaction of the director adequate experience, financing, and general ability to build or acquire multiple unit affordable housing. This corporation, and its subsidiaries and affiliates, must also demonstrate adequate ability to operate, manage and assure continued function of multiple unit affordable housing.

“Rehabilitation improvements” means modifications to existing structures that are vacant for 12 months or longer, that are made to achieve a condition of substantial compliance with existing building codes or modification to existing occupied structures which increase the number of ~~multifamily~~multiple-unit housing units-

“Residential targeted area” means the area within or coterminous with the city’s urban center that has been designated by the city council as the residential targeted area in accordance with this chapter and Chapter 84.14 RCW as found by the city council to be lacking sufficient available, convenient, attractive, livable, and desirable residential housing to meet the needs of the public.

“Sponsor Organization” means a qualified non-profit or governmental entity which takes ownership and management responsibility of the affordable multiple-unit housing units constructed to qualify for the 20-year multiple-unit tax exemption program as defined in PMC 3.70.070 (6).

“Urban center” means a compact identifiable district where urban residents may obtain a variety of products and services.

3.70.040 Residential targeted area designation criteria.

Following notice and public hearing, or a continuance thereof, as prescribed in RCW 84.14.040, the city council may, in its sole discretion, designate all of or a portion of the residential targeted area described in the notice of hearing as the residential targeted area. The city council may, by ordinance, amend or rescind the designation of a residential target area at any time pursuant to the same procedure as set forth in this chapter for original designation-

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-The designated targeted area must meet the following criteria, as found by city council in its sole discretion:

- (1) The targeted area is located within an urban center as determined by the city council;
- (2) The targeted area lacks sufficient available, attractive, convenient, desirable, and livable residential housing to meet the needs of the public who would be likely to live in the urban center, if such places to live were available; and
- (3) The providing of additional housing opportunity in the targeted area will assist in achieving the stated purposes of RCW [84.14.007](#), namely:

~~(a)~~ Encourage increased residential opportunities within the targeted area of the city of Puyallup; or
~~(a)~~~~(b)~~ (b) Stimulate the construction of new ~~multifamily multiple-unit~~ housing and the rehabilitation of existing vacant and underutilized buildings for ~~multifamily multiple-unit~~ housing that will increase and improve residential opportunities within the city's urban centers;

(4) In designating the residential targeted area, the city council may also consider other factors, including, but not limited to:

- ~~(a)~~ Whether providing additional housing opportunities for low- and moderate-income households would meet the needs of citizens likely to live in the area if affordable housing were available;
- ~~(b)~~ Which additional housing in the targeted area will attract and maintain a significant increase in the number of permanent residents;
- ~~(c)~~ Whether additional housing in the targeted area will help revitalize the city's urban center;
- ~~(d)~~ Whether an increased residential population will help improve the targeted area and whether an increased residential population in the targeted area will help to achieve the planning goals mandated by the Growth Management Act under RCW [36.70A.020](#).
- ~~(a)~~ The city council may, by ordinance, amend or rescind the designation of a residential target area at any time pursuant to the same procedure as set forth in this chapter for original designation.

(5) The notice for the hearing has met the requirements of RCW [84.14.040](#).

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3.70.050 Residential targeted area designated.

(1) Residential Targeted Area Designated. The area hereby declared to be the residential targeted area of the city of Puyallup includes all properties that are;

- ~~(a)~~ within the Downtown Regional Growth Center or the South Hill Regional Growth center or the River Road Corridor Planned Area as denoted in the official City of Puyallup Comprehensive Plan and that are zoned;
 - ~~(i)~~ Any central business district (CBD) Commercial (C) Zone as denoted on the official zoning map, or;
 - ~~(ii)~~ Any Multi-Family Residential (RM) Zone as denoted on the official zoning map, or;
 - ~~(iii)~~ Any Mixed Use (MX) Zone as denoted on the official zoning map;

~~zone district as denoted on the official city zoning map. In addition, the residential targeted area shall also consist of all properties directly south of the existing central business district zone southern perimeter within the area bound by 3rd Street SW, 7th Avenue and 2nd Street SE.~~

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(2) If a part of any legal lot is within the residential targeted area, then the entire lot shall be deemed to lie within such area.

3.70.060 Residential targeted area standards and guidelines.

For the designation of residential targeted area, the city council shall adopt basic requirements for both new construction and rehabilitation, including the application process and procedures. The city council may also adopt guidelines and requirements including the following:

- (1) Requirements that address demolition of existing structures and site utilization; and
- (2) Building requirements that may include elements addressing parking, height, density, environmental impact, public benefit features, compatibility with surrounding property, and such other amenities as will attract and keep permanent residents and will properly enhance the livability of the residential targeted area.
- (3) A proposed project must meet the standards and guidelines listed in PMC 3.70.070(4)(a) through ~~(2f)-(10)~~.

3.70.070 Tax exemption for multifamilyMultiple-Unit housing in residential targeted areas.Tax Exemption – Eligibility and Requirements

(1) Intent. Limited multi-year exemptions, as authorized by Chapter 84.14 RCW, from ad valorem property taxation for ~~multifamily~~multiple-unit housing in the residential targeted area are intended to:

- ~~(a)~~ Encourage increased residential opportunities within the urban center designated by the city council as a residential targeted area;
- (a)
- ~~(b)~~ Stimulate new construction or rehabilitation of existing vacant and underutilized buildings for ~~multifamily~~multiple-unit housing in the residential targeted area to increase and improve housing opportunities;
- (b)
- ~~(c)~~ Assist in directing future population growth in the designated urban center; and
- (c)
- (d) Achieve development densities which are more conducive to transit use in the designated urban center.

(2) Duration of Tax Exemption. The value of new housing construction, conversion, and rehabilitation improvements qualifying under this section is exempt from ad valorem property taxation. The project shall be exempt for either eight (8), twelve (12), or twenty (20) successive years of qualifying ad valorem taxes, beginning January 1st of the year immediately following the calendar year of issuance of the final certification; A project can only select one of the three possible durations of tax exemption (8, 12, or 20 years) and must meet all qualifications listed for that duration of tax exemption to be eligible for it.

~~(a) For properties for which applications for certificates of tax exemption eligibility were submitted before July 22, 2007, the value of new construction, conversion, and rehabilitation improvements qualifying under this chapter is exempt from ad valorem property taxation for 10 successive years beginning January 1st of the year immediately following the calendar year of issuance of the final certificate of tax exemption.~~

~~(b) For properties for which applications for certificates of tax exemption eligibility are submitted after July 22, 2007, the value is exempt:~~

~~(3) Limits on Exemption. The exemption does not apply to the value of the land or to the value of improvements not qualifying under this chapter, nor does the exemption apply to increases in assessed valuation of land or nonqualifying improvements. Nonresidential portions of multiple-use projects with qualifying residential components shall not qualify for this exemption. In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to submission of the completed application required under this chapter.~~

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~~(4) (i) Eight-year Exemption Project Eligibility. A proposed project which meets all of the following qualifications, shall be eligible to apply for ~~For eight (8) successive years~~ of tax exemption as defined in this chapter, beginning January 1st of the year immediately following the calendar year of issuance of the certification~~

~~(a) Location. The project must be located within the residential targeted area as designated pursuant to PMC 3.70.050.~~

~~(b) Tenant Displacement Prohibited. If the property proposed to be converted or improved is not vacant or, in the case of applications for property to be developed as new construction which currently has a residential rental structure on it, an applicant shall:~~

~~(i) provide each existing household a 120-calendar-day move notice~~

~~(ii) If any household being provided a 120-calendar-day move notice is qualified as a low-income household, the applicant will provide the household with moving expenses according to the current Department of Transportation Fixed Residential Moving Costs Schedule.~~

~~(iii) provide housing of comparable size, quality, and price which meets standards acceptable to the City.~~

~~(iv) Provide each displaced tenant with the first right of refusal to rent or purchase the newly constructed or rehabilitated dwelling units.~~

~~(c) Size. The project must include at least four units of multiple-unit housing within a residential structure, a group of structures, or as part of a mixed-use development. A minimum of four new units must be constructed or at least four additional multiple-unit units must be added to existing occupied multiple-unit housing. The project can be a single building or group of buildings, but must contain a net increase of at least 4 dwelling units, and each building must meet the definition of a multi-unit building. No residential structure in the project qualifying under the exemption may have fewer than two dwelling units. Property proposed to be rehabilitated with existing multiple-unit housing that has been vacant for twelve (12) months or more does not have to provide additional multiple-unit units~~

~~(d) Permanent Residential Housing. At least 50 percent of the space designated for multiple-unit housing must be provided for permanent residential occupancy, as defined in PMC 3.70.030, and only that portion of the space designated for multiple-unit housing shall be eligible for applicable exemption provided for by this chapter.~~

~~(e) Proposed Completion Date. New construction multiple-unit housing and rehabilitation improvements must be completed within three years from the date of approval of the application, plus any extension of time granted under PMC 3.70.090(2).~~

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~~(a)(f)~~ Compliance with Guidelines and Standards. The project must be designed to comply with the city's comprehensive plan, building, housing and zoning codes, and any other applicable regulations and standards in effect for the subject property at the time the applicant submits a fully completed application to the director. For the duration of the exemption granted under this chapter, the property shall have no violations of applicable zoning requirements, land use regulations, or building and housing ordinance requirements for which a notice of violation has been issued and is not resolved by compliance, withdrawal or other final resolution. The project must also comply with any other standards and guidelines adopted by the city for the residential targeted area in which the project will be developed.; or

~~(5) (ii)~~ Twelve-Year Exemption Project Eligibility. A proposed project which meets all of the following qualifications, shall be eligible to apply for twelve (12) successive years of tax exemption as defined in this chapter; For 12 successive years beginning January 1st of the year immediately following the calendar year of issuance of the certification if the property otherwise qualifies for the exemption under this chapter and meets the conditions of RCW 84.14.020(1)(a)(ii)(B).

- (a) All requirements set forth in subsection (4)(a-f) of this section; and
- (b) the applicant must commit to renting at least twenty percent (20%) of the multiple-unit housing units as affordable housing units to eligible low- and moderate-income households, and the property must satisfy that commitment; or
- (c) the applicant must commit to selling at least twenty percent (20%) of the multiple-unit housing units as affordable housing units exclusively for owner occupancy to eligible low- and moderate-income households, and the property must satisfy that commitment.
- (d) Affordable units intended for owner occupancy must be sold by the applicant with a covenant running with the land that prevents the use of the property as a rental unit and includes a resale restriction designed to maintain affordability for future low- and moderate-income homebuyers prior to the expiration of the exemption.
- (e) For the 12-year exemption only: at the expiration of the exemption the applicant must provide tenant relocation assistance in an amount equal to one month's rent to a qualified tenant within the final month of the qualified tenant's lease. To be eligible for tenant relocation assistance under this subsection, the tenant must occupy an affordable unit at the time the exemption expires and must qualify as a low-income household under this chapter at the time relocation assistance is sought.

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(6) Twenty-Year Exemption Project Eligibility. A proposed project which meets all of the following qualifications, shall be eligible to apply for twenty (20) successive years of tax exemption as defined in this chapter:

- (a) All requirements set forth in subsection (4)(a-f) of this section; and
- (b) at least twenty-five percent (25%) of the units must be built by or sold to a qualified non-profit or local government partner that will assure permanent affordable homeownership for eligible households, support the residents of these units, and become the sponsor organization for these affordable units.
- (c) The sponsor organization shall execute a resale restriction designed to provide affordability for future low-income homebuyers;

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- (i) this new ground lease or deed restriction shall have a duration of at least 99 years at the initial sale and with each successive sale; and
- (ii) shall have a right of first refusal for the sponsor organization to purchase the home at resale; and
- (iii) shall have a requirement that the sponsor must approve any refinancing, including home equity lines of credit;
- (d) The sponsor organization shall also support homeowners and enforce the ground lease or deed restriction.
- (f) These permanently affordable homeownership units shall be sold to eligible low-income households.
- (g) The remaining seventy-five percent (75%) of units may be rented or sold at market rates.

(7) If, in calculating the minimum proportion of the multiple-unit housing units in the project for affordable housing in this section, the number contains a fraction, then the minimum number of multiple-unit housing units for affordable housing shall be rounded up to the next whole number.

(8) For any affordable units required in this section, the following shall apply:

- (a) The mix and bedroom configuration of affordable units (e.g., studio, one-bedroom, etc.) shall be substantially proportional to the mix and configuration of the total housing units in the project unless otherwise approved by the Development and Permitting Services Director, or designee.
- (b) Affordable housing units shall be intermingled with all other units in the development; and
- (c) The quality of construction in those affordable units used to qualify for the exemption shall be the same as other housing units in the project.
- (d) Equal Access to Common Facilities. Tenants and owners of the Affordable Units shall have equal access to all amenities and facilities of the Project, such as parking, fitness centers, community rooms, and swimming pools. If a fee is charged for the use of an amenity or facility, then all tenants and owners in the Project must be charged equally for such use. If the City prohibits a fee for certain amenities or facilities included in the Project, such as parking, the Owner shall include such amenities or facilities in the rent or sale price of an Affordable Unit.

(9) Fees. The Director is authorized to limit fees charged to eligible households upon move-in or transfer to an MFTE unit, including, but not limited to, property administrative fees, transfer fees, last month's rent, and security deposits. Fees for credit checks, provided such fees are assessed for prospective tenants of all dwelling units, SEDUs, or congregate residence sleeping rooms in the multiple-unit housing, may be charged at cost. No eligible household may be charged fees for income verifications or reporting requirements related to the MFTE program.

(10~~e~~) If improvements have been exempted under this chapter, the improvements shall continue to be exempted for the duration of the period applicable under this subsection, so long as they are not converted to another use and so long as they continue to satisfy all applicable conditions of the contract provided for by PMC 3.70.090. If the owner intends to convert the ~~multifamily~~multiple-unit development to another use, or if applicable, if the owner intends to discontinue compliance with the affordable housing requirements as described in this section, or any other condition to exemption, the

owner shall notify the assessor within 60 days, and shall, in all respects, be subject to the requirements of RCW [84.14.110](#).

~~(3) Limits on Exemption. The exemption does not apply to the value of the land or to the value of improvements not qualifying under this chapter, nor does the exemption apply to increases in assessed valuation of land or nonqualifying improvements. Nonresidential portions of multiple-use projects with qualifying residential components shall not qualify for this exemption. In the case of rehabilitation of existing buildings, the exemption does not include the value of improvements constructed prior to submission of the completed application required under this chapter.~~

~~(4) Project Eligibility. A proposed project must meet the following requirements for consideration for a property tax exemption:~~

~~(a) Location. The project must be located within the residential targeted area as designated pursuant to PMC [3.70.050](#).~~

~~(b) Tenant Displacement Prohibited. The project must not displace existing residential tenants of structures that are proposed for redevelopment. Existing dwelling units proposed for rehabilitation must have been unoccupied for a minimum of 12 months prior to submission of an application and must fail to comply with one or more requirements of the applicable building or housing codes. Applications for new construction cannot be submitted for vacant property upon which an occupied residential rental structure previously stood, unless a minimum of 12 months has elapsed from the time of most recent occupancy.~~

~~(c) Size. The project must include at least four units of multifamily housing within a residential structure. A minimum of four new units must be constructed or at least four additional multifamily units must be added to existing occupied multifamily housing. Existing multifamily housing that has been vacant for 12 months or more does not have to provide additional units so long as the project provides at least four units of new, converted or rehabilitated multifamily housing.~~

~~(d) Permanent Residential Housing. At least 50 percent of the space designated for multifamily housing must be provided for permanent residential occupancy, as defined in PMC [3.70.030](#), and only that portion of the space designated for multifamily housing shall be eligible for applicable exemption provided for by this chapter.~~

~~(e) Proposed Completion Date. New construction multifamily housing and rehabilitation improvements must be completed within three years from the date of approval of the application, plus any extension of time granted under PMC [3.70.090\(2\)](#).~~

~~(f) Compliance with Guidelines and Standards. The project must be designed to comply with the city's comprehensive plan, building, housing and zoning codes, and any other applicable regulations and standards in effect for the subject property at the time the applicant submits a fully completed application to the director. For the duration of the exemption granted under this chapter, the property shall have no violations of applicable zoning requirements, land use regulations, or building and housing ordinance requirements for which a notice of violation has been issued and is not resolved by compliance, withdrawal or other final resolution. The project must also comply with any other standards~~

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~~and guidelines adopted by the city for the residential targeted area in which the project will be developed.~~

~~(g) Low- and Moderate-Income Housing. For the property to qualify for the 12-year exemption under this subsection, the applicant must commit to renting or selling at least 20 percent of the multifamily housing units as affordable housing units to low- and moderate-income households, as defined by RCW 84.14.020, and any additional affordability and income eligibility conditions as may be adopted by the city.~~

~~3.3.70.080~~ Application procedures.

A property owner who wishes to propose a project for a tax exemption shall comply with the following procedures:

(1) Prior to the ~~application for~~issuance of any building permit therefor, the applicant shall submit an application to the director, on a form established by the director along with the required fees, as contained in the city's fee schedule.

(2) A complete application shall contain such information as the director may deem necessary or useful, and shall include:

- (a) A brief written description of the project and preliminary schematic site and floor plans of the ~~multifamily~~multiple-unit units and the structure(s) in which they are proposed to be located setting forth the grounds for the exemption;
- (b) A brief statement setting forth the grounds for qualification for exemption, and specifically identifying the low- or moderate-income elements of the proposed project;
- (c) A statement from the owner acknowledging the potential tax liability when the project ceases to be eligible under this chapter; and
- (d) Verification by oath or affirmation of the information submitted.
- (e) For rehabilitation projects, the applicant shall also submit an affidavit that existing dwelling units have been unoccupied for a period of 12 months prior to filing the application and shall secure from the city verification of property noncompliance with the city's building or housing ordinances.

3.70.090 Application review and issuance of conditional certificate.

The director may certify as eligible an application which is determined to comply with the requirements of this chapter. A decision to approve or deny an application shall be made within 90 days of receipt of a complete application or concurrently with the issuance of the final SEPA determination for the proposed project, whichever is later. An application may be approved subject to such terms and conditions as deemed appropriate by the director to ensure the project meets the land use regulations of the city.

(1) Approval. If an application is approved by the director, the approval, together with a contract between the applicant and the city regarding the terms and conditions of the project, signed by the applicant, shall be presented to the city council for action. Once the contract is approved by the city council and fully executed, the director shall issue a conditional certificate of acceptance of tax exemption. The conditional certificate expires three years from the date of approval unless an extension is granted as provided in this chapter.

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(2) Extension of Conditional Certificate. The conditional certificate may be extended by the director for a period not to exceed 24 consecutive months. The applicant must submit a written request stating the grounds for the extension, accompanied by any applicable processing fee. An extension may be granted if the director determines that:

- (a) The anticipated failure to complete construction or rehabilitation within the required time period is due to circumstances beyond the control of the owner;
- (b) The owner has been acting and could reasonably be expected to continue to act in good faith and with due diligence; and
- (c) All the conditions of the original contract between the applicant and the city will be satisfied upon completion of the project.

(3) Contract Amendment Process. An owner may request amendments to the contract by submitting a request in writing to the director, along with the fees established by the council, at any time within three (3) years of the date of the approval of the contract as provided for in subsection (1). The director may approve amendments to the MFTE contract between the owner and the city that are reasonably within the scope and intent of the MFTE contract. The date for expiration of the conditional certificate shall not be extended by contract amendment unless all the conditions for extension set forth in subsection (2) of this section are met.

~~(4)~~ Denial of Application. If the application is denied, the director shall state in writing the reasons for denial and shall send notice to the applicant at the applicant's last known address within 10 days of the denial. An applicant may appeal a denial to the city council by filing a written appeal with the city clerk, or designee, within 30 days of notification that the application has been denied. The appeal will be based upon the record made before the director with the burden of proof on the applicant to show that there is no substantial evidence on the record to support the director's decision. The decision of the city council in denying or approving the application is final. All other appeals of the director's decisions shall be made to the hearing examiner.

3.70.100 Application for final certificate.

Upon completion of the improvements provided in the contract between the applicant and the city and upon issuance of a temporary or permanent certificate of occupancy, the applicant may request a final certificate of tax exemption. The applicant must file with the director such information as the director may deem necessary or useful to evaluate eligibility for the final certificate and shall include:

- (1) A statement of expenditures made with respect to each ~~multifamily~~multiple-unit housing unit and the total expenditures made with respect to the entire property;
- (2) A description of the completed work and a statement of qualification for the exemption; and
- (3) A statement that the work was completed within the required three-year period or any authorized extension. Within thirty (30) days of receipt of all materials required for a final certificate, the director shall determine whether the improvements satisfy the requirements of this chapter.

(4) A housing market study that includes the comparable rents or sales prices, as applicable, for other multiple-unit housing in the neighborhood market area, and the market rent or sales price for each of the MFTE units proposed to be designated under this chapter.

(5) A statement confirming that the documentation on file of the type and organizational structure of the owner, signature block for the owner, and authority of the owner representative that signed the contract is all current and accurate.

3.70.110 Issuance of final certificate.

If the director determines that the project has been completed in accordance with the contract between the applicant and the city and has been completed within the authorized time period, the city shall, within ten (-10) days following the expiration of the 30-day period specified in PMC 3.70.100(3), file a final certificate of tax exemption with the Pierce County assessor.

(1) Denial and Appeal. The director shall notify the applicant in writing that a final certificate will not be filed if the director determines that:

- (a) The improvements were not completed within the authorized time period;
- (b) The improvements were not completed in accordance with the contract between the applicant and the city;
- (c) The owner's property is otherwise not qualified under this chapter; or
- (d) The owner and the director cannot come to an agreement on the allocation of the value of the improvements allocated to the exempt portion of rehabilitation improvements, new construction and multi-use new construction.

(2) Within thirty (-30) days of notification by the city to the owner of the director's denial of a final certificate of tax exemption, the applicant may file a written appeal with the city specifying the factual and legal basis for the appeal. Said appeal shall be heard by the city's hearing examiner.

3.70.120 Annual compliance review.

Within thirty (30) days after the first anniversary of the date of filing the final certificate of tax exemption and each year thereafter, for the applicable tax exemption period, the property owner shall file a notarized declaration with the director indicating the following:

(1) A statement of occupancy and vacancy of the rehabilitated or newly constructed property during the twelve (12) months ending with the anniversary date;~~A statement of occupancy and vacancy of the multifamily units during the previous year;~~

(2) A certification that the property has not changed use and, if applicable, continues to be in compliance with the contract with the city; ~~and~~

(3) A description of any subsequent improvements or changes to the property;~~;~~

(4) Total monthly rent of each unit;

(5) Information demonstrating compliance with affordability requirements of PMC 3.70.070 (5) (b-c) or 3.70.070 (6)(b-f) and other applicable requirements;

(6) Any additional information requested regarding the units receiving tax exemption and meeting any reporting requirements under Chapter 84.14 RCW;

(7) City staff ~~may~~ also conduct on-site verification of the declaration;~~;~~

Ordinance No. _____

PMC 3.70

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(8) Failure to submit the annual declaration or information requested by the City may result in the tax exemption being canceled.

3.70.130 Cancellation of tax exemption.

If at any time the director determines the owner has not complied with the terms of the contract or with the requirements of this chapter, or that the property no longer complies with the terms of the contract or with the requirements of this chapter, or for any reason no longer qualifies for the tax exemption, the tax exemption shall be canceled and additional taxes, interest and penalties imposed pursuant to state law. This cancellation may occur in conjunction with the annual review or at any other time when noncompliance has been determined. If the owner intends to convert the multifamilymultiple-unit housing to another use, the owner must notify the director and the Pierce County assessor within sixty (60) days of the change in use. Upon such change in use, the tax exemption shall be canceled and additional taxes, interest and penalties imposed pursuant to state law.

(1) Effect of Cancellation. If a tax exemption is canceled due to a change in use or other noncompliance, the Pierce County assessor shall comply with applicable state law to impose additional taxes, interest and penalties on the property, and a priority lien may be placed on the land, pursuant to state law.

(2) Notice and Appeal. Upon determining that a tax exemption is to be canceled, the director shall notify the property owner by certified mail return receipt requested. The property owner may appeal the determination by filing a notice of appeal with the city within thirty (30) days, specifying the factual and legal basis for the appeal. The hearing examiner will conduct a hearing at which the applicant and the city will be heard and all competent evidence received. The hearing examiner may affirm, modify, or repeal the decision to cancel the exemption based on the evidence received.

(3) The director shall notify the county assessor of the cancelation of the tax exemption thirty (30) days after the notification of the property owner or qualified non-profit organization, or upon an unsuccessful appeal.

3.70.140 Appeals to hearing examiner.

(1) The city's land use hearing examiner is hereby provided jurisdiction to hear appeals of the decisions of the director under this chapter. Said appeals shall be as follows:

- (a) Appeal of a decision of the director that the owner is not entitled to a final certificate of tax exemption, filed with the city clerk within thirty (30) days of notification by the city to the owner of denial of a final certificate of tax exemption.
- (b) Appeal of a cancellation of tax exemption, filed with the city clerk within thirty (30) days of the notification by the city to the owner of cancellation.

(2) The hearing examiner's procedures shall apply to hearings under this chapter to the extent they are consistent with the requirements of this chapter and Chapter 84.14 RCW. The hearing examiner shall give substantial weight to the director's decision and the burden of overcoming the weight shall be on the appellant. The decision of the examiner constitutes the final decision of the city. An aggrieved party may appeal the decision to superior court under RCW 34.05.510 through 34.05.598 if the appeal is properly filed within thirty (30) days of notification by the city to the appellant of that decision.

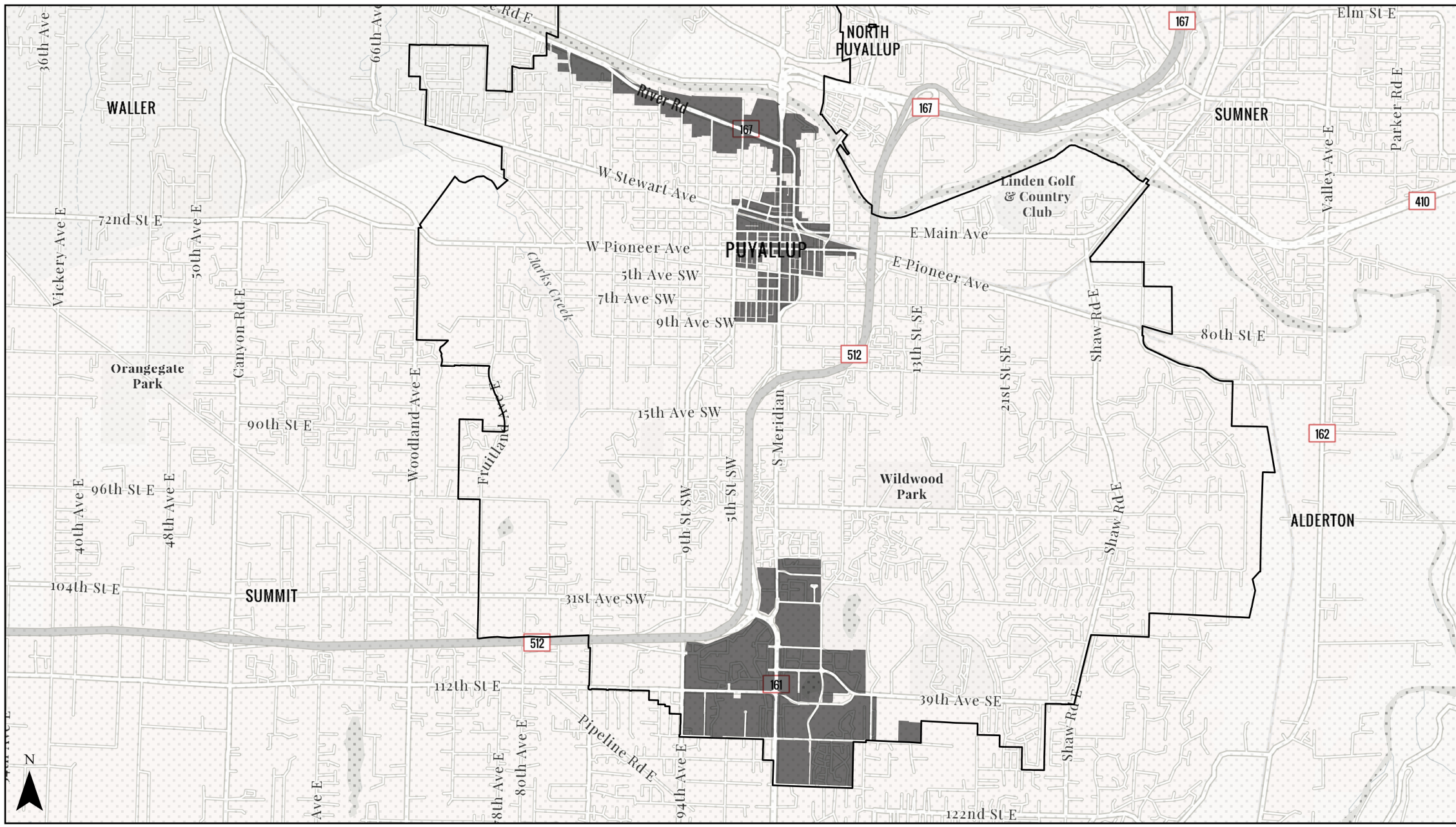
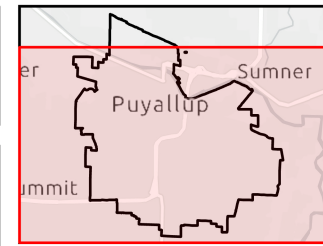


Major Proposed Changes to MFTE Program

#	Policy Theme	Current Policy	Proposed Policy	Alternative Policy Option	Reason for Change
1	Applicability Area	"All properties zoned Central Business District (CBD) and all properties directly south of the existing central business district zone southern perimeter within the area bound by 3rd Street SW, 7th Avenue and 2nd Street SE." (PMC 3.70.050)	"All properties zoned Commercial, Multi-Family, or Mixed Use located in the Downtown or South Hill Regional Growth Centers or in the River Road Corridor Planned Area."	Leave as is	The current area designated for the MFTE program is very limited and includes almost no multi-family zoned parcels.
2	Add 20-Year Home Ownership Option to the MFTE Menu	Current menu includes only 8-year and 12-year options. No requirement for permanent affordable units.	Add the 20-year exemption for home ownership to the current MFTE Menu	Leave Menu as is	<ul style="list-style-type: none"> • Providing additional options to the MFTE menu may facilitate more participation in the MFTE program by enabling more flexibility for developers in choosing an exemption that works for their project. • The 20-year program facilitates the City's goal of providing permanently affordable housing options to its citizens.
3	Add affordability requirements to 8-Year program	No affordability requirement for 8-year program	No change to existing 8-year program, which does not currently require affordable units	Add affordability requirement to 8-year program	<p>PC was split on the recommendation to add an affordability requirement to the 8-year program.</p> <ul style="list-style-type: none"> • Opportunities: Adding an affordability requirement to the 8-year program would provide more public benefit and a stronger focus on affordability. • Limitations: Adding this requirement would mean that every single item in the MFTE menu would require the applicant to provide affordable housing. Such a requirement to forgoe profits may further reduce participation in a program that has already historically struggled to attract participants.

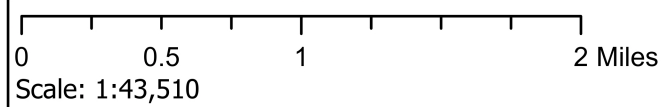
Multi-Family Tax Exemption (MFTE) Residential Targeted Areas (RTA)

Near Term RTA



Legend

- Near Term RTA
- City Limits



Map produced by RNBrown.

Date: 11/17/2023

The printed information was derived from digital databases within the City of Puyallup GIS Portal. The City of Puyallup cannot accept responsibility for any errors, omissions, or positional accuracy, and therefore, there are no warranties which accompany this product. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

RESOLUTION NO. 2487

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, setting a public hearing date to review the designation of residential targeted areas (RTA) for the property tax incentives established in residential targeted areas program, PMC 3.70, in the City of Puyallup.

WHEREAS, the City of Puyallup has codified in Puyallup Municipal Code 3.70 a program called the ‘property tax incentives in residential targeted areas’ commonly known as a ‘multi-family tax exemption’ program; and

WHEREAS, RCW 84.14.040 stipulates that such a program must designate specific geographic areas of the City, wherein the tax incentive will apply; and

WHEREAS, these geographic areas are called ‘residential targeted areas’ or ‘RTAs’; and

WHEREAS, currently, the City has designated a single RTA, located in a portion of the Puyallup Downtown Regional Growth Center; and

WHEREAS, the City would like to consider expansion of this RTA; and

WHEREAS, the City has two regional growth centers, one in the Downtown area and one surrounding the South Hill Mall;


WHEREAS, the City has an adopted corridor plan concerning a portion of River Road called the ‘River Road Corridor Plan’ adopted in the City of Puyallup Comprehensive Plan (as amended in 2015);

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council proposes to amend the City of Puyallup’s current residential target area and hereby establishes the proposed amended RTA as shown in the attached Exhibit A.

Section 2. The City Council will hold a public hearing on November 14th, 2023, to consider the expansion of the residential targeted area to the River Road Corridor Planned Area, the Puyallup Downtown Regional Growth Center and the South Hill Regional Growth Center.

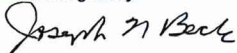
ADOPTED by the City Council of the City of Puyallup, Washington, this 24th day of October, 2023.



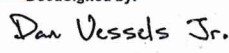
Dean Johnson
Mayor

Approved as to form:

Attest:

DocuSigned by:


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Joseph N. Beck
City Attorney

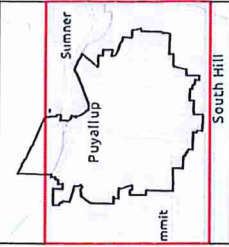
DocuSigned by:


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Dan Vessels, Jr.
City Clerk

Multi-Family Tax Exemption (MFTE) Residential Targeted Area (RTA) Existing RTA, Proposed Short Term & Long Term RTA

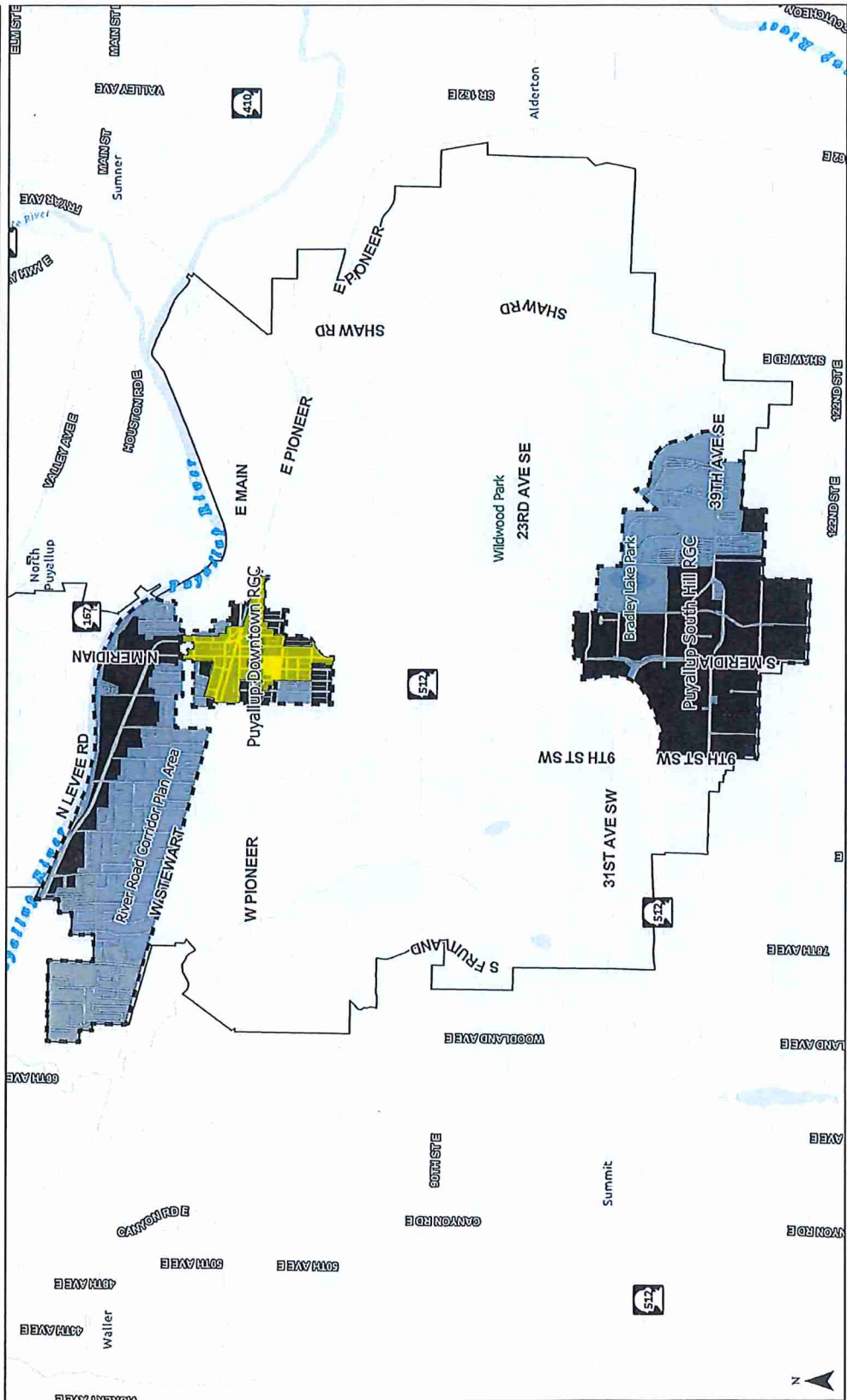


PUYALLUP
WASHINGTON



- City Limits
- Existing MFTE RTA
- Proposed Long Term RTA
- Proposed Short Term MFTE RTA

Note: "RGC" means "Regional Growth Center"



Map produced by RNBrown.

Date: 10/26/2023

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City Council Agenda Item Report

Submitted by: Joe Beck
Submitting Department: Legal
Meeting Date: December 5, 2023

Subject:

Pg. 60 - First Reading of two ordinances granting franchise agreements to Ziplly Fiber

Presenter:

Joseph Beck, City Attorney and Hans Hunger, City Engineer

Recommendation:

Conduct first reading of two ordinances establishing franchise agreements with Ziplly Wireless, LLC and Ziplly Fiber Pacific, LLC, both doing business as Ziplly Fiber.

Background:

Generally, in order for a telecommunications company to use a city's right of way to install telecommunications lines and related facilities, it must obtain a franchise or master permit from the relevant jurisdiction. Such franchises or master permits contain provisions which address construction, maintenance, emergency work, location of facilities, relocation of facilities, undergrounding, insurance, and so forth.

The City of Puyallup received an application from Ziplly Fiber for a franchise agreement. Ziplly Fiber is a company that installs and operates a dedicated Ethernet Internet Access system which allows customers to connect directly to the internet through their fiber network. Ziplly desires to install a system of aerial fiber facilities for the majority of their initial *Fiber to the Home* build within in the City. As a result of Ziplly's corporate structure, Ziplly applied for two franchise agreements - one for each of their entities that might be involved with the project. This includes Ziplly Wireless, LLC., and Ziplly Fiber Pacific, LLC. Council is being asked to consider approval of franchise agreement for each of these entities.

The Puyallup Municipal Code requires any telecommunications service provider which desire to occupy the rights-of-way of the City to obtain a franchise agreement. Franchise agreements include things like insurance and indemnification which must be tied to the corporate entity operating in the right-of-way. Therefore, if Ziplly uses a particular legal entity to complete work, that entity must have a franchise. Having a franchise agreement for each of the two Ziplly entities protects the City.

ATTACHMENTS

[Ordinance for Ziplly Fiber Pacific, LLC](#)

[Ordinance for Ziplly Wireless, LLC](#)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO ZIPLY FIBER PACIFIC, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

WHEREAS, Ziplly Fiber Pacific, LLC dba Ziplly Fiber (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”) for purposes of operating and maintaining a telecommunications network; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the Puyallup Municipal Code requires persons who are seeking to operate and maintain wireline telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee for a wireline franchise subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. Franchisee is granted a non-exclusive franchise for the transmission of wireline telecommunications in, through, over, and under the rights-of-way of the City of Puyallup, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law (“Effective Date”).

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

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This Franchise is entered into in Puyallup, Washington, by and between the City of Puyallup, a Washington municipal corporation (hereinafter “the City”), and Zply Fiber Pacific, LLC dba Zply Fiber (the “Franchisee”). The City and Franchisee are sometimes referred to hereinafter collectively as the “parties.”

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years, beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days’ written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Facilities, as defined in Section 2.1 , for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Puyallup, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public “Rights-of-Way” means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Franchise Area”). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Puyallup Comprehensive Plan, the Standards for Public Works Engineering and Construction Manual, and the Puyallup Municipal Code (collectively, the “Codes”). 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 Franchisee other than for the purpose of providing telecommunications services. The following “Services” are permitted under this Franchise: high speed data and fiber optic services, internet protocol-based services (including voice over internet protocol), internet access services, conduit and dark fiber leasing, telephone, and data transport services conveyed using wireline facilities. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and small wireless facilities as defined by 47 CFR 1.6002, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375 (collectively “Personal Wireless Services”).

Section 2.2 This Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 2.3 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.4 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public 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, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Puyallup Standards for Public Works Engineering and Construction Manual and applicable Code requirements in effect at the time of the specific Facility application is submitted as well as any requirements included in the facility permit. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system (“State Highways”), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 Relocation Requirement. Consistent with the requirements of PMC 11.05.170, the City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when required by the City for projects covered by PMC 11.05.170(1)(a) through (c), and consistent with the timeline contained in PMC 11.05.170. Costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be apportioned as set forth in PMC 11.05.170 and RCW 35.99.060.

Section 5.2 Relocation – Third-Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5.

Section 5.3 Relocation – Franchisee-Owned Structures. The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the

requirements of RCW 35.99.060(3)(b) for any aerial to underground relocations. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080.

Section 5.4 Locate. Franchisee shall maintain accurate maps and improvement plans of its Facilities located within the City. Franchisee shall provide, upon demand of the Public Works Director, or designee, and deliver to the office of the Public Works Department free of charge, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Franchisee Facilities installed within said Public Right-of-Way. If such maps and plans are not available for City requests, Franchisee shall, at Franchisee's sole cost and expense, expose by potholing to a depth of one foot (1') below the bottom of Franchisee's subsurface Facilities, within thirty (30) days of receipt of a written request from the City to do so.

Section 5.5 Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee notice in writing as soon as practicable 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 Franchisee 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. Relocation schedules and the timeline for the work to be completed shall be in compliance with PMC 11.05.170. Franchisee 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 there are delays caused by a force majeure event. To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process,

absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) In the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) Within 30 days following receipt of such written notice, Franchisee shall provide a schedule to the City indicating the estimated completion date for such required relocation. The relocation work shall be completed within 90 days following the original notice by the city unless a different duration is specifically authorized by the city engineer. Such relocation shall be provided at no charge or expense to the City unless otherwise permitted under state law. Such timeline may be extended by a mutual agreement.

Section 5.6 Alternative Arrangements. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 Contractor Delay Claims. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final 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 third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties) or failure to properly locate existing facilities. Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 15, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any third party.

Section 5.9 Building Moving. Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon seven (7) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.10 City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.11 Survival. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Wireline Facilities.

(a) As it pertains to Franchisee's wireline Facilities, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City, except as prohibited by applicable law or unless specifically allowed pursuant to a permit. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its wireline Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial wireline Facilities to underground installation at Franchisee's expense, except as otherwise provided in RCW 35.99.060(4) or other applicable law. Unless otherwise permitted by the City, Franchisee shall underground its wireline Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

(b) Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its wireline Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own wireline Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number

and size of Franchisee's wireline Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.2 To the extent Franchisee is providing wireline Facilities to Small Wireless Facilities either owned by a third party, Franchisee shall adhere to the design standards for such Small Wireless Facilities, and shall underground its wireline Facilities and/or place its wireline Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 6.1(b) does not require undergrounding or interior placement of wireline Facilities within the pole to the extent that the Small Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.1.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.1. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Upon request by the city, Franchisee user shall, within 10 business days, submit to the City, at no cost to the City, Franchisee's most current and accurate

record drawings in use by Franchisee showing the location, specified by the City in its request. Record drawings shall show all Facilities including but not limited to poles, conduit, vaults, and cabinets.

Section 7.2 Nothing in Section 7.1 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.2 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.2 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.4 Nothing in Section 7.2 or Section 7.3 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or

court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way it shall apply to the City for a permit consistent with the requirements of the Municipal Code. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted consistent with the Municipal Code requirements. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or by Code.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property,

public expense, inconvenience, interference with City utilities, or for any other lawful reason determined by the Public Works Director.

Section 8.4 New wireline Facilities shall not be installed on existing metal street light standards or traffic signal standards unless specifically approved by the Public Works Director.

Section 8.5 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts; and

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

(e) If required by a permit, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law (e.g., RCW [80.36.020](#)).

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City consistent with PMC 11.05.230. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon reasonable advance written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails to comply with this

provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee 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. Franchisee 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, Franchisee 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, Franchisee 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 Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 Additional standards include:

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

(b) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee 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.

Section 10.4 Stop Work Order. 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:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and 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 Franchisee. Franchisee 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 Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Standards for Public Works Engineering and Construction Manual and applicable Puyallup Municipal Code provisions. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted as required by Code.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost

and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then the City Engineer may take any action outlined in PMC 11.05.250 to address the matter. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies outlined in Code and including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual and reasonable administrative expenses incurred by the City that are directly 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. Franchisee shall

further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable 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. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise will be consistent with the services described in Section 2 above, including the provision of data transmission, internet access, voice over internet protocol and similar data services. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 of the Puyallup Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Title 5 of the Puyallup Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Title 5 of the Puyallup Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Puyallup Municipal Code as may be permitted by law.

Section 15. Indemnification.

Section 15.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and

representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property to the extent caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. Franchisee shall have sole control over the defense and any settlement of any claims indemnified under this Section. Franchisee shall consult with the City throughout the defense and/or settlement of any matter covered by this section but is not obligated to follow any recommendations made by the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. If the City chooses to participate, the parties will cooperatively work together in the defense of the matter, but Franchisee retains sole control over the defense and any settlement of claims indemnified under this section.

Section 15.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 15.

Section 15.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 15.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee 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 Franchisee, Franchisee 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. 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 Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, 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 Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee 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 Franchisee. 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.

Section 15.4 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 Franchisee under the indemnification provisions of this Section 15 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. 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 Franchisee'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 Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 15.5 Notwithstanding any other provisions of this Section 15, Franchisee 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, representatives, 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, representatives, elected or appointed officials, or contractors. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, representatives, elected or appointed officials, or contractors. Franchisee 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 Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 15.6 The provisions of this Section 15 shall survive the expiration, revocation, or termination of this Franchise.

Section 16. Insurance.

Section 16.1 Franchisee shall maintain for so long as Franchisee 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 Franchisee. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchise-provided insurance as set forth herein, except the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Franchisee shall ensure that

the City 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. Franchisee shall maintain insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement (except for workers compensation) 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. Franchisee may use any combination of primary and excess to meet required total limits.

Section 16.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability

insurance policies to satisfy the insurance policy limits required in this Section 16. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying policies.

Section 16.3 The required insurance policies, with the exception of Workers' Compensation, and Employer's Liability, and Pollution Liability obtained by Franchisee shall include the City, its officers, officials, employees, agents, and representatives ("Additional Insureds"), as an additional insured, with coverage at least as broad as ISO endorsement form CG 20 26, with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee. 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. Franchisee shall provide to the City upon acceptance a certificate of insurance and additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required commercial 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 Franchisee's required insurance and shall not contribute with it.

Section 16.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, except for non-payment, in which case a ten (10) day notice will be provided, required pursuant to this Section 16. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 16. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 16 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 19 below. Notwithstanding the cure period described in Section 19.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 16.5 Franchisee's maintenance of insurance as required by this Section 16 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee. If Franchisee 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 Franchisee, irrespective of whether such limits maintained by the Franchisee 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 Franchisee.

Section 16.6 The City may review all insurance limits once every three years during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to and review by Franchisee. Franchisee shall then issue or provide a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall make available for review copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

Section 16.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 17. Abandonment of Franchisee's Telecommunications Network.

Section 17.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall promptly report such Facilities in

writing (“Deactivated Facilities”) to the Public Works Director. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition. Franchisee must comply with all provisions of PMC 11.05.190 for facilities located within the right-of-way.

Section 17.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee’s Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition (accounting for reasonable wear and tear) the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 17.3 Notwithstanding Section 17.1 above, the City may permit Franchisee’s Facilities to be abandoned in place in such a manner as the City may prescribe consistent with PMC 11.05.190. Upon permanent abandonment, and Franchisee’s agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 17.4 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the

City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 17 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 17.5 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 18. Security - Bonding.

Section 18.1 Performance. Franchisee shall furnish a performance financial guarantee for any work in the right-of-way as required by PMC 11.05.070 and the City's current Standards for Public Works Engineering and Construction Manual, as applicable.

Section 18.2 Maintenance. Franchisee shall furnish a maintenance financial guarantee for any work in the right-of-way as required by PMC 11.05.070 and the City's current Standards for Public Works Engineering and Construction Manual, as applicable.

Section 18.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 18 shall constitute a material breach of this Franchise. The amount of the bond shall not be

construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 19. Remedies to Enforce Compliance.

Section 19.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 19.2 If Franchisee 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 Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee 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 Franchisee'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 Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee.

Bond set forth in Section 18.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 19.1 above.

Section 20. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Puyallup City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Puyallup City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Puyallup City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Puyallup City Council does not grant any additional period, the Puyallup City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 21. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid 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 reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 23. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 24. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 15, Section 17, Section 24, Section 26, and Section 37.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 25. Assignment.

Section 25.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 25.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications

Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 25, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 25.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 25.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, proof of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and

applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 26. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 17.

Section 27. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 28. 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 the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 29. 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 the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 30. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight

courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF PUYALLUP
Public Works Director
333 S. Meridian
Puyallup, WA 98371

Franchisee:
ZiPLY Fiber Pacific, LLC
Attn: Legal Department
135 Lake Street South,
Suite 155
Kirkland, WA 98033
legal@ziPLY.com.

Section 31. Severability. If any section, sentence, clause, or phrase of this Franchise is or 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 ruling.

Section 32. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid 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 reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities authorized by the City in accordance to the ordinance applicable at the time of the Facilities' construction.

Section 33. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 34. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 35. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the

cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 36. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 37. Miscellaneous.

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

Section 37.2 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.

Section 37.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 37.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any

of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 37.6 This Franchise may be enforced at both law and equity.

Section 37.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee 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 the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 37.8 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 38. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the Franchisee before a Notary Public. Acceptance must be filed with the City within thirty (30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 16; any Performance Bond, if applicable, pursuant to Section 18; and the

Franchise Bond required pursuant to Section 18.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

DEAN JOHNSON
MAYOR

ATTEST/AUTHENTICATED:

DAN VESSELS JR.
CITY CLERK

APPROVED AS TO FORM:

JOSEPH N. BECK
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

SUMMARY OF ORDINANCE NO. ____

City of Puyallup, Washington

On the ____ day of _____, 202__, the City Council of the City of Puyallup passed Ordinance No. _____. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO ZIPLY FIBER PACIFIC, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

DAN VESSELS JR.
CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

EXHIBIT A

STATEMENT OF ACCEPTANCE

ZiPLY Fiber Pacific, LLC dba ZiPLY Fiber, for itself and its successors, affiliates and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

ZiPLY Fiber Pacific, LLC

By: _____ Date: _____

Name: _____

Title: Associate General Counsel

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 202_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at

MY COMMISSION EXPIRES: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO ZIPLY WIRELESS, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

WHEREAS, Ziplly Wireless, LLC dba Ziplly Fiber (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”) for purposes of operating and maintaining a telecommunications network; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, the Puyallup Municipal Code requires persons who are seeking to operate and maintain wireline telecommunications facilities in City rights-of-way to obtain a franchise to do so; and

WHEREAS, the City is willing to grant the rights requested by Franchisee for a wireline franchise subject to certain terms and conditions, which are acceptable to both parties.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. Franchisee is granted a non-exclusive franchise for the transmission of wireline telecommunications in, through, over, and under the rights-of-way of the City of Puyallup, in accordance with the terms and conditions of the franchise language detailed in Section 3 of this Ordinance.

Section 2. EFFECTIVE DATE. In compliance with RCW 35A.47.040, this Ordinance shall take effect five (5) days after its passage, approval, and publication of an approved summary thereof consisting of the title, all as required by law (“Effective Date”).

Section 3. TERMS AND CONDITIONS OF FRANCHISE. The following provisions establish the terms and conditions of the franchise granted herein:

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This Franchise is entered into in Puyallup, Washington, by and between the City of Puyallup, a Washington municipal corporation (hereinafter “the City”), and Ziplly Wireless, LLC dba Ziplly Fiber (the “Franchisee”). The City and Franchisee are sometimes referred to hereinafter collectively as the “parties.”

Section 1. Franchise Granted.

Section 1.1 Pursuant to RCW 35A.47.040, the City hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of five (5) years, beginning on the Effective Date of this ordinance. This franchise will automatically renew for an additional five (5) year period, unless either party provides at least ninety (90) days’ written notice of its intent not to renew.

Section 1.2 This Franchise ordinance grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, repair, upgrade, remove, excavate, acquire, restore, and use the Facilities, as defined in Section 2.1 , for its telecommunications network, in, under, on, across, over, through, along, or below the public Rights-of-Ways located in the City of Puyallup, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public “Rights-of-Way” means all public streets and property granted or reserved for, or dedicated to, public use for street purposes, together with public property granted or reserved for, or dedicated to, public use for walkways, sidewalks, bikeways and horse trails, whether improved or unimproved, including the air rights, sub-surface rights and easements related thereto. Rights-of-Way for the purpose of this Franchise do not include: buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City. Franchisee is required to obtain a lease or similar agreement for the usage of any City or third party owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City (the “Franchise Area”). The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Puyallup Comprehensive Plan, the Standards for Public Works Engineering and Construction Manual, and the Puyallup Municipal Code (collectively, the “Codes”). 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 Franchisee other than for the purpose of providing telecommunications services. The following “Services” are permitted under this Franchise: high speed data and fiber optic services, internet protocol-based services (including voice over internet protocol), internet access services, conduit and dark fiber leasing, telephone, and data transport services conveyed using wireline facilities. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and small wireless facilities as defined by 47 CFR 1.6002, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375 (collectively “Personal Wireless Services”).

Section 2.2 This Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 2.3 No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner’s consent, or upon any City, public, or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, or to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Franchisee desires to use City-owned property, or to site new structures within the Rights-of-Way, it shall enter into a separate lease, site specific agreement, or license agreement with the City.

Section 2.4 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over its telecommunications system, Facilities and Services and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

Section 3. Non-Exclusive Franchise Grant. This Franchise is a non-exclusive franchise and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public 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, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to the City's Puyallup Standards for Public Works Engineering and Construction Manual and applicable Code requirements in effect at the time of the specific Facility application is submitted as well as any requirements included in the facility permit. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system (“State Highways”), are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

(a) any pavement trenching, and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Telecommunications Network Facilities.

Section 5.1 Relocation Requirement. Consistent with the requirements of PMC 11.05.170, the City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Right-of-Way when required by the City for projects covered by PMC 11.05.170(1)(a) through (c), and consistent with the timeline contained in PMC 11.05.170. Costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be apportioned as set forth in PMC 11.05.170 and RCW 35.99.060.

Section 5.2 Relocation – Third-Party Structures. If the request for relocation from the City originates due to a Public Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by the City and at no cost to the City, subject to the procedure in Section 5.5.

Section 5.3 Relocation – Franchisee-Owned Structures. The cost of relocation of any Franchisee-owned poles or structures shall be determined in accordance with the

requirements of RCW 35.99.060(3)(b) for any aerial to underground relocations. For this Section 5.3, designation of the Right-of-Way for a Public Project shall be undertaken in the City's Comprehensive Plan in accordance with the requirements of Ch. 36.70A RCW. The Comprehensive Plan includes, but is not limited to, the Transportation element or Transportation Improvement Plan (TIP), Capital Facilities element, utilities element and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080.

Section 5.4 Locate. Franchisee shall maintain accurate maps and improvement plans of its Facilities located within the City. Franchisee shall provide, upon demand of the Public Works Director, or designee, and deliver to the office of the Public Works Department free of charge, within thirty (30) days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth, and description of all Franchisee Facilities installed within said Public Right-of-Way. If such maps and plans are not available for City requests, Franchisee shall, at Franchisee's sole cost and expense, expose by potholing to a depth of one foot (1') below the bottom of Franchisee's subsurface Facilities, within thirty (30) days of receipt of a written request from the City to do so.

Section 5.5 Notice and Relocation Process. If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the City shall provide Franchisee notice in writing as soon as practicable 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 Franchisee 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. Relocation schedules and the timeline for the work to be completed shall be in compliance with PMC 11.05.170. Franchisee 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 there are delays caused by a force majeure event. To provide guidance on this notice process, the City will make reasonable efforts to engage in the following recommended process,

absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of the City that will result in severe financial consequences to the City:

(a) The City will consult with the Franchisee in the predesign phase of any Public Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Project or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City will give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.

(d) In the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.5, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

(e) Within 30 days following receipt of such written notice, Franchisee shall provide a schedule to the City indicating the estimated completion date for such required relocation. The relocation work shall be completed within 90 days following the original notice by the city unless a different duration is specifically authorized by the city engineer. Such relocation shall be provided at no charge or expense to the City unless otherwise permitted under state law. Such timeline may be extended by a mutual agreement.

Section 5.6 Alternative Arrangements. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 5.7 Contractor Delay Claims. Franchisee shall be solely responsible for the actual costs incurred by the City for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final 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 third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties) or failure to properly locate existing facilities. Such costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 15, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided in this Section 5; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of the City or any third party.

Section 5.9 Building Moving. Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon seven (7) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.10 City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) days' written notice to Franchisee, the City may perform such work (including removal) or cause it to be done, and the City's

costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and the City shall not be responsible for any damage to the Facilities.

Section 5.11 Survival. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Wireline Facilities.

(a) As it pertains to Franchisee's wireline Facilities, Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City, except as prohibited by applicable law or unless specifically allowed pursuant to a permit. Franchisee acknowledges and agrees that if the City does not require the undergrounding of its wireline Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial wireline Facilities to underground installation at Franchisee's expense, except as otherwise provided in RCW 35.99.060(4) or other applicable law. Unless otherwise permitted by the City, Franchisee shall underground its wireline Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

(b) Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its wireline Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own wireline Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number

and size of Franchisee's wireline Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.2 To the extent Franchisee is providing wireline Facilities to Small Wireless Facilities either owned by a third party, Franchisee shall adhere to the design standards for such Small Wireless Facilities, and shall underground its wireline Facilities and/or place its wireline Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 6.1(b) does not require undergrounding or interior placement of wireline Facilities within the pole to the extent that the Small Wireless Facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.1.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.1. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Upon request by the city, Franchisee user shall, within 10 business days, submit to the City, at no cost to the City, Franchisee's most current and accurate

record drawings in use by Franchisee showing the location, specified by the City in its request. Record drawings shall show all Facilities including but not limited to poles, conduit, vaults, and cabinets.

Section 7.2 Nothing in Section 7.1 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.2 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.2 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information including but not limited to names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.3 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.4 Nothing in Section 7.2 or Section 7.3 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or

court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way it shall apply to the City for a permit consistent with the requirements of the Municipal Code. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted consistent with the Municipal Code requirements. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise or by Code.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property,

public expense, inconvenience, interference with City utilities, or for any other lawful reason determined by the Public Works Director.

Section 8.4 New wireline Facilities shall not be installed on existing metal street light standards or traffic signal standards unless specifically approved by the Public Works Director.

Section 8.5 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;

(c) To the extent reasonably possible, Franchisee, at the direction of the City, shall cooperate with the City and provide other private utility companies with the opportunity to utilize joint or shared excavations in order to minimize disruption and damage to the Right-of-Way, as well as to minimize traffic-related impacts; and

(d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

(e) If required by a permit, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law (e.g., RCW [80.36.020](#)).

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City consistent with PMC 11.05.230. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification and approval of the City and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City permit approval prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth encroaching into the Public Rights-of-Way. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon reasonable advance written notice to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 8.8 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five (5) feet on all sides of such improvements. If Franchisee fails to comply with this

provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 9. One Call Locator Service. Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by the City or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee 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. Franchisee 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, Franchisee 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, Franchisee 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 Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.3 Additional standards include:

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

(b) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee 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.

Section 10.4 Stop Work Order. 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:

- (a) Be in writing;
- (b) Be given to the person doing the work or posted on the work site;
- (c) Be sent to Franchisee by overnight delivery;
- (d) Indicate the nature of the alleged violation or unsafe condition; and
- (e) Establish conditions under which work may be resumed.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and 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 Franchisee. Franchisee 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 Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way as required by the City's Standards for Public Works Engineering and Construction Manual and applicable Puyallup Municipal Code provisions. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and warranted as required by Code.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost

and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair or restore a Right-of-Way as required under this Section 12 or an improvement in or to a Right-of-Way, then the City Engineer may take any action outlined in PMC 11.05.250 to address the matter. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies outlined in Code and including the imposition of damages consistent with Section 20.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any person, entity, or the City, Franchisee shall immediately take the proper emergency measures to repair its Facilities in order to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any person, entity, or the City without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. The City retains the right and privilege to cut, move, or remove any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities, or City property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public or such property, and such action may include compliance within a prescribed time. In the event that Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14. Recovery of Costs, Taxes, and Fees.

Section 14.1 Franchisee shall pay a fee for the actual and reasonable administrative expenses incurred by the City that are directly 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. Franchisee shall

further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff, and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable 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. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee hereby warrants that its operations as authorized under this Franchise will be consistent with the services described in Section 2 above, including the provision of data transmission, internet access, voice over internet protocol and similar data services. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee acknowledges that certain of its business activities may be subject to taxation as a telephone business and that Franchisee shall pay to the City the rate applicable to such taxable services under Title 5 of the Puyallup Municipal Code, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Title 5 of the Puyallup Municipal Code shall control. In that event, the City may not enforce remedies under Section 20 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Title 5 of the Puyallup Municipal Code or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend the Puyallup Municipal Code as may be permitted by law.

Section 15. Indemnification.

Section 15.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and

representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property to the extent caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. This indemnification obligation shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. Franchisee shall have sole control over the defense and any settlement of any claims indemnified under this Section. Franchisee shall consult with the City throughout the defense and/or settlement of any matter covered by this section but is not obligated to follow any recommendations made by the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. If the City chooses to participate, the parties will cooperatively work together in the defense of the matter, but Franchisee retains sole control over the defense and any settlement of claims indemnified under this section.

Section 15.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 15.

Section 15.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 15.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee 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 Franchisee, Franchisee 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. 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 Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, 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 Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee 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 Franchisee. 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.

Section 15.4 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 Franchisee under the indemnification provisions of this Section 15 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials, employees, or agents and the Franchisee. 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 Franchisee'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 Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 15.5 Notwithstanding any other provisions of this Section 15, Franchisee 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, representatives, 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, representatives, elected or appointed officials, or contractors. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, exemplary, or punitive damages, including, by way of example and not limitation, lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, representatives, elected or appointed officials, or contractors. Franchisee 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 Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

Section 15.6 The provisions of this Section 15 shall survive the expiration, revocation, or termination of this Franchise.

Section 16. Insurance.

Section 16.1 Franchisee shall maintain for so long as Franchisee 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 Franchisee. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchise-provided insurance as set forth herein, except the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Franchisee shall ensure that

the City 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. Franchisee shall maintain insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement (except for workers compensation) 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. Franchisee may use any combination of primary and excess to meet required total limits.

Section 16.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability

insurance policies to satisfy the insurance policy limits required in this Section 16. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying policies.

Section 16.3 The required insurance policies, with the exception of Workers' Compensation, and Employer's Liability, and Pollution Liability obtained by Franchisee shall include the City, its officers, officials, employees, agents, and representatives ("Additional Insureds"), as an additional insured, with coverage at least as broad as ISO endorsement form CG 20 26, with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee. 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. Franchisee shall provide to the City upon acceptance a certificate of insurance and additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required commercial 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 Franchisee's required insurance and shall not contribute with it.

Section 16.4 Upon receipt of notice from its insurer(s) Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, except for non-payment, in which case a ten (10) day notice will be provided, required pursuant to this Section 16. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 16. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 16 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 19 below. Notwithstanding the cure period described in Section 19.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 16.5 Franchisee's maintenance of insurance as required by this Section 16 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee. If Franchisee 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 Franchisee, irrespective of whether such limits maintained by the Franchisee 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 Franchisee.

Section 16.6 The City may review all insurance limits once every three years during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to and review by Franchisee. Franchisee shall then issue or provide a certificate of insurance to the City showing compliance with these adjustments. Upon request by the City, Franchisee shall make available for review copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

Section 16.7 As of the Effective Date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of Franchisee's or its parent company's most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (iii) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 17. Abandonment of Franchisee's Telecommunications Network.

Section 17.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall promptly report such Facilities in

writing (“Deactivated Facilities”) to the Public Works Director. Deactivated Facilities, or portions thereof, shall be completely removed within ninety (90) days and the site, pole or infrastructure restored to its pre-existing condition. Franchisee must comply with all provisions of PMC 11.05.190 for facilities located within the right-of-way.

Section 17.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within the timeline provided by the landlord, but no more than ninety (90) days of such notification from the landlord, at no cost to the City and shall remove the pole if so required by the landlord. Notwithstanding the preceding sentence, the timelines determined by the City for relocation projects described in Section 5 above shall apply. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee’s Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition (accounting for reasonable wear and tear) the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 17.3 Notwithstanding Section 17.1 above, the City may permit Franchisee’s Facilities to be abandoned in place in such a manner as the City may prescribe consistent with PMC 11.05.190. Upon permanent abandonment, and Franchisee’s agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 17.4 Any Facilities which are not removed within one hundred and eighty (180) days of either the date of termination or revocation of this Franchise or the date the

City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 17 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 17.5 The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 18. Security - Bonding.

Section 18.1 Performance. Franchisee shall furnish a performance financial guarantee for any work in the right-of-way as required by PMC 11.05.070 and the City's current Standards for Public Works Engineering and Construction Manual, as applicable.

Section 18.2 Maintenance. Franchisee shall furnish a maintenance financial guarantee for any work in the right-of-way as required by PMC 11.05.070 and the City's current Standards for Public Works Engineering and Construction Manual, as applicable.

Section 18.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 18 shall constitute a material breach of this Franchise. The amount of the bond shall not be

construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 19. Remedies to Enforce Compliance.

Section 19.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 19.2 If Franchisee 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 Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee 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 Franchisee'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 Franchisee does not comply with the specified conditions, the City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee.

Bond set forth in Section 18.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 19.1 above.

Section 20. Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods, then at the election of the Puyallup City Council after at least thirty (30) days written notice to Franchisee specifying the alleged violation or failure and an opportunity to cure, the City may revoke all rights conferred and this Franchise may be revoked by the City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) days after the hearing, the Puyallup City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Puyallup City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Puyallup City Council does not grant any additional period, the Puyallup City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 21. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or of any other covenants, agreements, or option.

Section 22. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid 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 reasonably control by appropriate regulations the location, elevation, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 23. Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 24. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 15, Section 17, Section 24, Section 26, and Section 37.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, obligations, and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned where Franchisee is named herein.

Section 25. Assignment.

Section 25.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 25.2 below, or to an entity that acquires all or substantially all of Franchisee's assets located in the area defined by the Federal Communications

Commission in which the Facilities are located, or for collateral security purposes. Franchisee shall provide prompt, written notice to the City of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 25, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 25.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 25.3 Franchisee may, without prior consent from the City: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from the City, proof of any such lease or agreement, provided that Franchisee may redact the name, street address (except for City and zip code), Social Security Numbers, Employer Identification Numbers or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and

applicable City codes. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 26. Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 17.

Section 27. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 28. 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 the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 29. 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 the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than ninety (90) days before vacating all or any portion of any such area. The City may, after ninety (90) days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 30. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight

courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

CITY OF PUYALLUP
Public Works Director
333 S. Meridian
Puyallup, WA 98371

Franchisee:
ZiPLY Wireless, LLC
Attn: Legal Department
135 Lake Street South,
Suite 155
Kirkland, WA 98033
legal@ziPLY.com.

Section 31. Severability. If any section, sentence, clause, or phrase of this Franchise is or 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 ruling.

Section 32. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid 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 reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities authorized by the City in accordance to the ordinance applicable at the time of the Facilities' construction.

Section 33. Amendment. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare; or relating to roadway regulation or relating to a City ordinance enacted pursuant to such federal or state statute or regulation; provided that the City provide Franchisee with ninety (90) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within ninety (90) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 34. Attorney Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs, expenses, and attorney fees as the court finds reasonable, including those upon appeal of any judgment or ruling.

Section 35. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in violation of any applicable law or regulation, and Franchisee shall not allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City and its officers, officials, employees, agents, and representatives harmless from and against any and all claims, costs, and liabilities, including reasonable attorney fees and costs, arising out of or in connection with the

cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and/or with the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 36. Licenses, Fees, and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly, and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City, and shall pay utility taxes and license fees imposed by the City.

Section 37. Miscellaneous.

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

Section 37.2 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.

Section 37.3 The section captions and headings herein are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 37.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty, or covenant whether any

of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 37.6 This Franchise may be enforced at both law and equity.

Section 37.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee 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 the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 37.8 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 38. Acceptance. The rights and privileges granted pursuant to this Franchise shall not become effective until its terms and conditions are accepted by Franchisee. Acceptance shall be accomplished by Franchisee's submission of a written instrument in the form attached hereto as Exhibit A, executed and sworn to by a corporate officer of the Franchisee before a Notary Public. Acceptance must be filed with the City within thirty (30) days after the effective date of this Ordinance. At the time that acceptance is submitted, Franchisee shall also submit necessary insurance documentation pursuant to Section 16; any Performance Bond, if applicable, pursuant to Section 18; and the

Franchise Bond required pursuant to Section 18.3. The administrative fees owing pursuant to Section 14.1 are due within thirty (30) days of receipt of invoice from the City.

APPROVED:

DEAN JOHNSON
MAYOR

ATTEST/AUTHENTICATED:

DAN VESSELS JR.
CITY CLERK

APPROVED AS TO FORM:

JOSEPH N. BECK
CITY ATTORNEY

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

SUMMARY OF ORDINANCE NO. ____

City of Puyallup, Washington

On the ____ day of _____, 202__, the City Council of the City of Puyallup passed Ordinance No. _____. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF PUYALLUP, WASHINGTON, GRANTING TO ZIPLY WIRELESS, LLC DBA ZIPLY FIBER AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE FRANCHISE FOR FIVE YEARS TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF PUYALLUP, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

DAN VESSELS JR.
CITY CLERK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

EXHIBIT A

STATEMENT OF ACCEPTANCE

Zipty Wireless, LLC dba Zipty Fiber, for itself and its successors, affiliates and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

Zipty Wireless, LLC

By: _____ Date: _____

Name: _____

Title: Associate General Counsel

STATE OF _____)
COUNTY OF _____)

On this ____ day of _____, 202_, before me the undersigned, a Notary Public in and for the State of _____, duly commissioned and sworn, personally appeared, _____ of _____, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

Signature

NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____



City Council Agenda Item Report

Submitted by: Cody Geddes

Submitting Department: Parks, Recreation and Facilities

Meeting Date: December 5, 2023

Subject:

Pg. 147 - Van Lierop Park Master Plan Update

Presenter:

Andrew Cirillo, Senior Associate and Civil Engineer with BCRA

Recommendation:

Select and approve a revised van Lierop Park Master Plan.

Background:

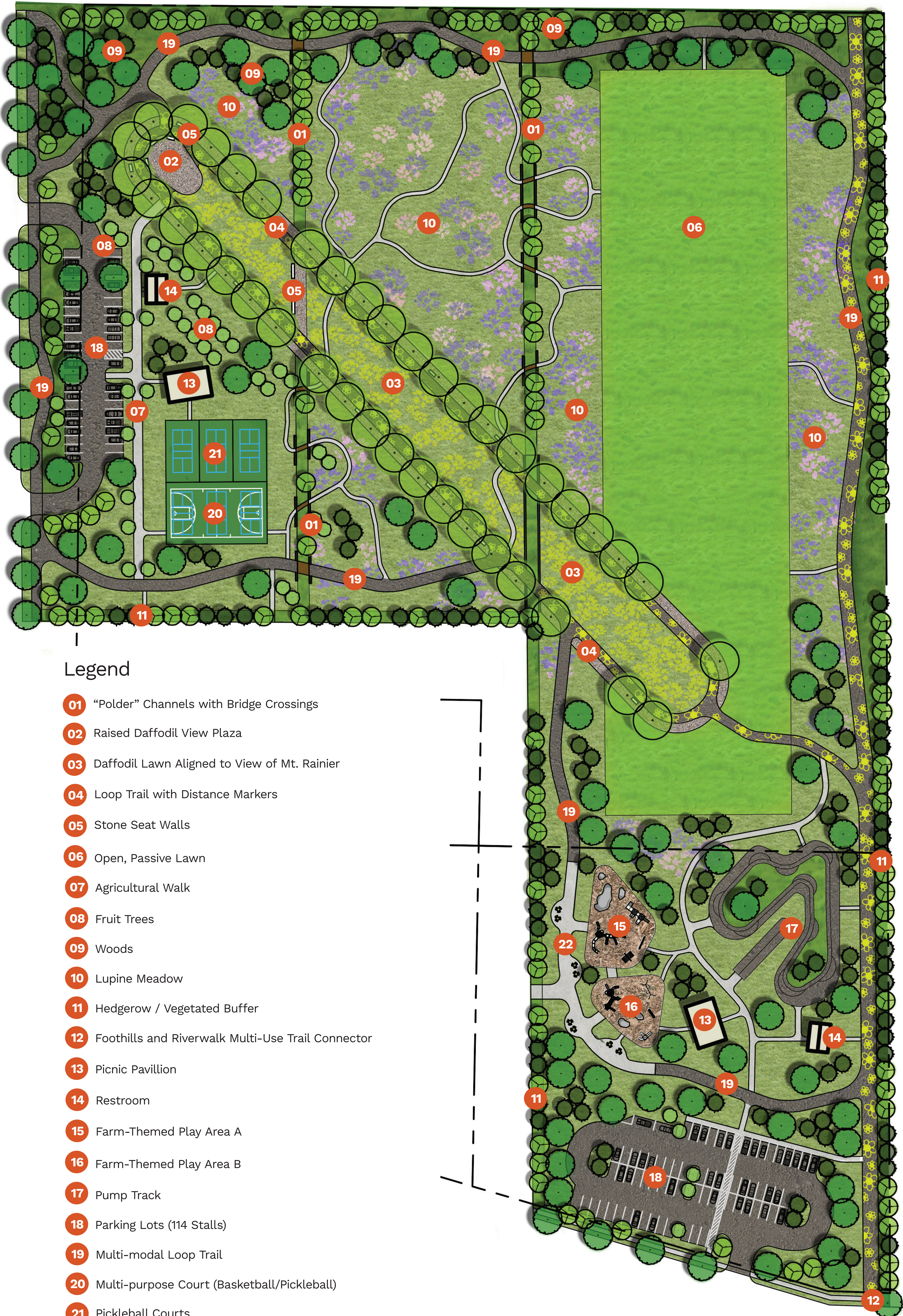
BCRA is currently in the process of updating the Van Lierop Master Plan. They have undertaken a public survey and organized an open public meeting to gather input regarding the revised design options. The updated plan incorporates input from the November 14 City Council meeting. Accompanying this agenda bill are two options for Council's consideration based on feedback and direction from City Council at its November 14th meeting.

ATTACHMENTS

[Alternatives](#)

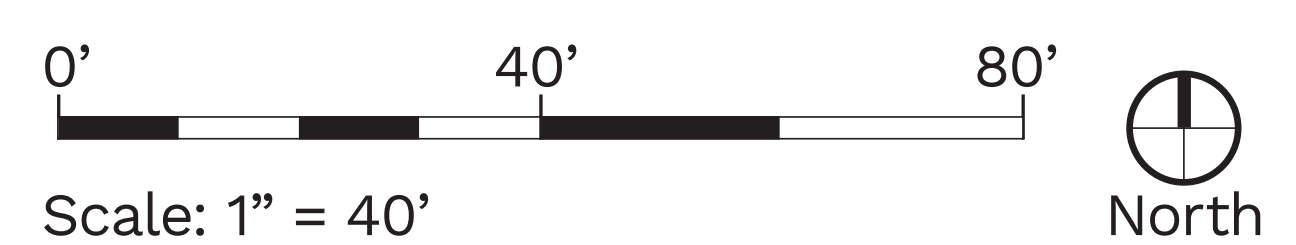
Alternate 2A

VAN LIEROP PARK MASTER PLAN



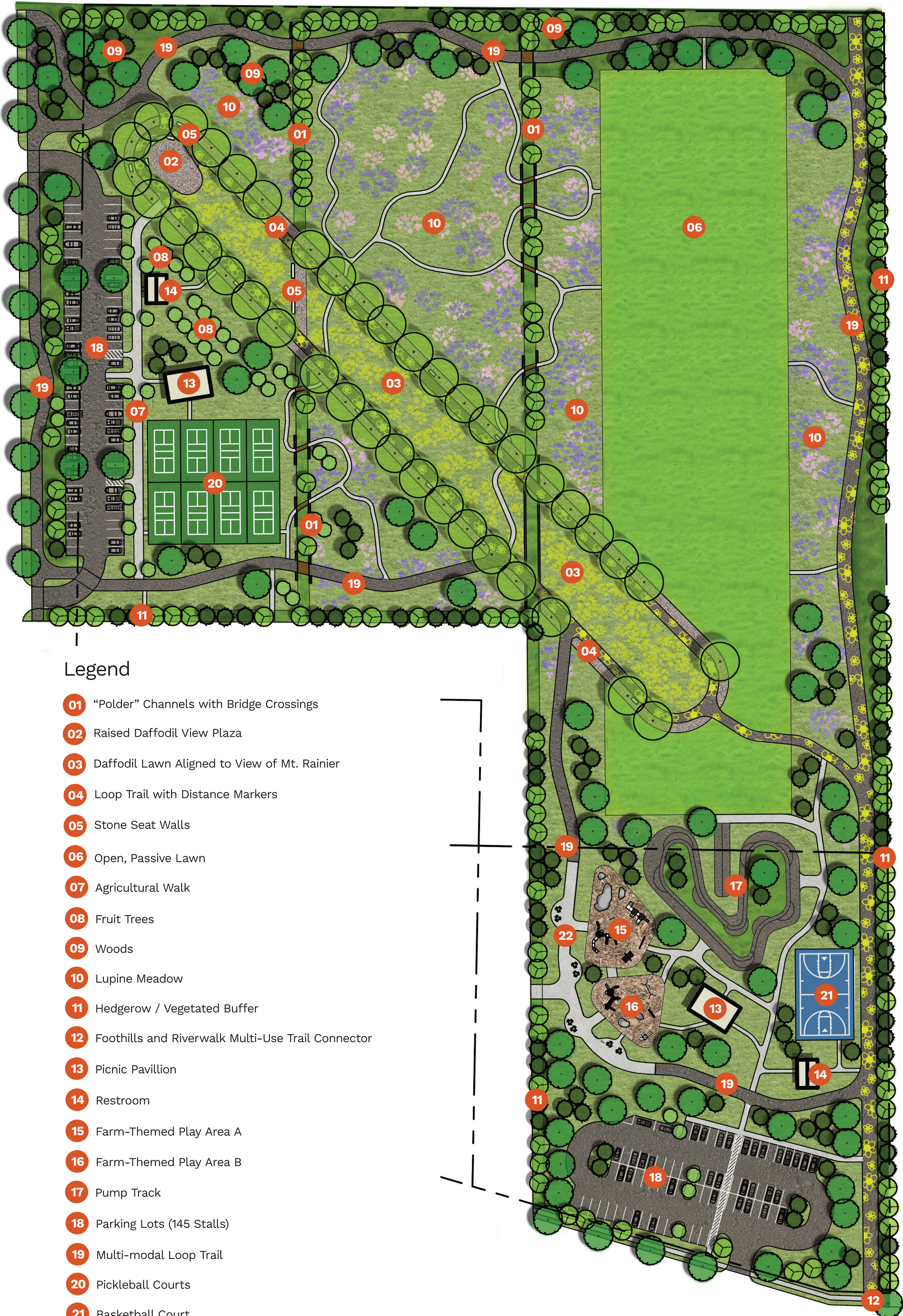
Legend

- 01** "Polder" Channels with Bridge Crossings
- 02** Raised Daffodil View Plaza
- 03** Daffodil Lawn Aligned to View of Mt. Rainier
- 04** Loop Trail with Distance Markers
- 05** Stone Seat Walls
- 06** Open, Passive Lawn
- 07** Agricultural Walk
- 08** Fruit Trees
- 09** Woods
- 10** Lupine Meadow
- 11** Hedgerow / Vegetated Buffer
- 12** Foothills and Riverwalk Multi-Use Trail Connector
- 13** Picnic Pavillion
- 14** Restroom
- 15** Farm-Themed Play Area A
- 16** Farm-Themed Play Area B
- 17** Pump Track
- 18** Parking Lots (114 Stalls)
- 19** Multi-modal Loop Trail
- 20** Multi-purpose Court (Basketball/Pickleball)
- 21** Pickleball Courts
- 22** Picnic Tables and Seating Area



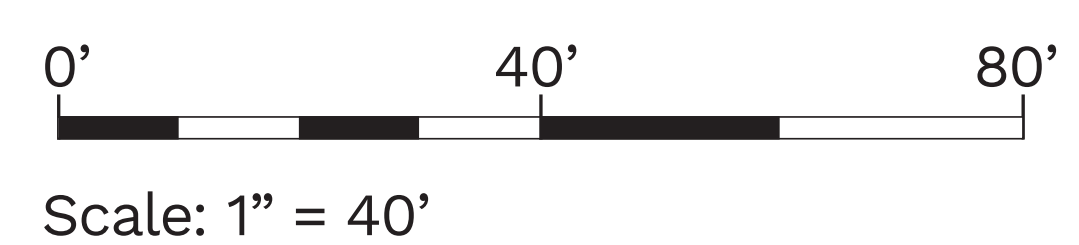
Alternate 2B

VAN LIEROP PARK MASTER PLAN



Legend

- 01 "Polder" Channels with Bridge Crossings
- 02 Raised Daffodil View Plaza
- 03 Daffodil Lawn Aligned to View of Mt. Rainier
- 04 Loop Trail with Distance Markers
- 05 Stone Seat Walls
- 06 Open, Passive Lawn
- 07 Agricultural Walk
- 08 Fruit Trees
- 09 Woods
- 10 Lupine Meadow
- 11 Hedgerow / Vegetated Buffer
- 12 Foothills and Riverwalk Multi-Use Trail Connector
- 13 Picnic Pavillion
- 14 Restroom
- 15 Farm-Themed Play Area A
- 16 Farm-Themed Play Area B
- 17 Pump Track
- 18 Parking Lots (145 Stalls)
- 19 Multi-modal Loop Trail
- 20 Pickleball Courts
- 21 Basketball Court
- 22 Picnic Tables and Seating Area





City Council Agenda Item Report

Submitted by: Chris Beale

Submitting Department: Development & Permitting Services

Meeting Date: December 5, 2023

Subject:

Pg. 150 - Resolution adopting the Environment and Sustainability Action Plan (ESAP)

Presenter:

Chris Beale, Senior Planner

Recommendation:

Approve a resolution to adopt the ESAP.

Background:

City Council previously received presentations and provided feedback on the Environment and Sustainability Action Plan (ESAP) on February 28, 2023, June 27, 2023, September 19, 2023 and November 14, 2023.

At the November 14, 2023 meeting, staff presented the summary of public input from the October public comment period and requested feedback on changes to the ESAP. The ESAP has been edited to incorporate Council and community feedback. See the attached memo for further detail on the changes and additions to the ESAP.

At this meeting, staff will provide a brief presentation on those changes and an overview of the final document. Council is then being asked to approve a resolution adopting the ESAP.

Fiscal Impacts:

Adoption of the plan itself will not result in direct fiscal impacts. Some implementation items can be absorbed into existing department funds, while others could require additional funds. These would be identified for Council's consideration at the time of strategy implementation.

ATTACHMENTS

[Resolution](#)

[Memo](#)

[ESAP final draft](#)

RESOLUTION NO. ____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON, adopting the City of Puyallup Environment and Sustainability Action Plan (ESAP) to guide municipal and community-wide sustainability efforts

WHEREAS, the City of Puyallup’s Strategic Plan identifies the prioritization and stewardship of the community’s natural resources as a priority to create a healthy and livable community; and,

WHEREAS, the City of Puyallup’s Comprehensive Plan identifies the need to safeguard the natural environment by meeting the needs of the present without compromising the ability of future generations to meet their own needs as a priority; and,

WHEREAS, the City Council set aside funds during the current budget cycle to prioritize the development of the ESAP in order to protect and improve the environment, promote sustainability and plan for protecting public health and safety from climate and weather related impacts; and,

WHEREAS, city staff and the City Council have been engaged in a year-long effort to seek community input, research best practices and policies from other communities and guiding resources, and establishing collaboration across city departments in the development of the ESAP; and,

WHEREAS, Puyallup City Council recognizes the need to provide a guiding framework for community-wide resource conservation, pollution reduction and sustainability actions; and,

WHEREAS, the Environment & Sustainability Action Plan (ESAP) establishes clear strategies and actions to conserve Puyallup’s natural environment, promote sustainability and protect community well-being and prepare for environmental risks facing our community; and,

WHEREAS, this Resolution is in the best interests of the residents of Puyallup and achieves a stated public benefit; and,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUYALLUP, WASHINGTON AS FOLLOWS:

Section 1. The City of Puyallup adopts the Environment and Sustainability Action Plan (ESAP), as reviewed by City Council on December 05, 2023.

Section 2. The City Clerk is authorized to make necessary corrections to this resolution including, but not limited to, the correction of scrivener’s/clerical errors, references, resolution numbering, section/subsection numbers and any references thereto.

PASSED this _____ day of _____, 20__.

APPROVED:

Dean Johnson
MAYOR

ATTEST/AUTHENTICATED:

Dan Vessels Jr.
CITY CLERK

APPROVED AS TO FORM:

Joseph N. Beck
CITY ATTORNEY

FILED WITH THE CITY CLERK: _____
PASSED BY THE CITY COUNCIL: _____
RESOLUTION NO.: _____



CITY OF PUYALLUP

Development and Permitting Services

333 S Meridian, Puyallup, WA 98371
(253) 864-4165 Fax (253) 840-6678

December 05, 2023

To: City Council

From: Planning staff

Re: Environment and Sustainability Action Plan (ESAP) – summary of final edits

Mayor Johnson and City Council,

On Tuesday, December 05, 2023 Planning staff will present the final draft of the Environment and Sustainability Action Plan (ESAP). Staff and City Council have been working on the draft ESAP since Fall, 2022. Previous meetings with the City Council were held on February 28, June 27, September 19 and November 14, 2023. The ESAP was informed by a community survey of environment and sustainability priorities in May, 2023 and a draft of ESAP actions were sent to the public for comment in October, 2023. It is anticipated that the City Council will pass a resolution adopting the ESAP on December 05, 2023. Future phases of the project will include implementing specific actions, seeking grant monies and developing a future Climate and Resiliency Element in the Comprehensive Plan (prior to 2029, as required by GMA).

The following summary of changes were made as a result of the public input received in October, 2023:

- Adding additional source citation for climate and weather related impact data
- Adding citations for the vulnerability assessment and additional information about community vulnerability risk assessment for context in the ESAP
- Adding source information for the findings of the report, adding cross references to the vulnerability assessment
- Adding a new policy on Transit Oriented Development (TOD)
- Adding supplement language on focus of future EV infrastructure planning
- Amending EH1.2, and EH2.3, to address comments on engagement on human health and job programs in green infrastructure
- Adding a new action on community outreach to restaurants around food waste diversion
- Amending CW1.2, to address comments on tool lending libraries
- Adding a new section on soil testing and education
- Amending CW1.1, to address comments on recycling services
- Adding a policy on the importance of lead water testing and education
- Addressing questions about vulnerable and front line populations and how they are defined

If you have any questions, feel free to contact Chris Beale, Senior Planner at (253) 841-5418 or cbeale@puyallupwa.gov.

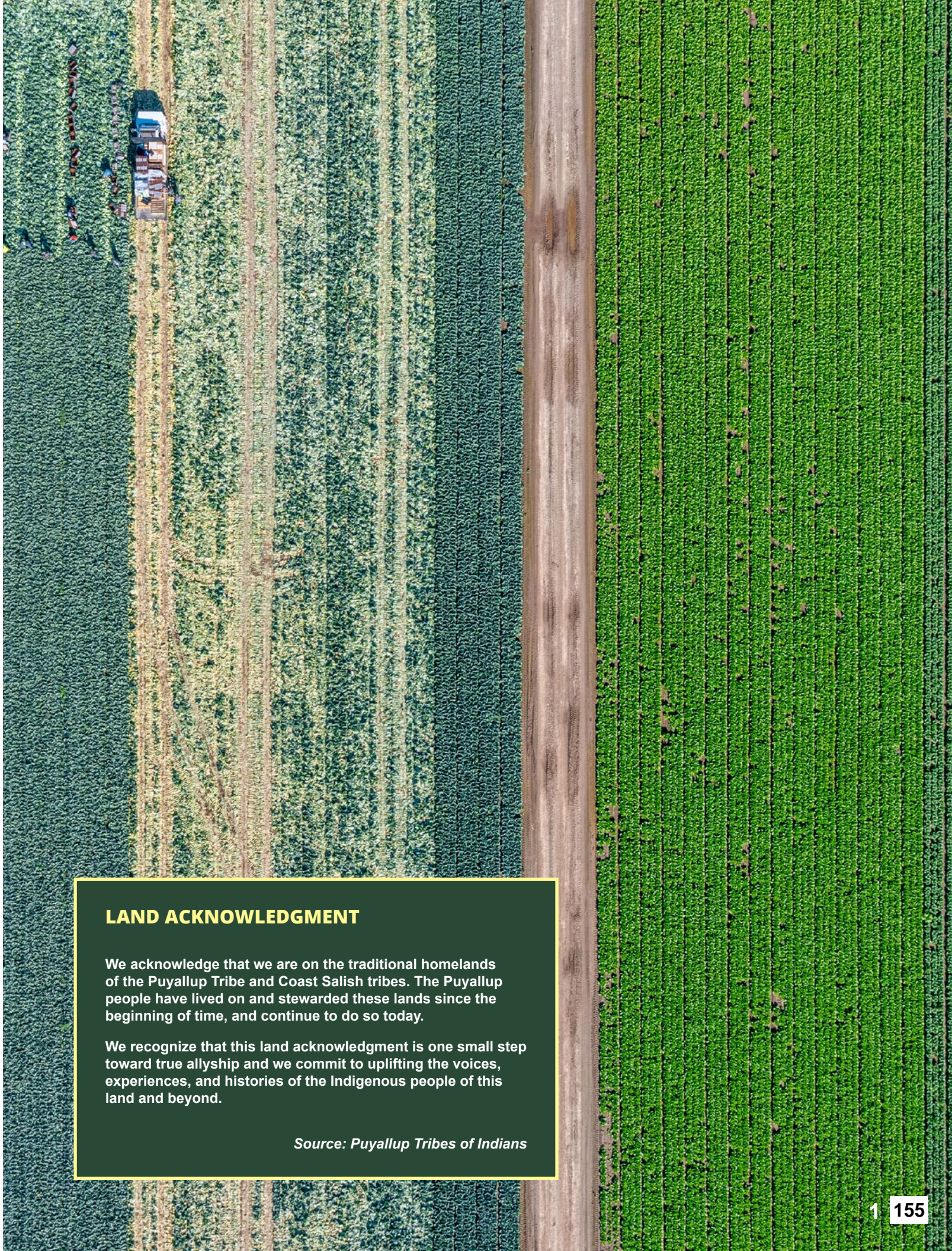


CITY OF PUYALLUP

Environment & Sustainability Action Plan

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LAND ACKNOWLEDGMENT

We acknowledge that we are on the traditional homelands of the Puyallup Tribe and Coast Salish tribes. The Puyallup people have lived on and stewarded these lands since the beginning of time, and continue to do so today.

We recognize that this land acknowledgment is one small step toward true allyship and we commit to uplifting the voices, experiences, and histories of the Indigenous people of this land and beyond.

Source: Puyallup Tribes of Indians



OVERVIEW

This Environment & Sustainability Action Plan (ESAP) establishes clear strategies and actions to conserve Puyallup's natural environment, promote sustainability and protect community well-being and prepare for environmental risks facing our community.

The ESAP is organized by six key focus areas that aim to enhance the overall sustainability of the City, address growing climate impacts, and build community resilience:

- ▶ Overarching & Municipal
- ▶ Buildings & Energy
- ▶ Transportation
- ▶ Ecosystem Health
- ▶ Consumption & Disposal
- ▶ Community Resilience & Well-being

We must act now to be responsible stewards of our natural systems so that future generations of both people and creatures may enjoy and benefit from them as we do today, and to continue to live in a place where both people and nature flourish.

PUYALLUP'S COMMUNITY GREENHOUSE GAS EMISSIONS

Greenhouse gas emissions are increasing worldwide due to burning fossil fuels to support transportation and energy needs, solid waste decomposition, consumptions, and other human activities. These gases trap heat and warm the planet, which directly contributes to climate change and increases associated risks such as more severe weather, drought, and wildfires.

The chart on the right shows Puyallup's 2019 communitywide GHG emissions: 338,000 MT CO₂e (metric tons of carbon dioxide equivalent).¹

2020: UPDATED GHG TARGETS

(RCW 70A.45.020)

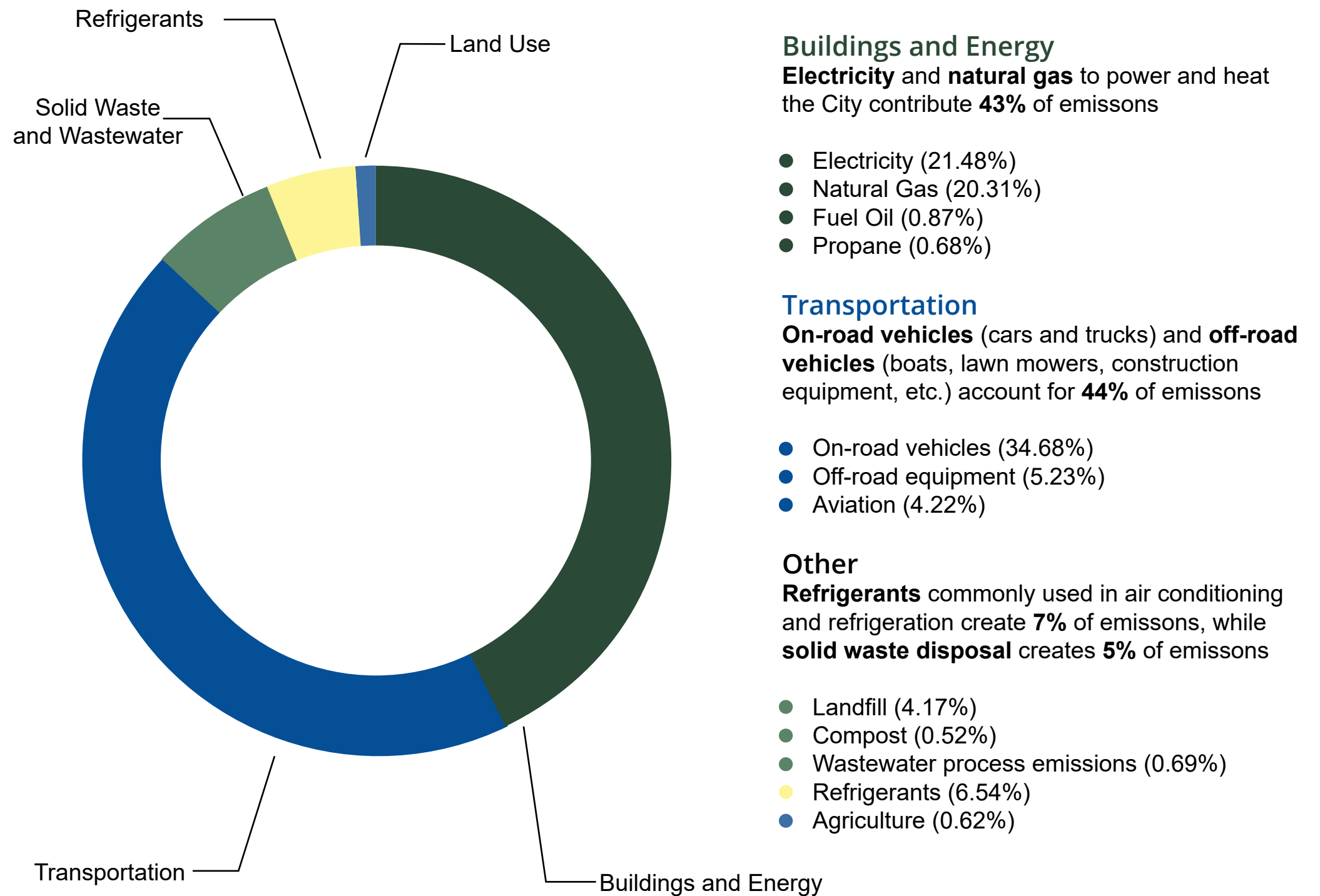
By 2030, 45% below 1990 levels

By 2040, 70% below 1990 levels

By 2050, 95% below 1990 levels

¹ The 2019 inventory was estimated by scaling Pierce County's 2019 emissions, calculated through the [Pierce County Communitywide Geographic Greenhouse Gas Emissions](#), to Puyallup based on population. This inventory includes emissions that could be reliably estimated/calculated using (1) best available data; and (2) the standard methodology outlined in the U.S. Community Protocol. Based on this guidance, industrial process emissions and emissions from marine and rail sources county-wide were not included in this inventory.

Figure 1. Puyallup's Community GHG Profile

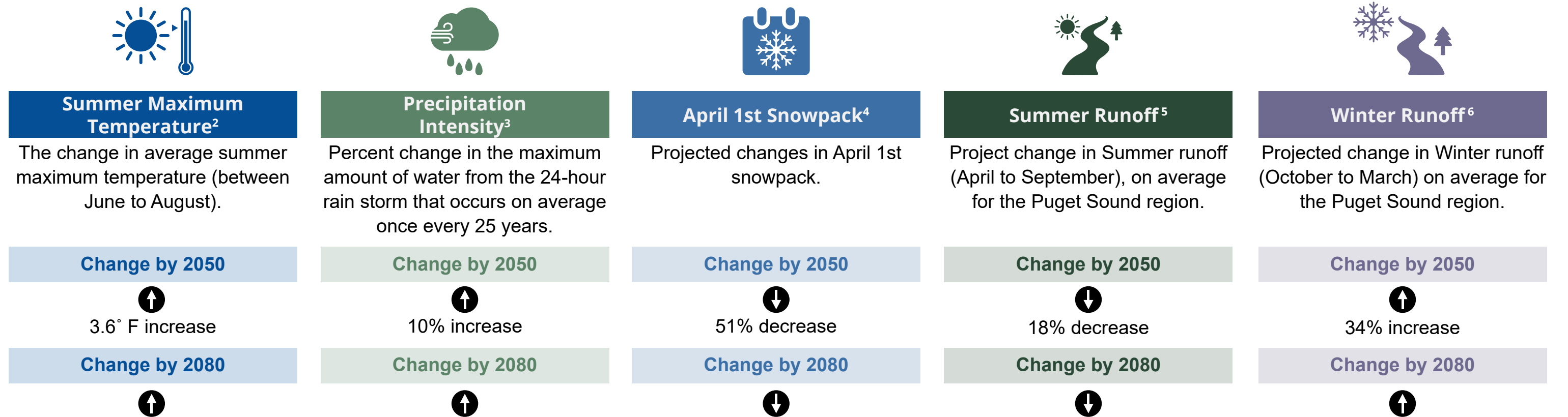


CLIMATE IMPACTS

The Puyallup and Pierce County region is experiencing a diversity of climate changes: warmer temperatures, shifting rainfall patterns, reduced winter snowpack, and increased frequency and risk of wildfires. These changes have introduced and exacerbated a variety of risks for communities and natural systems across the region, including increased flooding and landslide risk, reduced water supply and streamflow, impaired ecosystems and habitat, and prolonged periods of droughts.

The following graphic summarizes projected climate trends through 2050 and 2080 based on the latest climate change research available for the Puget Sound region and the City of Puyallup. The full Vulnerability Assessment is available in [Appendix B: Community Vulnerability Assessment](#).

Figure 2. Climate impacts for Puyallup



² Average Summer Maximum Temperature compared to 1980 to 2009 period under RCP 8.5. From: Abatzoglou J.T. and Brown T.J. A comparison of statistical downscaling methods suited for wildfire applications, International Journal of Climatology (2012), 32, 772-780.

<https://doi.org/10.1002/joc.2312>

³ Percentage change in Precipitation Intensity compared to 1980 to 2009 period under RCP 8.5. From: Salathé, E.P., Leung, L.R., Qian, Y., Zhang, Y. 2010. Regional climate model projections for the State of Washington. Climatic Change 102(1-2): 51-75. <https://doi.org/10.1007/s10584-010-9849-y>

⁴ April 1st Snowpack change compared to 1980 to 2009 period under RCP 8.5. From: Chegwiddden, O. S., B. Nijssen, D. E. Rupp, P. W. Mote, 2017: Hydrologic Response of the Columbia River System to Climate Change [Data set]. Zenodo. doi:10.5281/zenodo.854763.

⁵ Summer Runoff changes compared to 1970 to 1999 period under RCP 8.5. From: G. S. Mauger, J. H. Casola, H. A. Morgan, R. L. Strauch, B. Jones, B. Curry, T. M. Busch, Isaksen, L. Whitely Binder, M. B. Krosby and A. K. Snover, "State of Knowledge: Climate Change in Puget Sound," Climate Impacts Group University of Washington, Seattle, WA, 2015.

⁶ Winter Runoff changes compared to 1970 to 1999 period under RCP 8.5. From: G. S. Mauger, J. H. Casola, H. A. Morgan, R. L. Strauch, B. Jones, B. Curry, T. M. Busch, Isaksen, L. Whitely Binder, M. B. Krosby and A. K. Snover, "State of Knowledge: Climate Change in Puget Sound," Climate Impacts Group University of Washington, Seattle, WA, 2015.

STRATEGIES & ACTIONS

The goals, metrics, strategies and actions that make up the ESAP provide a roadmap of impactful actions that the City and Puyallup communities can take to enhance sustainability, reduce emission, and increase resilience. These actions are critical first steps to meet our reduction and resilience goals.

The following strategies and actions are a result of an iterative planning process that:

- ▶ Is rooted in the latest data and information
- ▶ Is tailored to the City of Puyallup's unique priorities and concerns
- ▶ Ensures Puyallup will be in alignment with state and regional targets and best practices.

Oversight & Accountability

The city will meet goals and metrics outlined in the ESAP through ongoing oversight and accountability.

Monitoring, Evaluation & Reporting

Tracking and reporting on progress is critical to meeting goals identified in this Plan. The city will provide annual progress reports on strategy and action implementation progress.

Funding

The city will work to identify funding opportunities through existing city budget and pursue additional grants to continue this work.

Community Involvement

Puyallup communities are critical partners to reducing GHG emissions and will need to be actively engaged for ESAP success. The city plans to engage and collaborate with Puyallup communities by 2029 as it develops the Climate and Resiliency Element in the Comprehensive Plan.

Timeline

All actions identified within this Plan are intended to be implemented in the near term, within the next 5 years. Future Plan updates will build upon these initial foundational steps and continue to evolve. The first update will occur in 2029.









Strategies & Actions Matrix

The matrix below is organized by six focus areas that are the priority topics of this plan. Every action includes criteria and information for level of impact and cost. We are defining these key criteria by the following:

ID	Strategy ID
Name	Strategy Name
Description	Strategy Description
Impact	Relative measure of the action’s potential to reduce emissions and/or increase resilience
Cost	Estimate of how much the action will cost to implement
Partners	Known local, regional, and state partners to support implementation
Implementation Constraints	General factors the City will consider when implementing the action, such as sequencing and key next steps
Success Indicator	How we will track progress and success towards a specific action, goal, or metric

Legend

Impact	
	Low
	Moderate
	High

Cost	
	Low: \$0 – \$10,000
	Moderate: \$10,000 – \$100,000
	High: \$100,000 – \$1,000,000





Overarching & Municipal

GOAL: Reduce GHG emissions from municipal operations through internal City policies and initiatives and incorporate sustainability and climate considerations into comprehensive City planning.

The overarching & municipal focus area includes cross-cutting sustainability and climate strategies and actions, as well as actions that are aimed at municipal operations. The overarching & municipal focus area includes cross-cutting sustainability and climate strategies and actions, as well as actions that are aimed at municipal operations.

ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
Strategy 1: Improve the overall sustainability of the City by mitigating climate impacts and strengthening its the adaptive capacity to cope with climate impacts.							
OM1.1	Sustainability Coordinator	Consider hiring a Sustainability Coordinator to implement the ESAP and other environment and sustainability programs (such as Tree City/Bee City designations).				Financial, policy, Council budget priorities	Hiring a coordinator
OM1.2	Comprehensive resiliency planning	Conduct a Puyallup-specific GHG inventory of communitywide emissions to inform goal and policy updates.			PSCAA	Financial, regulatory requirements	Fund and complete a GHG inventory
Strategy 2: Reduce GHG emissions from communitywide and City operations.							
OM2.1	Decarbonize City buildings	Evaluate and implement decarbonization strategies for City buildings and facilities. Use findings from the GHG inventory to adaptively manage decarbonization strategies on an ongoing basis.			PSCAA	Financial, regulatory requirements	Conduct assessment of city buildings/facilities and set goals to reduce carbon footprint. Pair this assessment with community GHG inventory
OM2.2	City fleet electrification	Develop and implement a plan to convert City fleet to EVs whenever appropriate, with a minimum standard for hybrid vehicles unless warranted by city service needs for the vehicle type.			Other jurisdictions	Financial, availability of vehicles, technology	Establish purchasing policy that requires examining hybrid and EV options for city vehicles



Overarching & Municipal

ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
OM2.3	City sustainable purchasing program	Update sustainable purchasing policy that includes evaluation criteria for sustainable practices and waste reduction goals from office supply vendors.			Other jurisdictions	Financial costs to implement	Update and adopt purchasing policy



Buildings & Energy

GOAL: Reduce building emissions through energy efficiency, building electrification, and renewable energy.

The Buildings & Energy focus area includes strategies and actions that promote clean and reliable energy and sustainable building development.

ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
Strategy 1: Improve energy efficiency, transition to renewable, and reduce energy use in new and existing buildings.							
BE1.1	Implement regional heat pump campaign	Work with regional utilities to promote electric heat pumps to replace natural gas-powered furnaces and increase energy efficiency in existing commercial and residential buildings.			PSE	Availability of grants and incentives	Coordinate with PSE to promote existing programs and funding to public
BE1.2	Promote energy upgrades in residential buildings	Promote already available financial incentives for homeowners to install energy efficient and solar energy upgrades. <ul style="list-style-type: none"> • Include additional rebates for low-income residents • Add solar panel permitting to the list of eligible permits for DPS' expedited permit program. 			PSE	Availability of grants and incentives	Coordinate with PSE; add solar to DPS permit program
BE1.3	Explore feasibility of community solar and micro-wind turbine projects	Support the generation, transmission and use of locally distributed renewable energy. Explore feasibility of installing locally distributed renewable energy projects including City and community solar projects and micro-wind turbines.			PSE	Financial, technical, facility availability, feasibility	Complete planning level assessment of city and publicly owned properties and facilities to determine suitability of community solar project



Transportation

GOAL: Reduce greenhouse gas emissions from transportation by expanding the use of electric vehicles, increasing multimodal transportation options, improving cycling and pedestrian infrastructure.



The Transportation focus area contains strategies and actions that aim to make transportation options more sustainable, accessible, and safe.

ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
Strategy 1: Promote and incentivize public transit, electric vehicles (EVs), EV infrastructure, and active transportation options.							
TR1.1	Improve and expand biking infrastructure	Implement and complete the near-term bike project list, while maintaining and expanding funding for safe routes to schools, trails and missing link sidewalk program. Consider hiring a transportation planner to seek grants and coordinate more rapid implementation of bike and pedestrian planned improvements and programs.			Local advocates and non-profits	Financial, policy, Council budget priorities	Prioritization of funding of near term bike project list.
TR1.2	EV infrastructure plan	Develop and implement an EV infrastructure plan to add charging stations to City owned facilities, public rights-of-way, and othe significant community locations, such as shopping centers, multi-family complexes, fair grounds, etc. Promote EV ready outlets in all new residential buildings and EV charging stations in newly constructed apartment buildings.			PSE, EV contractors	Financial, capacity to implement	Fund and complete an EV infrastructure plan
TR1.3	Integrate climate impacts in transportation infrastructure designs	When updating roads, bridges, and other infrastructure consider integrating design strategies that will address how infrastructure will withstand climate impacts such as heavier rain flows, flooding, landslides, and extreme heat.			FEMA, Ecology, WSU storm water center	Technical, regulatory requirements	Implement action during development of capital projects and planning



Transportation



ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
TR1.4	Transit Oriented Development	Implement the Comprehensive Plan and Downtown Plan to encourage more people living closer to transit hubs and less reliant on cars.			Development community	Technical feasibility, zoning	Adoption and maintenance of Comprehensive Plan policies and zoning that supports TOD



Ecosystem Health

GOAL: Protect and preserve the natural landscape by conserving water resources and enhancing vital habitats, ecosystems, and natural resources.

Ecosystem focus area includes strategies and actions that protect and enhance our waterways and natural systems and resources.



ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
Strategy 1: Create a thriving urban tree canopy.							
EH1.1	Tree planting programs	Adopt an urban tree canopy target to increase City-wide tree cover and design and implement tree planting programs to meet the urban tree canopy target.			PCD, Ecology, local tree advocates	Policy, staff capacity, community buy-in	Adopt a policy to Comp Plan
EH1.2	Urban forest management plan	Update the city's 20-year forest management plan by 2025 and consider additional resources to accelerate protecting the city's natural forested habitat areas. Partner with WSU Puyallup Urban Forest researchers to update the city's 20-year forest management plan through paid internships for local high school and college students for hands-on learning.			PCD , Green Puyallup Partnership (GPP)	Staff capacity	Update plan by 2025
Strategy 2: Conserve and provide equitable access to water.							
EH2.1	Conserve water flow	Protect and conserve water flow through actions such as promoting water efficiency, recycling grey water, increasing drought-tolerant/pollinator friendly native vegetation, and restoring stream water quality			PCD , DOH	Staff capacity to implement	Promotion of sustainability practices through city online channels (website, socials)



ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
EH2.2	Maintain stormwater infrastructure	Use climate change predictions for precipitation when replacing, sizing, or adding stormwater infrastructure, use low impact development, and continue to research and use new technologies as they become available.			WSU Stormwater center	Regulatory	Implement action during development of capital projects and planning
EH2.3	Green Infrastructure	Develop and implement a policy that incentivizes green infrastructure (raingardens, bioswales, green roofs) and replace impervious surfaces where appropriate. Include opportunities for paid learning, job training, and/or technical certificate programs around green stormwater infrastructure and related careers.			PCD	Financial constraints, budget priorities	Determine appropriate incentives for further consideration
Strategy 3: Protect and conserve natural landscapes and habitats.							
EH3.1	Restore salmon habitat	Restore salmon habitat through stream restoration ((e.g., restore riparian vegetation, protect and restore stream flow and water quality, promote native plant distribution, coordinate with regional partners (such as WSU extension center) to protect salmon).			PCD , WSU Stormwater center	Staff capacity, financial	Continue efforts to re-vegetate local streams through NPDES and shoreline restoration program
EH3.2	Protect existing farmland	Work with regional partners including the Pierce County Conservation District, non-profits organizations, the Puyallup-White River Lead Implementing Organization (LIO), and the agricultural industry and farm workers to protect existing agricultural lands from development. Engagement will be in language and include other topics such as pesticide use and how environmental exposures impact human health.			Forterra	Staff capacity, financial	Formulate plan with local and regional partners



Ecosystem Health

ID	Name	Description	Impact	Cost	Partners	Implementation Constraints	Success Indicator
EH 3.3	Soil Testing	Explore methods of soil testing for heavy metals and other contaminants for residents including at community gardens and resident gardens. Build public healthy soil by creating composting initiatives that help prevent water pollution and also divert food waste.			Health Dept.	Staff capacity	Research costs, feasibility and methods for soil testing



Consumption & Waste

GOAL: Reduce greenhouse gas emissions associated with consumption and disposal of goods and materials.



The Consumption & Waste focus area incorporates strategies and actions that promote recycling, composting, and reuse.

ID	Name	Description	Impact	Cost	Partners	Implementation constraints	Success Indicators
Strategy 1: Increase waste diversion from landfills and reduce waste generation by improving community waste collection and disposal systems.							
CW1.1	Expand recycling and composting	Work with local disposal contractor to implement yard waste bin programs that allow combined yard and food waste disposal, and is free for residents. Expand recycling programs to include glass and additional items to be collected in at residential, commercial, and multi-family recycling bin programs. Provide education and disposal options for hard to recycle items, such as batteries, medications, and paints.			Local refuse hauler, Pierce County	Financial	Develop a plan with local disposal contractor to implement action; assess financial impacts
CW1.2	Support community re-use events	Support and sponsor a community zero-waste, repair, and upcycling workshop. Promote community reuse events such as garage sales and clean-up/recycling events. Explore a Puyallup Tool Library for the Puyallup community with existing City tools to repair their items.			Local advocates, non-profits	Staff capacity, financial, availability of community partners	Identify local advocates and develop a public engagement plan to implement action



Consumption & Waste

ID	Name	Description	Impact	Cost	Partners	Implementation constraints	Success Indicators
CW1.3	Litter reduction and management	Manage litter and plastic pollution in Puyallup by sponsoring litter clean up days, increasing number of public waste bins and frequency of pick up, and provide education around litter impacts.			Local advocates, non-profits	Staff capacity, financial, availability of community partners	Identify local advocates to implement litter pick ups; identify local areas where new public waste bins are needed; promote public education through city website, socials
CW 1.4	Commercial Outreach	Find ways to work with restaurants and businesses in the city to divert food waste, compost, and recycle.			Health Dept., source control staff (city)	Staff capacity	Development of materials or promotion of existing education materials



Community Resilience & Wellbeing

GOAL: Ensure that all Puyallup residents are prepared for current and future climate emergencies and impacts.



The Community Resilience & Wellbeing focus area will focus on strategies and actions that enhance public health, emergency preparedness, and address disproportionate impacts to the city’s most vulnerable communities.

ID	Name	Description	Impact	Cost	Partners	Implementation constraints	Success Indicator
Strategy 1: Ensure all City services, infrastructure, and community members are resilient to climate change impacts.							
CRW1.1	Incentivize adaptation upgrades	Consider financial incentives for adaptation upgrades to businesses and homeowners (e.g., weatherproofing, flood retrofits, reduce paved areas to address runoff and heat, green roofs, permeable pavement, air filters, fans).			Local non-profits, PSE, PCD	Staff capacity, financial	Fund and develop a plan to determine possible city program features and costs
CRW1.2	Evaluate City infrastructure and Facilities	Evaluate critical City infrastructure and facilities for extreme heat and flooding impacts.			Consultants	Staff capacity, financial	Fund and complete an assessment. Pair this assessment with city buildings/facilities carbon footprint study
CRW1.3	Conduct Wildfire Risk Assessment	Partner with WA DNR, local fire department and community groups to develop and conduct a Wildfire Risk Assessment. Use report findings to implement wildfire reduction strategies.			WA DNR	Staff capacity, financial	Fund and complete an assessment.
CRW 1.4	Lead Testing	Educate the public about the dangers of lead contamination and work with TPCHD and WA DOH to make sure communities aren’t unknowingly impacted.			Health Dept., School District	Staff capacity	Promotion of educational materials from Health Dept. through city channels



Community Resilience & Wellbeing



ID	Name	Description	Impact	Cost	Partners	Implementation constraints	Success Indicator
Strategy 2: Enhance resilience of populations that will be disproportionately impacted by climate change.							
CRW2.1	Educate residents on climate risks and impacts	Partner with community organizations to conduct outreach and education campaigns that prepare homeowners, renters, and workers for the negative impacts of flooding, extreme heat, and wildfire smoke. Prioritize communities that are at high risk, including those in the floodplain, without air conditioning or air filtration, and those who work outside.			Local non-profits , TPCHD, PSCAA	Staff capacity, financial	Identify local partners and develop outreach / public engagement plan
CRW2.2	Establish resilience centers for cooling and air quality relief	Implement mitigation strategies to address wildfire smoke and extreme heat events, including city sponsored wildfire air quality and cooling centers throughout the community and funding for box fan filters for deployment, prioritizing the most vulnerable community members.			Local churches, TPCHD, PSCAA	Staff capacity, financial	Conduct assessment of facilities in community to support additional services, develop cost and staffing needs
CRW2.3	Improve food security and nutritional health	Support local farmers and food production by providing areas in parks for community gardens, promoting CSAs and encouraging residents to buy local.			Local non-profits, farmers	Staff capacity, financial	Identify community needs for additional garden space in parks, CSA location and partnerships

APPENDIX A: ACRONYMS AND KEY TERMS

Climate change	The long-term change in global and regional climate patterns due to increased levels of atmospheric carbon dioxide and other greenhouse gases produced by human activities such as using fossil fuels like coal, oil, and gas.
Climate emergency	The severe, adverse effects of climate change or an extreme weather event caused by climate change, such as wildfire, heatwaves, flooding, and drought.
Climate resilience	The ability of the built environment, ecosystems, and social systems to prepare for, respond to, and recover from climate impacts.
Commute trip reduction (CTR) program	A Washington State Department of Transportation (WSDOT) program that promotes alternatives to driving alone under the Commute Trip Reduction Law (WAC Chapter 468-63) to improve sustainability and reduce traffic congestion. Common elements of CTR programs include transportation demand management strategies such as provision of bicycle amenities, carpool and vanpool incentives, subsidies for transit fares, and implementation of flexible work schedules.
Decarbonization	Targeted reduction of carbon dioxide and other greenhouse gases emitted into the atmosphere from fossil fuel intensive systems and infrastructure.
Electric vehicles (EVs)	Vehicles that derive all or part of their power from electricity, including: <ul style="list-style-type: none"> • Plug-In Hybrid Electric Vehicles (PHEVs): Vehicles that run by using a combination of electricity and use of an internal combustion engine and plug into the electric grid to derive power. • Battery Electric Vehicles (BEVs): Vehicles that run completely on electricity using a battery that can be recharged by being plugged into the electric grid.
Electrification	The transition away from using natural gas and other fossil fuels to electricity (typically generated from renewable energy sources like solar and wind), typically to power, heat, and cool homes and vehicles.
Environment & Sustainability Action Plan	A comprehensive roadmap that outlines specific strategies and actions to reduce greenhouse gas emissions and adapt to climate and weather related impacts.
Frontline communities	A community that includes people who are both highly exposed to climate risks (because of the places they live and the projected changes expected to occur in those places) and have fewer resources, capacity, social or economic safety nets, or political power to respond to those risks. Frontline communities are those that experience the “first and worst” consequences of climate change. These are often, but not limited to, communities of color and low-income communities. [Source: Fifth National Climate Assessment https://nca2023.globalchange.gov/chapter/appendix-5/]
Global warming potential (GWP)	Used to describe the relative global warming impacts of different gases based on how much energy the emissions of one gas will absorb over a given period of time, relative to the emissions of carbon dioxide (CO ₂).

Greenhouse gases (GHGs)	Heat-trapping gases that warm the atmosphere such as carbon dioxide (CO ₂), methane (CH ₄), and nitrous oxide (N ₂ O).
Heat pump	An energy-efficient alternative to traditional furnaces and air conditioners that uses electricity to transfer heat from one building location to another rather than generating it.
ICLEI – Local Governments for Sustainability	A global organization focused on supporting local governments in addressing sustainability challenges. ICLEI’s standards, tools, and programs have been utilized by Gig Harbor to evaluate and reduce the City’s GHG emissions.
Metric ton of carbon dioxide equivalent (MTCO_{2e})	A common unit of measurement that represents an amount of a greenhouse gas whose impact on climate change has been standardized to that of one unit of carbon dioxide (CO ₂), based on the global warming potential (GWP) of the gas.
Multimodal transportation	Accessible transportation through a variety of travel modes beyond single-occupancy vehicles, including pedestrian, bicycle, and public transit.
Science-based targets (SBTs)	Measurable and actionable greenhouse gas reduction targets developed by individual local governments and based on the best available climate science. These targets represent each community’s equitable share of GHG reductions needed to meet the Paris Agreement’s commitment of keeping average global warming below 1.5°C. There are several established methodologies used to calculate SBTs.
Transit-oriented development	Walkable, pedestrian-oriented, and densely compacted mixed-use (commercial, residential, entertainment) development centered around or located near public transit.
Vehicle miles traveled (VMT)	A metric used in transportation planning to measure the cumulative miles traveled by all vehicles in a geographic region over a period of time.
Vulnerable Populations	Communities of people who face disproportionate and unequal risks from projected and realized climate change impacts and who are least able to anticipate, cope with, and recover from these adverse impacts. socioeconomic factors may include, but are not limited to, income, educational attainment, race and ethnicity, and age. [Source: Fifth National Climate Assessment https://nca2023.globalchange.gov/chapter/appendix-5/]

**APPENDIX B:
COMMUNITY
VULNERABILITY
ASSESSMENT**