



**CITY COUNCIL REGULAR MEETING AGENDA**  
**January 18, 2022 at 6:30 p.m.**  
**City Hall Council Chambers and Virtual**

The City of Kennewick broadcasts City Council meetings on the City's website at <https://www.go2kennewick.com/CouncilMeetingBroadcasts> and via Zoom. The City provides options for members of the public who are unable to attend in person (if applicable/available) and wish to comment on items during a regular meeting virtually or telephonically via Zoom and the City's website (see more information under Visitors or Public Hearings/Meetings on the agenda.) *Anyone attending in person is asked to comply with the State mandates regarding gathering in [public spaces](#). Face coverings will be available.*

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**1. CALL TO ORDER**

Pledge of Allegiance/Welcome

**HONORS & RECOGNITIONS**

**2. APPROVAL OF AGENDA**

**3. CONSENT AGENDA**

All matters listed within the Consent Agenda have been distributed to each member of the Kennewick City Council for reading and study, are considered to be routine, and will be enacted by one motion of the Council with no separate discussion.

- a. Minutes of Regular Meeting of January 4, 2022.
- b. Motion to approve Claims Roster - None.
- c. Motion to approve Payroll Roster for December 31, 2021.
- d. Motion to authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Dove Ridge Subdivision in the Kennewick Urban Growth Area.
- e. Motion to authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Highland Vineyards Phase 1 and Phase 2 Subdivision in the Kennewick UGA.
- f. Motion to authorize the City Manager to sign the License Agreement for 2301 W. 21<sup>st</sup> Ave with Esmeralda Sanchez Rodriguez.
- g. Motion to increase the authorized contract amount from \$618,566.30 to \$720,257.51 and accept the work of Tommer Construction for Contract P2021-20 (2021 Bituminous Surface Treatment Seal Coat), in the amount of \$720,257.51.
- h. Motion to authorize the City Manager to sign the Solid Waste Interlocal Agreement with Benton County for 2022-2023.
- i. Motion to authorize the purchase of one MB Peterbilt Paint Truck from MB Companies in the amount of \$512,640 including tax.

**4. VISITORS**

The City asks all members of the public who are unable to attend in person (if applicable/available) and wish to comment during the meeting under the Visitors section virtually (via Zoom) or telephonically, regarding any item not covered under a public hearing, please register at

[https://us02web.zoom.us/webinar/register/WN\\_SPdhE884QSaOWcttBNmdNA](https://us02web.zoom.us/webinar/register/WN_SPdhE884QSaOWcttBNmdNA).

Registrations must be received by 4:00 p.m. on Tuesday, January 18<sup>th</sup>.

Written comments regarding any items not covered under a public hearing, may also be submitted to P.O. Box 6108, Kennewick, WA 99336; or e-mailed to [clerkinfo@ci.kennewick.wa.us](mailto:clerkinfo@ci.kennewick.wa.us) no later than 4:30 p.m. on Monday, January 17<sup>th</sup> to be included in the Council packet.

**5. ORDINANCES/RESOLUTIONS**

a. Ordinance 5969: Zayo Group, LLC Franchise Agreement

b. Ordinance 5970: US Cellular Franchise Agreement

**6. PUBLIC HEARINGS/MEETINGS**

The City asks all members of the public who are unable to attend in person (if applicable/available) and wish to comment during the meeting under the Visitors section virtually or telephonically, please register at

[https://us02web.zoom.us/webinar/register/WN\\_SPdhE884QSaOWcttBNmdNA](https://us02web.zoom.us/webinar/register/WN_SPdhE884QSaOWcttBNmdNA).

Registrations must be received by 4:00 p.m. on Tuesday, January 18<sup>th</sup>.

The public may also submit comments regarding items under Public Hearings/Meetings by filling out an online form at <https://www.go2kennewick.com/PublicHearing> no later than 4:30 p.m. on Monday, January 17<sup>th</sup> to be included in the Council packet.

Interested parties may also submit written comments to P.O. Box 6108, Kennewick, WA 99336; or e-mail [clerkinfo@ci.kennewick.wa.us](mailto:clerkinfo@ci.kennewick.wa.us) no later than 4:30 p.m. on Monday, January 17<sup>th</sup> to be included in the Council packet.

a. Ordinance 5968: Right-of-way vacation at 7114 W. Hildebrand Blvd.

**7. NEW BUSINESS**

a. Letter Supporting Police Reform Legislation Amendments

b. Council Order of Business and Agenda

**8. UNFINISHED BUSINESS**

**9. COUNCIL COMMENTS/DISCUSSION**

**10. ADJOURNMENT**

CITY OF KENNEWICK  
CITY COUNCIL  
Regular Meeting  
January 4, 2022

1. CALL TO ORDER

City Clerk, Terri Wright called the meeting to order at 6:30 p.m.

City Council and Staff Present:

Loren Anderson	Marie Mosley	Emily Estes-Cross
Brad Beauchamp	Steve Donovan	Ken Hohenberg
Gretl Crawford	Christina Palmer	Chad Michael
Bill McKay	Lisa Beaton	Evelyn Lusignan
Jim Millbauer	Cary Roe	Krystal Townsend
Chuck Torelli	Terri Wright	
John Trumbo	Dan Legard	

Ms. Wright led the Pledge of Allegiance.

City Clerk Wright announced the first of order of business is the election of the Mayor. All Council members are nominated for the office. The roll would be called in reverse alphabetical order and as their name is called, each Council member will cast his vote verbally.

Council was provided an opportunity for discussion before the roll call vote was taken.

Election of Mayor January 4, 2022  REVERSE ALPHABETICAL ORDER	Trumbo	Torelli	Millbauer	McKay	Crawford	Beauchamp	Anderson
Mr. Trumbo				X			
Mr. Torelli							X
Mr. McKay				X			
Mr. Millbauer							X
Ms. Crawford				X			
Mr. Beauchamp				X			
Mr. Anderson				X			
Total Votes				5			2

Bill McKay was elected Mayor by a 5-2 vote on the first ballot and assumed the Chair.

The roll was called in alphabetical order.

Election of Mayor Pro Tem January 4 2022  ALPHABETICAL ORDER	Anderson	Beauchamp	Crawford	McKay	Millbauer	Torelli	Trumbo
Mr. Anderson			X				
Mr. Beauchamp			X				
Ms. Crawford			X				
Mr. McKay			X				
Mr. Millbauer	X						
Mr. Torelli							
Mr. Trumbo			X				
Total Votes	1		6				

Gretl Crawford was elected Mayor Pro Tem by a 6-1 vote on the first ballot.

## 2. APPROVAL OF AGENDA

Mr. Torelli moved, seconded by Mr. Trumbo to approve the Agenda as presented or amended. The motion passed unanimously.

## 3. APPROVAL OF CONSENT AGENDA

- a. Minutes of Regular Meeting of December 21, 2021.
- b. (1) Motion to approve Claims Roster - None.  
(2) Motion to approve the Claims Roster for the Columbia Park Golf Course Account for November 2021.  
(3) Motion to approve the Claims Rosters for the Toyota Center Operations and Box Office Accounts for November 2021.
- c. Motion to approve Payroll Roster for December 15, 2021.
- d. Motion to authorize the City Manager to sign the Interlocal Agreement with Hanford Communities.
- e. Motion to authorize the Mayor (or in his absence Mayor Pro Tem) to sign the Final Plat of Southcliffe Phase 6, contingent upon payment of fees and bonding for incomplete sidewalks.
- f. Motion to authorize the Mayor (or in his absence Mayor Pro Tem) to sign the Final Plat of Apple Valley Phase 5B, contingent upon payment of fees and bonding for incomplete sidewalk work.

Mr. Trumbo moved, seconded by Mr. Beauchamp to approve the Consent Agenda. The motion passed unanimously.

## 4. VISITORS

Tina Gregory, 5208 W. 10<sup>th</sup> Ave – Spoke in regards to masks not being effective.

Micah Valentine, 3301 S. Lincoln St, Kennewick – Encouraged Council to fight for the communities individual rights

Ubbly Creek, 3219 W. Canal Dr, Kennewick – Encouraged Council to engage with all the community especially the east side of Kennewick

Don Britain, 8802 W. Klamath Ave, Kennewick – Encouraged Council to allow the recently filed ethics complaints go through the current process and be reviewed by the Ethics Officer

5. ORDINANCE/RESOLUTIONS

- a. Ordinance 5964: Change of Zone (COZ) from Residential, Suburban (RS) to Residential, Medium (RM) at 3321 W. 10th Ave. Steve Donovan, Community Planning Manager reported.

ORDINANCE NO. 5964

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY WITHIN THE CITY OF KENNEWICK LOCATED 3321 W. 10th AVENUE FROM RESIDENTIAL SUBURBAN TO RESIDENTIAL MEDIUM (COZ 21-13, Tami Johnson, Creekstone Senior Living)

Mr. Beauchamp moved, seconded by Mayor Pro Tem Crawford to adopt Ordinance No. 5964. The motion passed unanimously.

6. PUBLIC HEARINGS/MEETINGS - None

7. NEW BUSINESS

- a. Ethics Policy and Ethics Officer. Marie Mosley, City Manager reported.

Council engaged in a lengthy discussion.

Mr. Anderson moved, seconded by Mr. Beauchamp to move this item to the January 18<sup>th</sup> Council meeting for final action. The motion passed unanimously.

8. UNFINISHED BUSINESS - None

9. COUNCIL COMMENTS/DISCUSSION

Council members reported on their respective activities.

10. ADJOURNMENT

Meeting was adjourned at 8:08 p.m.

Terri L. Wright, CMC  
City Clerk

# Council Agenda Coversheet



Agenda Item Number	3.c.	Council Date	01/18/2022
Agenda Item Type	General Business Item		
Subject	Payroll Roster for PPE 12/31/2021		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Finance		

Consent Agenda	<input checked="" type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

That council approve the Payroll Roster.

### Motion for Consideration

I move to approve the Payroll Roster for 12/31/2021 in the amount of \$1,972,268.06 comprised of check numbers 75512 through 75518 and direct deposit numbers 198505 through 198918.

### Summary

None.

### Alternatives

None.

### Fiscal Impact

Total \$1,972,268.06.

Through	
Dept Head Approval	Dan Legard Jan 04, 13:00:06 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 15:19:33 GMT-0800 2022

Attachments: 

Payroll Roster
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Recording Required?

January 18, 2022

All Departments:

December 31, 2021

ADMINISTRATIVE TEAM	2,836.90
CITY COUNCIL	4,612.50
CITY MANAGER	31,995.11
CIVIL SERVICE	4,060.00
COMMUNITY PLANNING & ECONOMIC DEVELOPMENT	24,328.59
EMPLOYEE & COMMUNITY RELATIONS	46,741.06
ENGINEERING	57,412.13
FACILITIES & GROUNDS	72,433.68
FINANCE	51,092.72
FIRE	98,532.88
LEGAL SERVICES	22,291.52
MANAGEMENT SERVICES	86,168.06
POLICE	479,399.64
	<hr/>
Subtotal General Fund	<b>981,904.79</b>
STREETS	28,773.03
TRAFFIC	23,454.12
	<hr/>
Subtotal Street Fund	<b>52,227.15</b>
BI-PIN	10,248.02
BUILDING SAFETY	45,580.03
COMMUNITY DEVELOPMENT	4,125.98
CRIMINAL JUSTICE	66,942.69
EQUIPMENT RENTAL	10,518.34
MEDICAL SERVICES	353,604.07
RISK MANAGEMENT	3,937.32
STORMWATER UTILITY	18,232.22
WATER & SEWER	153,444.67
	<hr/>
Subtotal Other Funds	<b>666,633.34</b>
Total Salaries and Wages	<b>1,700,765.28</b>
<u>Benefits:</u>	
Industrial Insurance	41,382.74
Medical Retirement Account	3,262.50
Retirement	124,555.56
Social Security (FICA)	99,694.89
WA Family Leave	2,607.09
	<hr/>
	<b>271,502.78</b>
Total Benefits	
Grand Total	<b><u><u>\$1,972,268.06</u></u></b>

I, Dan Legard, Finance Director, at the direction of the Council, do hereby certify that the Payroll hereinabove specified is approved for payment in the amount of \$1,972,268.06 comprised of check numbers 75512 through 75518 and direct deposit numbers 198505 through 198918.

Approved for payment:



Dan Legard, Finance Director

# Council Agenda Coversheet



Agenda Item Number	3.d.	Council Date	01/18/2022
Agenda Item Type	Contract/Agreement/Lease		
Subject	Interlocal Agreement with Benton County		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Public Works		

Consent Agenda	<input checked="" type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Dove Ridge Subdivision in the Kennewick Urban Growth Area.

### Motion for Consideration

I move to authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Dove Ridge Subdivision in the Kennewick Urban Growth Area.

### Summary

From time to time, certain developments in the County, but within Kennewick's Urban Growth Area (UGA), are built to the City's urban street standards, which includes curb & gutter, sidewalks, storm drains and street lighting.

When this occurs, the City makes the commitment to inspect, operate and maintain those urban amenities, especially when it is likely that these streets will be annexed into the City at some future date. The Dove Ridge Subdivision is such a development.

Staff has negotiated a template Interlocal Agreement for such circumstances, and it has been reviewed and approved as to form by the City Attorney. In the agreement, duties and responsibilities are divided or shared between the City and the County as appropriate.

It is staff's intention to use this ILA as a template moving forward for similar urban street improvements within the City's UGA, for developments approved by the City.

### Alternatives

None.

### Fiscal Impact

Minor maintenance costs for storm drain, street sweeping and street lighting to have streets built to City urban standards.

Through	Bruce Mills Jan 13, 13:22:58 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 13, 13:25:27 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 15:21:58 GMT-0800 2022

Attachments: Agreement

Recording Required?



# RESOLUTION 2022 038

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF AUTHORIZING THE EXECUTION OF AN INTERLOCAL COOPERATIVE AGREEMENT BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN DOVE RIDGE SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA**

**WHEREAS**, pursuant to RCW 39.34, local government units are permitted to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

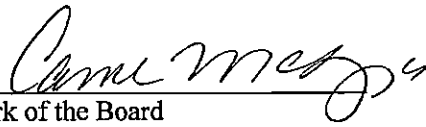
**WHEREAS**, The City of Kennewick, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be constructed as a condition of development of urban growth areas with properties adjoining the City. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards; and


**WHEREAS**, Benton County and the City of Kennewick desire to enter into an agreement that sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Dove Ridge subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards as requested by the City; **NOW, THEREFORE;**


**BE IT RESOLVED**, The Benton County Board of Commissioners hereby approves the attached Interlocal Cooperative Agreement between Benton County and the City of Kennewick and the Chairman of the Board of County Commissioners is hereby authorized and directed to execute said agreement, a copy of which is attached.

Dated this 11th day of January 2022:

Attest:

  
Clerk of the Board

  
Chairman

  
Chairman Pro-Tem

  
Member

Constituting the Board of County  
Commissioners of Benton County,  
Washington

**INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK  
FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN  
DOVE RIDGE SUBDIVISION IN THE KENNEWICK URBAN GROWTH AREA**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "the County") with its principal offices located at 620 Market Street, Prosser, Washington, 99350, by and for the Benton County Public Works Department, and the City of Kennewick (hereinafter "the City"), with its principal offices located at 210 W. 6<sup>th</sup> Avenue, Kennewick, Washington, 99336, by and for the City of Kennewick Public Works Department, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I  
PURPOSE**

- 1.01 **PURPOSE.** The City, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be done as a condition of development of adjoining properties. In instances where the developing land owner has been required to make these improvements by request of the City, the County may promote the City's request in accordance with Section 2 of the Memorandum of Understanding dated October 6, 1998. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Dove Ridge subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards requested by the City.

**ARTICLE II  
ADMINISTRATION AND ORGANIZATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 The County's representative shall be the Public Works Director/County Engineer or their authorized designee.
- 2.03 The City's representative shall be the Public Works Director or their authorized designee.
- 2.04 This Agreement is entered into pursuant to Chapter 39.34 RCW as an interlocal agreement between the parties. Each party shall be solely responsible for all costs,

materials, supplies, and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incidental to the fulfillment of this Interlocal Agreement shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incidental to, this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor, or posted on the County's or City's website, as provided by Chapter 39.34 RCW.

**ARTICLE III  
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL**. This Agreement shall be effective when executed by both parties' authorized representatives and shall continue until annexation occurs, unless terminated in writing by either party, consistent with the termination provisions of this Agreement.
- 3.02 **SCOPE OF WORK**. The following shall be a division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Dove Ridge subdivision. Costs for necessary labor, equipment and materials for each task shall be borne by the responsible party

TASK	RESPONSIBLE PARTY	
	COUNTY	CITY
Plans review	X	X
Inspection	X	X
Setting speed limits	X	
Pavement maintenance	X	
Road signage maintenance	X	
Road striping & pavement marking maintenance	X	
Snow and ice control	X	
Vegetation maintenance	X	
Street sweeping		X
Curb & gutter maintenance		X
Storm drain system maintenance		X
Street light system maintenance		X

Electrical service charges for street lights		X
Note: Maintenance of sidewalks, landscaping, irrigation and stormwater ponds are the responsibility of the individual property owners or the homeowners association.		

Construction plans shall be jointly approved by the City Public Works Director and the County Engineer.

**ARTICLE IV  
COMPENSATION**

4.01 **COMPENSATION.** Each party is responsible for all cost, materials and services necessary to perform their portion of the above scope of work. In the event one party performs all or a portion of the other parties responsibility, with prior written approval or notification, the responsible party shall reimburse the other party based on the actual cost of labor, equipment rental, engineering, and/or materials used in the prosecution of the work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition, thereto, a reasonable percent of the total costs may be added for overhead costs for accounting and billing and administrative services. A detailed calculation used to determine any overhead percentage claimed shall be provided on request by either party. Either party shall submit a certificate statement of the costs to the other or within thirty (30) days thereafter the other party shall pay the amount of said statement.

When the City requests that its urban standards be applied to a private development project pursuant to Section 3.02 the City will collect from the project developer any and all fees it would normally collect in accordance with fee schedules published at the time of development. When the project is a County Road Project no such fees will be applied.

**ARTICLE V  
PERFORMANCE OF AGREEMENT**

5.01 **COMPLIANCE WITH ALL LAWS.** Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including, without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS.** All work shall be completed in accordance with the latest version of the City of Kennewick Standards and Specifications. If there is no local standard or specification for the work to be

performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would its own property.

- 5.03 **MAINTENANCE AND AUDIT OF RECORDS**. Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.
- 5.04 **ON-SITE INSPECTIONS**. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance complies with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.05 **TREATMENT OF ASSETS AND PROPERTY**. No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.06 **IMPROPER INFLUENCE**. Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.07 **CONFLICT OF INTEREST**. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.08 **ASSIGNMENT AND SUBCONTRACTING**. No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties' authorized representatives.
- 5.09 **NOTICE**. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the City shall be to:  
City of Kennewick, Public Works Director PO Box 6108 Kennewick, WA 99336-0108.

Notice to the County, for all purposes under this Agreement, shall be to: Benton County Public Works Director and the Benton County Commissioners, 620 Market Street, Prosser, Washington, 99350.

**ARTICLE VI  
INDEMNIFICATION**

- 6.01 **INDEMNIFICATION.** The County agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

The City agrees to and shall defend, indemnify, and hold harmless the County, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the County, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

**ARTICLE VII  
DISPUTES**

- 7.01 **TIME.** Time is of the essence for this Agreement.
- 7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington.

In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the City Manager and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton

County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

## **ARTICLE VIII TERMINATION**

- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

## **ARTICLE IX GENERAL PROVISIONS**

- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2022.

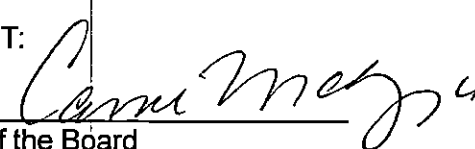
APPROVED:  
BOARD OF COUNTY COMMISSIONERS,  
BENTON COUNTY, WASHINGTON

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Chair Pro-Tem

  
\_\_\_\_\_  
Member

ATTEST:

By:   
\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

By:   
\_\_\_\_\_  
Prosecuting Attorney

APPROVED:  
CITY OF KENNEWICK

\_\_\_\_\_  
City Manager (Marie E. Mosley)

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney



# Council Agenda Coversheet



Agenda Item Number	3.e.	Council Date	01/18/2022
Agenda Item Type	Contract/Agreement/Lease		
Subject	Interlocal Agreement with Benton County		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Public Works		

Consent Agenda	<input checked="" type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Highland Vineyards Phase 1 and Phase 2 Subdivision in the Kennewick UGA.

### Motion for Consideration

I move to authorize the City Manager to sign an Interlocal Cooperative Agreement with Benton County for inspection, operation and maintenance of County roads within the Highland Vineyards Phase 1 and Phase 2 Subdivision in the Kennewick UGA.

### Summary

From time to time, certain developments in the County, but within Kennewick's Urban Growth Area (UGA), are built to the City's urban street standards, which includes curb & gutter, sidewalks, storm drains and street lighting.

When this occurs, the City makes the commitment to inspect, operate and maintain those urban amenities, especially when it is likely that these streets will be annexed into the City as some future date. The Highland Vineyards Phase 1 & Phase 2 Subdivision is such a development.

Staff has negotiated a template Interlocal Agreement for such circumstances, and it has been reviewed and approved as to form by the City Attorney. In the agreement, duties and responsibilities are divided or shared between the City and the County as appropriate.

It is staff's intention to use this ILA as a template moving forward for similar urban street improvements within the City's UGA, for developments approved by the City.

### Alternatives

None recommended.

### Fiscal Impact

Minor maintenance costs for storm drain, street sweeping and street lighting to have streets built to City urban standards.

Through	Bruce Mills Jan 12, 09:29:36 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 12, 14:02:50 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 15:24:11 GMT-0800 2022

Attachments: Agreement

Recording Required?

**INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN BENTON COUNTY AND THE CITY OF KENNEWICK  
FOR INSPECTION, OPERATION AND MAINTENANCE OF COUNTY ROADS WITHIN  
HIGHLAND VINEYARDS PHASE 1 AND PHASE 2 SUBDIVISION IN THE KENNEWICK  
URBAN GROWTH AREA**

THIS AGREEMENT is made and entered into by and between Benton County (Hereinafter "the County") with its principal offices located at 620 Market Street, Prosser, Washington, 99350, by and for the Benton County Public Works Department, and the City of Kennewick (hereinafter "the City"), with its principal offices located at 210 W. 6<sup>th</sup> Avenue, Kennewick, Washington, 99336, by and for the City of Kennewick Public Works Department, pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**ARTICLE I  
PURPOSE**

- 1.01 **PURPOSE.** The City, anticipating annexation of particular areas into its incorporated limits, may request that certain urban roadway improvements be done as a condition of development of adjoining properties. In instances where the developing land owner has been required to make these improvements by request of the City, the County may promote the City's request in accordance with Section 2 of the Memorandum of Understanding dated October 6, 1998. The parties recognize that the County lacks the resources to maintain certain improvements that are above and beyond its own design standards. This agreement sets forth the terms and conditions under which the County and City will be jointly responsible for the construction inspection, operation and maintenance of the roadway and roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision county roads within the Urban Growth Area (UGA) of the City of Kennewick where the roads are developed to urban standards requested by the City.

**ARTICLE II  
ADMINISTRATION AND ORGANIZATION**

- 2.01 **ADMINISTRATOR.** The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.
- 2.02 The County's representative shall be the Public Works Director/County Engineer or their authorized designee.
- 2.03 The City's representative shall be the Public Works Director or their authorized designee.
- 2.04 This Agreement is entered into pursuant to Chapter 39.34 RCW as an interlocal agreement between the parties. Each party shall be solely responsible for all costs,

materials, supplies, and services necessary for their performance under the terms of this Agreement. All property and materials secured by each party in the performance of this Agreement shall remain the sole property of that party. All funding incidental to the fulfillment of this Interlocal Agreement shall be borne by each party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incidental to, this Interlocal Cooperation Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement.

A copy of this Interlocal Agreement shall be filed with the Benton County Auditor, or posted on the County's or City's website, as provided by Chapter 39.34 RCW.

**ARTICLE III  
DURATION AND RENEWAL OF AGREEMENT**

- 3.01 **DURATION AND RENEWAL.** This Agreement shall be effective when executed by both parties' authorized representatives and shall continue until annexation occurs, unless terminated in writing by either party, consistent with the termination provisions of this Agreement.
  
- 3.02 **SCOPE OF WORK.** The following shall be a division of responsibilities for the inspection, operation and maintenance of the road and its roadway appurtenances in the Highland Vineyards phase 1 and phase 2 subdivision. Costs for necessary labor, equipment and materials for each task shall be borne by the responsible party

TASK	RESPONSIBLE PARTY	
	COUNTY	CITY
Plans review	X	X
Inspection	X	X
Setting speed limits	X	
Pavement maintenance	X	
Road signage maintenance	X	
Road striping & pavement marking maintenance	X	
Snow and ice control	X	
Vegetation maintenance	X	
Street sweeping		X
Curb & gutter maintenance		X
Storm drain system maintenance		X
Street light system maintenance		X

Electrical service charges for street lights		X
Note: Maintenance of sidewalks, landscaping, irrigation and stormwater ponds are the responsibility of the individual property owners or the homeowners association.		

Construction plans shall be jointly approved by the City Public Works Director and the County Engineer.

**ARTICLE IV  
COMPENSATION**

4.01 **COMPENSATION**. Each party is responsible for all cost, materials and services necessary to perform their portion of the above scope of work. In the event one party performs all or a portion of the other parties responsibility, with prior written approval or notification, the responsible party shall reimburse the other party based on the actual cost of labor, equipment rental, engineering, and/or materials used in the prosecution of the work involved; plus all costs for fringe benefits to labor, including, but not limited to: social security, retirement, industrial and medical aid costs, prorated sick leave, holidays and vacation time, and group medical insurance. In addition, thereto, a reasonable percent of the total costs may be added for overhead costs for accounting and billing and administrative services. A detailed calculation used to determine any overhead percentage claimed shall be provided on request by either party. Either party shall submit a certificate statement of the costs to the other or within thirty (30) days thereafter the other party shall pay the amount of said statement.

When the City requests that its urban standards be applied to a private development project pursuant to Section 3.02 the City will collect from the project developer any and all fees it would normally collect in accordance with fee schedules published at the time of development. When the project is a County Road Project no such fees will be applied.

**ARTICLE V  
PERFORMANCE OF AGREEMENT**

5.01 **COMPLIANCE WITH ALL LAWS**. Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including, without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.

5.02 **COMPLIANCE WITH STANDARDS AND SPECIFICATIONS**. All work shall be completed in accordance with the latest version of the City of Kennewick Standards and Specifications. If there is no local standard or specification for the work to be

performed, the acting party shall comply with WSDOT standards and specifications. If there is no WSDOT standard or specification, the acting party may complete the work as it would its own property.

- 5.03 **MAINTENANCE AND AUDIT OF RECORDS**. Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subjected to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records, documents, and other materials for the applicable retention period under federal and Washington law.
- 5.04 **ON-SITE INSPECTIONS**. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance complies with the standards set forth in this Agreement, and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 5.05 **TREATMENT OF ASSETS AND PROPERTY**. No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 5.06 **IMPROPER INFLUENCE**. Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 5.07 **CONFLICT OF INTEREST**. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 5.08 **ASSIGNMENT AND SUBCONTRACTING**. No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties' authorized representatives.
- 5.09 **NOTICE**. Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice to the City shall be to:  
City of Kennewick, Public Works Director PO Box 6108 Kennewick, WA 99336-0108.  
Notice to the County, for all purposes under this Agreement, shall be to: Benton County Public Works Director and the Benton County Commissioners, 620 Market Street, Prosser, Washington, 99350.

**ARTICLE VI  
INDEMNIFICATION**

6.01 **INDEMNIFICATION.** The County agrees to and shall defend, indemnify, and hold harmless the City, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the City, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the County, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the City, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

The City agrees to and shall defend, indemnify, and hold harmless the County, its appointed and elective officials, officers, agents, and employees, from and against all loss or expense, including, but not limited to: judgments, settlements, attorney's fees, and costs by reason of any and all claims and demands upon the County, its elected or appointed officials, officers, agents, or employees for damages because of personal or bodily injury, including death, at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, when such injury to persons or damage to property is due to the negligence of the City, its elected officials, officers, employees, or their agents, except when such injury or damage shall have been occasioned by the sole negligence of the County, its appointed or elected officials, officers, agents, or employees. It is further provided that no liability shall attach to the County by reason of entering into this Agreement, except as expressly provided herein.

**ARTICLE VII  
DISPUTES**

7.01 **TIME.** Time is of the essence for this Agreement.

7.02 **GOVERNING LAW AND VENUE.** This Agreement shall be governed exclusively by the laws of the State of Washington.

In the event of a dispute regarding the enforcement, breach, or interpretation of this Agreement, the City Manager and the County Administrator shall first meet in a good faith attempt to resolve such dispute. In the event they are unable to resolve such dispute, either individually or with the assistance of a mediator, the dispute shall be resolved by arbitration pursuant to RCW 7.04A; with venue being placed in Benton

County, Washington; with all parties waiving the right of a jury trial upon *de novo* appeal, if any; and the substantially prevailing party being awarded its attorney fees and costs as additional award and judgment against the other.

## **ARTICLE VIII TERMINATION**


- 8.01 **TERMINATION.** Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

## **ARTICLE IX GENERAL PROVISIONS**

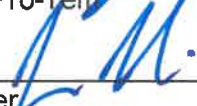
- 9.01 **CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS.** The Agreement may be changed, modified, amended, or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence, or omission and shall not constitute a waiver as to any other term or condition, or future act, occurrence, or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.
- 9.02 **ASSIGNMENT.** Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, subcontract, or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.
- 9.03 **SEVERABILITY.** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this Agreement are declared severable.
- 9.04 **ENTIRE AGREEMENT.** This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated herein by reference will be attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.
- 9.05 **FILING.** This Agreement shall be filed pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2022.

APPROVED:  
BOARD OF COUNTY COMMISSIONERS,  
BENTON COUNTY, WASHINGTON

  
\_\_\_\_\_  
Chair

  
\_\_\_\_\_  
Chair Pro-Tem

  
\_\_\_\_\_  
Member

ATTEST:  
By:   
Clerk of the Board

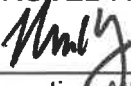
APPROVED:  
CITY OF KENNEWICK

\_\_\_\_\_  
City Manager (Marie E. Mosley)

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

By:   
Prosecuting Attorney



# Council Agenda Coversheet



Agenda Item Number	3.f.	Council Date	01/18/2022
Agenda Item Type	Contract/Agreement/Lease		
Subject	License Agreement for 2301 W 21st Ave		
Ordinance/Reso #		Contract #	
Project #		Permit #	ENG-2022-0001
Department	Public Works		

Consent Agenda	<input checked="" type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Authorize the City Manager to sign a license agreement with Esmeralda Sanchez Rodriguez to install a fence, landscaping and garden within the right-of-way of West 22nd Avenue.

### Motion for Consideration

I move to authorize the City Manager to sign the License Agreement for 2301 W. 21st Ave with Esmeralda Sanchez Rodriguez.

### Summary

The applicant owns property at 2301 West 21st Avenue, and desires to place a fence, landscaping and garden along a portion of unused right-way-way for West 22nd Avenue. The development of the plat of Lauria Meadows created an area of unused right-of-way that has become an issue for weeds, garbage and parking blocking the applicants access to the rear of his property.

The license agreement notifies the applicant that the City may take back this area at any time in the future, with no compensation to the applicant.

Staff recommends granting the license agreement.

### Alternatives

None recommended

### Fiscal Impact

\$350 Permit Fee

Through	Bruce Mills Jan 11, 15:47:32 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 11, 16:24:25 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 15:34:45 GMT-0800 2022

Attachments: License Agreement  
Map

Recording Required?

After Recording Return to:  
City Clerk's Office  
PO Box 6108  
Kennewick WA 99336

## LICENSE AGREEMENT

Tax Parcel ID #: 1-1189-304-0000-001  
Location: 2301 West 21st Avenue

For and in consideration of the mutual covenants contained herein, the undersigned, CITY OF KENNEWICK (hereinafter referred to as "City" or "Licensor"), and Esmeralda Sanchez Rodriguez (hereinafter referred to as the "Licensee"), hereby agree as follows:

1. The City hereby grants to the Licensee a license for the following described real property:

Portion of the Northeast quarter of the Southwest quarter of Section 11, Township 8 North, Range 29 East, Willamette Meridian, Benton County, Washington:

Beginning at the southeast corner of Lot 1 of Nielsen's Plat recorded under Auditor File Number 226692, thence along the south line of said Lot 1 South 88°23'50" West for a distance of 65.32 feet to the southwest corner of said lot;

Thence South 00°48'40" East for a distance of 38.00 feet to a point on a 133.00-foot radius curve concave to the northwest, radius point of said curve bears North 01°36'02" West;

Thence northeasterly along said curve through a central angle of 29°30'41" for an arc distance of 68.50 feet;

Thence North 00°41'39" West for a distance of 20.75 feet to the True Point of Beginning;

Contains 2,117 square feet more or less.

2. This license is granted to allow the Licensee, at his/her request, to use the property solely for the installation and maintenance of fencing, landscaping and garden (hereinafter referred to as "improvements"). The private non-structural improvements may be installed in that portion of the public right of way described above in Section 1, subject to inspection and approval by the City. The improvements shall not encroach on the existing roadways, sidewalks, or other public infrastructure; or obstruct access to public facilities.

3. In the event of any change to the Licensee's property, the Licensee will bring the improvements into compliance with applicable City standards, conditions or requirements within sixty (60) days after written notice by the City. Should the City need to enter into the improved property to protect the public health, safety or welfare, any damage done by the City to improvements made under this license shall be at the sole responsibility of the Licensee.
4. The Licensee shall maintain the improvements to the property in a safe and well cared for condition. The Licensee shall maintain the improvements per the approved plans, unless otherwise directed or approved in writing by the City. The Licensee shall make any modifications to the improvements directed by the City within sixty (60) days written notice by the City. The Licensee shall be solely responsible for all costs associated with the maintenance of, and for any City approved or directed modifications of the improvements located on the property.
5. Use of public rights-of-way is considered temporary in nature and may not be used to lessen or abrogate any City code requirements.
6. This License Agreement may be assigned by the Licensee, subject to the prior written approval of the City Manager.
7. The parties acknowledge that a License Agreement is a limited permission to occupy property, and Licensee's rights are limited to only those expressly provided in this Agreement. The parties acknowledge that this License Agreement may be revoked at any time upon sixty (60) days written notice to the Licensee by the City Manager. At the end of the 60 days, Licensee will have an additional 30 days to remove all improvements made in the property at the sole cost and expense of the Licensee. Licensee agrees to remove all improvements and restore the property in accordance to City standards, conditions and requirements. Should the Licensee fail to remove the improvements and restore the property to the City's satisfaction, the City may have the improvements removed at the cost of the Licensee. Licensee agrees that upon notice of the costs of removal of the improvements and restoration of the property, and their refusal to reimburse the City, the City may file a lien against their property (adjacent to the licensed property) for the removal and restoration costs.
8. The Licensee has paid the City a one-time administrative fee of \$350.00, which covers City processing costs and recording fees.
9. In exchange for the granting of this License Agreement, the Licensee, its successors and assigns, hereby release and hold harmless and agree to defend and indemnify the City of Kennewick from any and all losses, claims, actions, damages, costs or liability associated with the installation, presence and maintenance of improvements described in Section 2 of this agreement. This Agreement shall be binding upon the Licensee, their successors and assigns.

- 10. Any terms, conditions, requirements, determinations, directions, or decisions by the City of Kennewick with respect to the use of the public property made under this License Agreement are final and are not subject to appeal.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF KENNEWICK**

\_\_\_\_\_  
MARIE E. MOSLEY, City Manager

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

**LICENSEE**

\_\_\_\_\_  
ESMERELDA SANCHEZ RODRIGUEZ

STATE OF WASHINGTON )  
) ss.  
COUNTY OF BENTON )

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the individual who executed the foregoing instrument and acknowledged said instrument to be his free and voluntary act and deed, and on oath stated that he is authorized to execute said instrument.

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

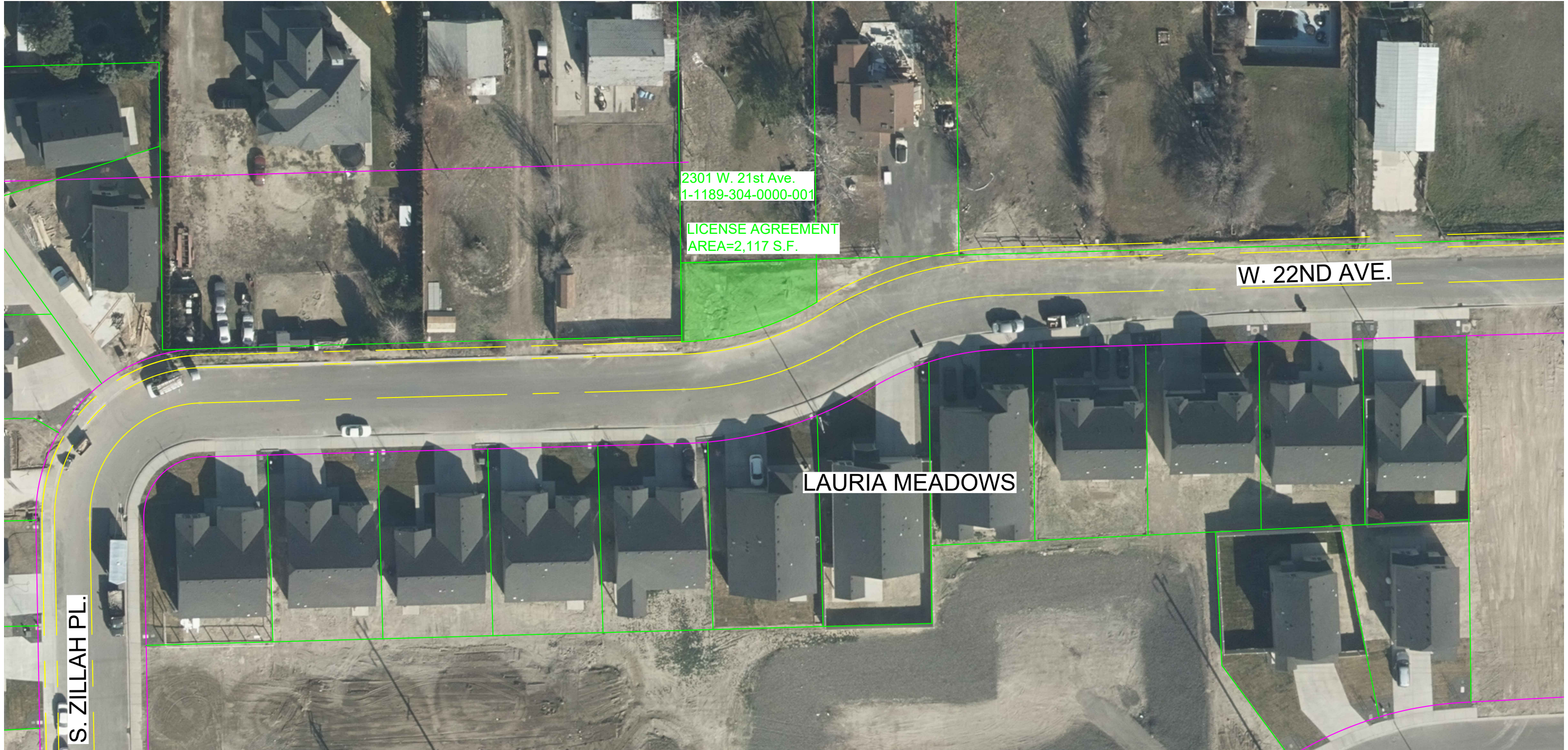
\_\_\_\_\_  
Notary Public in and for the State of Washington residing at \_\_\_\_\_  
My Commission Expires:

STATE OF WASHINGTON            )  
  ) ss.  
COUNTY OF BENTON            )

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared MARIE E. MOSLEY, to me known to be the City Manager of the City of Kennewick, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

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

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My Commission Expires:



2301 W. 21st Ave.  
1-1189-304-0000-001

LICENSE AGREEMENT  
AREA=2,117 S.F.

W. 22ND AVE.

LAURIA MEADOWS

S. ZILLAH PL.

# Council Agenda Coversheet



Agenda Item Number	3.g.	Council Date	01/18/2022
Agenda Item Type	Contract/Agreement/Lease		
Subject	2021 Bituminous Surface Treatment Seal Coat		
Ordinance/Reso #		Contract #	
Project #	P2021-20	Permit #	
Department	Public Works		

Consent Agenda

Ordinance/Reso

Public Mtg / Hrg

Other

Quasi-Judicial

### Recommendation

Staff recommends that Council increase the authorized contract amount from \$618,566.30 to \$720,257.51 and accept the work of Tommer Construction for Contract P2021-20 (2021 Bituminous Surface Treatment Seal Coat), in the amount of \$720,257.51.

### Motion for Consideration

I move to increase the authorized contract amount from \$618,566.30 to \$720,257.51 and accept the work of Tommer Construction for Contract P2021-20 (2021 Bituminous Surface Treatment Seal Coat), in the amount of \$720,257.51.

### Summary

Original Contract \$ 562,333.00 (Authorized amount w/ Contingency: \$618,566.30)  
 Change Orders \$ 101,503.91  
 Quantity Changes \$ 56,420.60  
 Total \$ 720,257.51 (+16.4% above authorized amount)

This project included the application of bituminous surface treatment (BST) seal coat of approximately 9.1 miles of streets within the Kennewick City Limits, including a portion of Washington St between W 1st Ave and E Columbia Dr. Work also included patching of selected areas of BST streets, pre-project sweeping by City crews, traffic control, and removal and replacement of pavement markings.

The increase in work was from the addition of 3 locations to the project, due to the excellent bid prices the City received.

The three additional locations that were added to the BST project and their overall cost are;

W 45th Ave. between S Vancouver St. and S Olympia St.	\$68,885.65
W Deschutes Ave. between N Morain St. and N Johnson St.	\$47,060.20 (\$39,400 reimbursed by property owners)
Fire Station No. 2 Parking Lot	\$16,356.86 (reimbursed by Parks and Facilities)

The attached memo (attached as "Memo") from Bruce Mills, Deputy Public Works Director, provides a more detailed summary of the changes to the contract that resulted in the increased project cost.

### Alternatives

None

### Fiscal Impact

Arterial Street Fund - 2021 Local Pavement Preservation	\$614,581.94
Reimbursement from Parks and Facilities	\$ 16,356.86
Reimbursement from Adjacent Property Owners	\$ 39,400.00
P1918-21 Washington Street Corridor Project	\$ 49,918.72

Through	Kendrick Glover Jan 11, 16:29:07 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 13, 06:07:30 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 15:42:46 GMT-0800 2022

Attachments:

Recording Required?



*Leading the Way*

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## MEMORANDUM

Public Works Department

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September 17, 2021

To: Cary M. Roe, PE, Public Works Director  
From: Bruce Mills, PE, Deputy Public Works Director  
Subject: **P2021-20: 2021 BST Contract – Project Cost Overruns**

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### **Executive Summary**

In performing the 2021 BST contract, several cost increases occurred for additional contracted work and an oil price adjustment. This memo summarizes and explains those additional items and adjustments. The original awarded contract amount was for \$618,566.30, which included an authorized 10% for change orders/contingencies. The final amount of the contract was \$720,257.51, an increase of 16.4% over the authorized amount. The attached September 9, 2021 memo details all final costs for the project.

### **Adding 45<sup>th</sup> Avenue (Olympia to Vancouver)**

This section of roadway greatly deteriorated in the past year, but was not an asphalt overlay candidate because of a future water line replacement and a lower volume of traffic (3700 vehicles/day). We solicited a quote from the contractor to add this road section to the contract for \$68,885.65. By performing skin and BST patches and a double shot of BST over the drive lanes (single shot over paved shoulders), we have bought 8-10 years before needing to replace the water line and do an overlay.

### **Adding Fire Station No. 2 Parking Lot**

After the contract was awarded, Parks/Facilities asked if Public Works could get a quote to add this deteriorated parking lot into the contract, which was done for \$16,356.86. This included skin and BST patching prior to the BST seal coat. The costs will be reimbursed back to Public Works by Parks/Facilities.

### **Adding Deschutes Avenue (Morain to Johnson)**

This private road, which also fronts the City's Fire Station No. 2, was in extremely deteriorated condition, with several dangerously deep potholes. Public Works received a quote from the Contractor to patch and double shot this street for \$39,400 (including the fire station frontage). Public Works approached the adjoining six property owners, and secured a written commitment from them to pay their fixed share of the \$39,400. The final cost increased to \$47,060.20 - an additional \$7,660.20 - due to additional pothole repairs, utility adjustments, oil price increase and unplanned for sales tax, due to it being work in a private (not public) street.

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## PUBLIC WORKS



Unfortunately, the written commitments by the six private property owners were for a fixed amount, based on the original contractor quote. The additional \$7,660.20 costs to the City are justified somewhat based on the daily use of the street by heavy City fire trucks/emergency vehicles. In other words, City fire trucks cause a majority of the damage to the street, justifying a larger final share of the total street BST costs.

### **Summary**

Of the additional \$101,691.21 spent above the originally authorized amount of \$618,566.30, adjacent Deschutes Avenue property owners and Parks/Facilities reimbursed \$55,756.86, and the remaining \$45,934.35 was charged to the 2021-22 pavement preservation budget.

Additionally, Washington Street (Kennewick Ave to Columbia Drive) received a BST seal coat with this project, and will reimburse the pavement preservation budget \$50,252.22 from that project's funding sources.

Each decision to add these items to the contract was sound, and resulted in a much better condition pavement surface, saving the City significant future maintenance costs. Occurring in the first year of a biennium budget, there is no negative effect on the pavement preservation *program budget*. However, in hindsight these additional project costs should have been pre-authorized by the Council to expand the individual 2021 BST *project budget*. Extra care must be exercised in the future to keep a running total of any additional work and adjustments during the contract, to avoid exceeding the authorized amount without receiving additional spending authority from the Council.

<b>Council Agenda Coversheet</b>  	Agenda Item Number	3.h.	Council Date	01/18/2022	Consent Agenda	<input checked="" type="checkbox"/>
	Agenda Item Type	Contract/Agreement/Lease			Ordinance/Reso	<input type="checkbox"/>
	Subject	Solid Waste Interlocal Agreement			Public Mtg / Hrg	<input type="checkbox"/>
	Ordinance/Reso #		Contract #		Other	<input type="checkbox"/>
	Project #		Permit #		Quasi-Judicial	<input type="checkbox"/>
	Department	Public Works				

**Recommendation**

Authorize the City Manager to sign the Solid Waste Interlocal Agreement with Benton County for 2022-2023.

**Motion for Consideration**

I move to authorize the City Manager to sign the Solid Waste Interlocal Agreement with Benton County for 2022-2023.

**Summary**

In compliance with State of Washington solid waste management requirements, Benton County acts as the Lead Agency for the Solid Waste Management Program. The City of Kennewick and other cities in Benton County participate in the management of this plan and its programs through the Solid Waste Advisory Committee via an Interlocal Agreement.

The current agreement expired 12/31/2021. The proposed new two-year agreement will cover 2022 and 2023, and it aligns with the Washington State Department of Ecology Solid Waste Grant to Benton County (7/1/2021 - 6/30/2023), in the amount of \$682,504.00. The grant will be used to pay approximately two-thirds of the construction costs for the new Moderate Risk Waste Facility that will be completed in 2022 and located at the former County Shop at 1709 S. Ely Street in Kennewick.

Benton County and the cities pay a 25% local match for the grant (\$170,626.00), with each city's portion based on population. Kennewick currently has about 41% of Benton County's population, and our associated local match share is \$69,956.66. Our share of the local match will be paid with revenues from fees for extra garbage carts.

This is our entire contribution to the County Solid Waste Management Program for 1/1/2022 - 6/30/2023, when a new grant will be issued by Ecology. All other program costs, including operational costs for the Moderate Risk Waste Facility and two annual mobile collection events, will be paid from existing County Solid Waste funds.

Staff recommends the execution of the Solid Waste Interlocal Agreement.

**Alternatives**

None recommended.

**Fiscal Impact**

\$69,956.66 from City Solid Waste revenues.

Through	Bruce Mills Jan 12, 14:31:39 GMT-0800 2022	Attachments: <input type="text" value="Agreement"/>
Dept Head Approval	Cary Roe Jan 12, 14:52:52 GMT-0800 2022	
City Mgr Approval	Marie Mosley Jan 14, 16:12:06 GMT-0800 2022	
		<input type="checkbox"/> Recording Required?

INTER-LOCAL AGREEMENT  
REGARDING SOLID WASTE MANAGEMENT  
BENTON COUNTY

This Agreement addresses City-County joint participation in the countywide Solid Waste Plan and joins public agencies to exercise their powers, thereby maximizing their ability to provide services and facilities which will best fulfill the needs of the community as a whole, and is made and entered into effective the first day of January 2022, by and between Benton County, a political subdivision of the State of Washington, hereafter referred to as the Lead Agency, and the cities of Benton City, Kennewick, Richland, Prosser, and West Richland, political subdivisions of the State of Washington, and hereafter referred to as Participating Jurisdictions. The Participating Jurisdictions and Lead Agency may be referred to herein collectively as the Parties.

I. RECITALS

WHEREAS, the parties hereto recognize the requirement to prepare and implement solid and hazardous waste plans under RCW Chapter 70.95 and RCW Chapter 70.105, and

WHEREAS, the parties have developed the Benton County Comprehensive Solid Waste Plan with public involvement; and

WHEREAS, the parties have adopted the Benton County Comprehensive Solid Waste Plan fulfilling their jurisdictional requirements under RCW Chapter 70.95 and RCW Chapter 70.105; and

WHEREAS, the parties hereto wish to enter into a cooperative effort to administer, plan, and implement the recommendations contained within the adopted Benton County Comprehensive Solid Waste Plan; and

WHEREAS, the Solid Waste Advisory Committee advises the Board of County Commissioners with respect to developing plans and policies for solid waste management in Benton County, each Participating Jurisdiction and Lead Agency recognizes that all members of the Solid Waste Advisory Committee shall have one (1) equal vote; and

WHEREAS, the Lead Agency will manage, track and provide custody for this Agreement, and

WHEREAS, the undersigned signatories of this Agreement are duly authorized to enter into the same by properly adopted resolutions,

NOW THEREFORE, in consideration of the foregoing recitals and the mutual agreements and covenants herein contained, the parties agree as follows:

## II. AGREEMENTS

### A. AUTHORITIES

The parties to this Agreement have and possess, both jointly and severally, the primary responsibility for effective solid and hazardous waste management, planning and implementation under RCW Chapters 70.95 and 70.105. Under RCW Chapter 39.34, the Inter-local Cooperation Act, local governments are authorized to cooperate to provide themselves with services of the nature herein agreed to.

### B. PURPOSE

This Agreement is entered into pursuant to RCW Chapter 39.34 for the purpose of cooperative management of solid waste within Benton County. It is the intent of the parties to work cooperatively in implementing and managing a comprehensive solid waste management plan pursuant of RCW Chapters 70.95 and 70.105 that is viable and economically responsible to their citizens. Specifically, this Agreement will provide for the administration, planning and operations of the adopted Benton County Comprehensive Solid Waste Management Program.

### C. DEFINITIONS

For the purpose of this Agreement, the following definitions shall apply:

‘Fair Share’ - the amount owed by each of the Parties, based upon April 1 population figures for the given year supplied by the Washington State Office of Financial Management (OFM), and the corresponding population percentage applied to the Solid Waste Program Budget.

‘Solid Waste Advisory Committee’ (SWAC) - a committee, formed pursuant to RCW 70.95.165, comprised of no more than twelve (12) members representing a balance of interests, pursuant to state statutes. Said committee shall contain one representative of each of the Parties. Each Party shall nominate its representative to the SWAC to the Lead Agency, to be approved by the Board of County Commissioners. The SWAC shall review Solid Waste Program budget and activities and make recommendations to the Benton County Commissioners.

‘Lead Agency’ - Benton County, a political subdivision of the State of Washington. The Lead Agency will administer, plan, and implement the Plan and Solid Waste Program.

‘Participating Jurisdictions’ - any City who has entered into the County-wide Solid Waste Inter-Local Agreement with the Lead Agency and who has agreed to mutually support and financially contribute to the administration, planning, and implementation of the Plan.

‘Parties’ - the collective term for all Participating Jurisdictions and Lead Agency.

‘Plan’ - the Benton County Comprehensive Solid Waste Management Plan, as the same exists now or may hereafter be amended.

‘Routine Operating Agreement’ (ROA) - an agreement that is established for the purpose of accomplishing a task set forth by the Parties and is funded within the Solid Waste Program Budget.

‘Solid Waste Advisory Committee Members Bylaws’ - the bylaws the same as now exist or may hereafter be amended.

‘Solid Waste Program Budget’ - the annual Countywide Solid Waste Budget, as prepared by Benton County and accepted by the SWAC, that appropriates funds to Routine Operating Agreements and administrative functions that meet specific requirements in RCW 70.95 and/or accomplishes goals as set fourth in the Plan.

‘Task’ - a project, program, activity, etc., that is annually funded from the Solid Waste Program Budget. All tasks are approved by the SWAC as needed and shall meet the recommendations set forth in the Plan.

‘Task Manager’ is designated to lead and manage a Task per the ROA.

#### D. LOCAL ADOPTION OF PLAN

Under the authority of RCW 70.95.080, each Participating Jurisdiction elected to enter into this agreement with the County pursuant to those jurisdictions that participated in preparing and adopting the joint City-County Plan.

#### E. PLAN IMPLEMENTATION

Pursuant to RCW 70.95.080 and RCW 70.105.220, the Participating Jurisdictions and Lead Agency jointly prepared the Plan in accordance with “Guidelines for the Development of Local Solid Waste Plans and Plan Revisions” (*i.e.* Department of Ecology (WDoE) Publication No. 90-11) and will implement the Plan’s recommendations, as approved by the Department of Ecology pursuant to RCW 70.95.094.

#### F. BENTON COUNTY SOLID WASTE ADVISORY COMMITTEE

The Parties hereto recognize and support the SWAC as an advisory board created under authority of RCW 70.95.165. The SWAC is an ongoing advisory committee. The

SWAC is the focal point of the public involvement effort used in the planning, development and implementation of the Plan. The SWAC also provides advice to the Parties on solid and hazardous waste issues and assists the Parties in developing solid waste ordinances, rules, guidelines, and policies prior to their adoption.

**G. REGIONAL PLANNING AREA**

The Parties hereto recognize the geographical planning area covered by this Agreement to be the incorporated areas of the Participating Jurisdictions and the unincorporated area of Benton County. The Hanford Nuclear Reservation is exempted from the Plan and this Inter-local Agreement.

**H. ROUTINE OPERATING AGREEMENT IMPLEMENTATION**

Two months prior to the biennial Solid Waste Program Budget workshop, all task managers are required to submit their ROA. As a minimum, an ROA will include: 1) Task Introduction Statement; 2) Task Scope of Work; 3) Task Responsibilities; 4) Annual Task Cost; and 5) Quality Control. Eligibility of an ROA request is based on task cost and meeting recommendations set forth in the Plan. The ROA request should include both activities undertaken by the Participating Jurisdiction submitting the ROA and any activities that the Participating Jurisdiction believes the Lead Agency should implement on a countywide basis. The SWAC shall recommend that a request be advanced to the Board of County Commissioners on a 2/3 majority of those members present.

**I. SOLID WASTE PROGRAM BUDGET**

The Parties agree to mutually and financially support the administration, planning and operations of the Plan recommendations or as specified in RCW 70.95. The Lead Agency shall prepare a Solid Waste Program Budget each year for the upcoming budget year. The budget will also include Routine Operating Agreements that provide information on projects funded by the annual budget.

**J. FAIR SHARE**

The Parties agree to pay a Fair Share of the administration, planning and operation of the Solid Waste Program, as determined and voted-on by the SWAC and approved by the Benton County Commissioners. Said Fair Share shall be a percentage of all program costs that are not covered by Local Solid Waste Financial Aid Funds, share percentages to be updated each April of the Agreement, being based on the most recent population figures as supplied by the Washington State OFM. The Parties agree to remit their fee to the Lead Agency within sixty (60) days of receiving an invoice from the Lead Agency. The Lead Agency's fair share shall be based on the population for the unincorporated areas of the County.

**K. DISBURSEMENT OF ASSETS AND DEBTS**

If this Agreement is terminated, all Parties to this Agreement shall determine the disbursement of any outstanding debts and the allocation of any assets. If the Parties cannot agree to the disbursement of any outstanding debts and the allocation of any assets, the issues are to be submitted for arbitration, pursuant to state law, RCW 7.04 *et seq.* The Lead Agency and the contesting jurisdiction agree that such arbitration shall be conducted before one (1) disinterested arbitrator.

#### L. DURATION

This Agreement shall commence on the date set forth above and will continue in effect to December 31, 2023, or until superseded by another Interlocal Agreement. As stipulated within RCW 70.95.110(1), each Plan shall be maintained in a current condition and reviewed and revised periodically as may be required by the WDoE. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty (20) years in the future, and a revised implementation schedule and implementation budget for six (6) years in the future.

#### M. REVIEW AND RENEGOTIATION

Any Party may request a review and/or renegotiations on any provision of the Agreement during the six-month period immediately preceding the ending date for the Agreement. Such request must be made in writing to the Lead Agency and must specify the provision(s) of the Agreement for which review/renegotiation(s) are requested. Review and/or renegotiation(s) pursuant to such a written request shall be immediately referred to the SWAC for their review and recommendation. Notwithstanding any other provisions in this paragraph to the contrary, the Parties may, pursuant to the procedure outlined within the Solid Waste Advisory Committee Members Bylaws, modify or amend any provision(s) of this Agreement at any time during the term of this Agreement.

#### N. TERMINATION

This Agreement may be terminated by any Participating Jurisdiction, by written notice to the Lead Agency no less than thirty (30) days immediately preceding the implementation date of the next Solid Waste Program Budget. The Parties agree: (1) that the termination will not absolve a terminating Party of any financial responsibility to the extent a financial responsibility continues to exist pursuant to the provisions of this Agreement; and (2) that prior to termination, a withdrawing City shall submit to the SWAC how it intends on meeting its planning obligation under RCW 70.95.080.

#### O. WAIVER

No waiver by any of the Parties of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach whether of the same or a different provision of this Agreement.

P. ENTIRE AGREEMENT

This Agreement, including the recitals and all subsequent attachments and addendums, constitutes the entire Agreement between the Parties and shall be governed by the laws of the State of Washington. There are no other oral or written agreements or understanding between the Parties as to the subject matter contained herein. The venue for any action of law, suit in equity and judicial proceeding for the enforcement of this Agreement shall be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

Q. SEVERABILITY

Any provisions of this Agreement that is determined to be illegal, invalid or unenforceable for any reason shall be ineffective to the extent of such prohibition without invalidating the remainder of this Agreement.



FOR THE CITY OF BENTON CITY, WASHINGTON.

\_\_\_\_\_  
Linda Lehman, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk/Treasurer

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in an for the State of Washington, duly commissioned and sworn, personally appeared Linda Lehman, to me known to be the Mayor of the City of Benton City, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Benton City.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

FOR THE CITY OF KENNEWICK, WASHINGTON.

\_\_\_\_\_  
Marie E. Mosley, City Manager

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in an for the State of Washington, duly commissioned and sworn, personally appeared Marie E. Mosley, to me known to be the City Manager of the City of Kennewick, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Kennewick.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at Kennewick  
My commission expires: \_\_\_\_\_

FOR THE CITY OF PROSSER, WASHINGTON.

\_\_\_\_\_  
Randy Taylor, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in an for the State of Washington, duly commissioned and sworn, personally appeared Randy Taylor, to me known to be the Mayor of the City of Prosser, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Prosser.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

FOR THE CITY OF RICHLAND, WASHINGTON.

\_\_\_\_\_  
Jon Amundson, City Manager

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jon Amundson, to me known to be the City Manager of the City of Richland, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of the City of Richland.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

FOR THE CITY OF WEST RICHLAND, WASHINGTON.

\_\_\_\_\_  
Brent Gerry, City Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in an for the State of Washington, duly commissioned and sworn, personally appeared Brent Gerry, to me known to be the Mayor of the City of West Richland, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of the City of West Richland.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

FOR BENTON COUNTY, WASHINGTON.

\_\_\_\_\_  
Jerome Delvin, Chairman  
Board of County Commissioners

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
Date

Approved as to Form:

\_\_\_\_\_  
Deputy Prosecuting Attorney

\_\_\_\_\_  
Date

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jerome Delvin, to me known to be the Chairman of the Board of Commissioners for Benton County, Washington, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument and that the seal affixed is the corporate seal of Benton County.

Witness my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_

# Council Agenda Coversheet



Agenda Item Number	3.i.	Council Date	01/18/2022
Agenda Item Type	Contract/Agreement/Lease		
Subject	Fleet MB Paint Truck Purchase		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	Management Services		

Consent Agenda	<input checked="" type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

## Recommendation

Staff recommends that Council authorize the purchase of one MB Peterbilt Paint Truck in the amount of \$512,640.

## Motion for Consideration

I move to authorize the purchase of one MB Peterbilt Paint Truck from MB Companies in the amount of \$512,640 including tax.

## Summary

Included in the 2021/22 budget is the replacement of a paint truck the Streets Department. City purchasing policy requires purchases greater than \$500,000 be approved by Council, even if they have previously been approved within the budget.

This authorization is for the purchase of one (1) MB Companies 2022 Peterbilt Paint Truck from MB Companies through a nationally competed Sourcewell contract. Fleet and Public Works staff have reviewed other manufacturer offerings available and determined the MB Paint Truck provided the best value and fit for the needs of the Department. Delivery of the vehicle is anticipated to be 9 months from receipt of order and we will install safety lighting at that time.

The purchase of the MB Paint Truck and lighting is from budgeted annual CIP transfer for Fleet replacement.

MB Companies 2022 Peterbilt Paint Truck: \$512,640

This purchase will also include the following additional costs from separate vendors, but the overall total is still within budget.

1. Licensing \$64.00

2. Additional Lighting (local install): \$6,887

TOTAL = \$519,591 (includes tax)

This item is to approve the contract with MB Companies for the purchase of the truck.

## Alternatives

None Recommended.

## Fiscal Impact

Budgeted M7594180 564008 Transportation Equipment - \$525,000

Through	John Noble Jan 12, 09:02:50 GMT-0800 2022
Dept Head Approval	Christina Palmer Jan 12, 12:08:46 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 16:14:43 GMT-0800 2022

Attachments:

Recording Required?



M-B Companies, Inc.  
 Pavement Marking Equipment  
 95 Blessing Drive  
 Muncy, PA 17756

Phone 920 898 4203  
 Fax 920 898 4588  
 www.m-bco.com

# PRICE QUOTATION

**QUOTATION NO. 17186**

Please refer to this number when submitting an order

To: City of Kennewick  
 414 E 10th Avenue  
 Kennewick, WA 99336

Date: 1/11/22

Attn: Jon Correio

F.O.B. 99336

We appreciate the opportunity to submit the following quotation:

**M-B Companies, Inc. MAXI-560A STRIPER BODY ONLY**

The following is included in the price shown below:

Item Description	LIST COST	SOURCEWELL	QTY	TOTAL
MAXI-500A MAXI-500A, 2-250 GALLON NON-PRESSURE TANKS	\$ 233,270.00	\$ 221,606.50	1	\$ 221,606.50
DCWIRED INSTALL WIRED DAVID CALRK INTERCOM, 3 STATION MESSAGEBOARD3 INSTALL MESSAGEBOARD, APPROX SIZE 44"X81" 3-LINE	\$ 20,193.96	\$ 19,184.26	1	\$ 19,184.26
NIGHTLIGHT INSTALL NIGHTLIGHTS (EACH)	\$ 265.20	\$ 251.94	7	\$ 1,763.58
GL3000P INSTALL LASER POINTER ON CHASSIS CAB ROOF	\$ 7,540.61	\$ 7,163.58	1	\$ 7,163.58
GL3000PM INSTALL LASER POINTER ON CARRIAGE (EACH)	\$ 3,210.64	\$ 3,050.11	2	\$ 6,100.22
VIDEOGUIDANCE INSTALL CAMERA VIDEO GUIDANCE SYSTEM, 2 CAMERAS, ELECTRIC	\$ 10,423.38	\$ 9,902.21	1	\$ 9,902.21
REARVIDREC INSTALL REARVIEW CAMERA SYSTEM WITH RECORDER (DVR)	\$ 1,361.70	\$ 1,293.62	1	\$ 1,293.62
SC12 INSTALL SC-12 SKIPTIMER SYSTEM	\$ 12,552.12	\$ 11,924.51	1	\$ 11,924.51
GRACOPAINT INSTALL GRACO 238-377 PAINT GUN	\$ 1,154.74	\$ 1,097.00	4	\$ 4,388.00
GRACOBead INSTALL GRACO 238-338 BEAD GUN	\$ 1,263.96	\$ 1,200.76	2	\$ 2,401.52
AIRNOZZLES INSTALL AIR BLOWER NOZZLE AHEAD OF GUN ROWS (EACH)	\$ 303.96	\$ 288.76	5	\$ 1,443.80
ELEVATORS INSTALL REMOTE ELEVATORS ON PAINT GUNS (EACH)	\$ 678.79	\$ 644.85	7	\$ 4,513.95
TOOLBOX INSTALL TOOLBOX (EACH), LOCKABLE, 20"X20"X14"	\$ 918.87	\$ 872.93	2	\$ 1,745.86
FENDERS SINGLE POLY INSTALL POY FENDERS OVER SINGLE REAR AXLE	\$ 826.20	\$ 784.89	2	\$ 1,569.78
HEAT ENGINE INSTALL PAINT HEAR - SCAVENGER HEAT SYSTEM ON UNIT	\$ 2,026,740.00	\$ 19,254.03	1	\$ 19,254.03
SOLVENTSYS INSTALL SOLVENT/CLEANER SYSTEM WITH 20 GALLON ASME TANK	\$ 4,780.74	\$ 4,541.70	1	\$ 4,541.70
FLUSHFLY INSTALL FLUSH ON THE FLY FOR PAINT GUNS (MUST HAVE SOLVENT SYSTEM)(PER GUN)	\$ 1,250.52	\$ 1,187.99	7	\$ 8,315.93



OFF CONTRACT ITEMS

ADD DIGITAL SPEEDMETER	\$	174.00	1	\$	174.00
ADD CANOPY WITH SLOPED SIDES	\$	2,510.00	1	\$	2,510.00
REMOVE 2-250 TANKS, ADD 2-280 TANKS	\$	1,333.00	1	\$	1,333.00
REMOVE 3,000 LB. GLASS TANK, ADD 4,000 LB. GLASS TANK	\$	794.00	1	\$	794.00
REMOVE 2 STANDARD WHEELS, ADD 4 AIRCRAFT WHEELS	\$	2,200.00	1	\$	2,200.00
ADD CARRIAGE AUTOLOCK SYSTEM	\$	145.00	1	\$	145.00
ADD CLEANER HANDGUN, 25 FOOT HOSE, REEL	\$	1,738.00	1	\$	1,738.00
ADD 2 GARDEN HOSE HOOK UP	\$	5.00	2	\$	10.00
ADD 1 SINGLE EAR HEADSET	\$	471.00	1	\$	471.00
DRIVEN DELIVERY	\$	6,100.00	1	\$	6,100.00
3 DAYS STARTUP TRAINING	\$	1,500.00	3	\$	4,500.00
PAPER MANUAL	\$	250.00	1	\$	250.00
VIRTUAL PRE-CONSTRUCTION MEETING	\$	-	1	\$	-
ON-SITE PRE-DELIVERY INSPECTION - 3 PEOPLE	\$	2,900.00	3	\$	8,700.00
				STRIPER BODY TOTAL:	\$ 360,257.95

CHASSIS SOURCEWELL CONTRACT # 060920-pmc-cy2021-2024

Peterbilt 220	\$	111,786.00	1	\$	111,786.00
				TOTAL FOR ABOVE:	\$ 472,043.95

OPTIONAL

Remove nightlights, keep wires ONLY. Install customer supplied lights.	\$	(277.00)	1	\$	(277.00)
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\*SOURCEWELL CONTRACT AWARDED, CONTRACT NUMBER 080521-Aebi

CUSTOMER IS RESPONSIBLE FOR ALL APPLICABLE SALES TAXES

PAYMENT TERMS: Net 20 This quotation is valid for 60 Days  
 Delivery: 90 to 120 days after receipt of chassis, notwithstanding exceptional circumstances out of our control.  
 Unless otherwise Stated, prices quoted are for the above listed quantities shipped at one time. Prices may change if quantities differ from those shown above.

M-B Companies, Inc.

By: **Mike Vander Zwaag, Territory Sales Manager**  
**Pavement Marking Equipment Division**

Customer Acceptance of Order	
Signature	Date

THIS QUOTATION IS NOT AN OFFER AND IS NOT LEGALLY BINDING ON M-B. ALL SALES BY M-B SHALL BE SUBJECT EXCLUSIVELY TO M-B'S TERMS AND CONDITIONS OF SALES SET FORTH ON THE BACK HEREOF.

QUOTATION NO: 17186

### Standard Terms and Condition of Sale

M-B Companies, Inc. of Wisconsin ("Seller") agrees to sell products, parts or components to ("Buyer") on the terms and conditions set out in these Terms and Conditions (the "Terms and Conditions").

**Placement of Orders:** Processing of an order will not commence until Seller has received written confirmation. If Buyer does not issue a formal purchase order, written confirmation must include the following information: M-B model, size, other options (if applicable), prime mover model to which striper will be mounted, quantity, price, expected discount, expected delivery date, and shipping instructions. This information should appear on Buyer's letterhead, and be signed by an authorized representative of Buyer.

**Acceptance:** All orders are subject to final written acceptance by Seller at its home office. These Terms and Conditions constitute the final agreement between Seller and Buyer, and shall apply to all sales by Seller to Buyer. Seller's acceptance of this order is expressly conditioned on Buyer's agreement to these Terms and Conditions. Buyer shall be deemed to have consented to these Terms and Conditions in the event it accepts the shipment of any products from Seller. These Terms and Conditions supersede any and all conditions contained in Buyer's purchase order or other document furnished by Buyer. Any attempt by Buyer to vary these terms is hereby expressly objected to and rejected.

**Price:** Unless otherwise stated, all prices and deliveries are FOB Muncy, Pennsylvania. Prices do not include any taxes. All prices, specifications, terms and conditions are subject to change without notice. All orders will be invoiced at the price in effect when the order is received by Seller. All quotations shall be valid for a period of ninety (90) days unless otherwise noted.

**Delivery Dates / Delays:** Delivery date quoted shall be FOB shipping point date unless otherwise specified. Delivery dates are only estimations by Seller. In the event of delay attributable to Buyer, Buyer shall compensate Seller for delay costs. Seller shall not be liable for delays in delivery or failure to perform due to causes beyond its reasonable control, including but not limited to, acts of nature, acts of war or terrorism, Buyer's acts or failures to act, acts of government or military authority, delays in transportation or shortages, or inability due to causes beyond Seller's reasonable control to obtain necessary labor, materials, utilities, components, parts or manufacturing facilities.

**Payment Terms:** Payment terms are Net 20 days after invoice date (special terms may apply). Seller reserves the right to require cash payment if Seller develops doubt as to Buyer's ability to pay. Seller may charge Buyer interest at the rate of one percent (1.0%) over current prime rate per annum on past due accounts. In addition, in the event of late payment or default by Buyer, Seller shall be entitled to collect its attorneys' fees, expenses and other costs incurred in pursuing collection. Buyer shall not take any credit against payment due Seller without a written credit memorandum authorizing such credit issued in advance by Seller. Payments due to Seller, whether for the purchase of products or otherwise, shall be paid without deduction, set-off, or recoupment by Buyer.

**Returns:** Buyer shall not return any products unless authorized in writing by Seller with Seller's "returned materials authorization" number (RMA). The RMA must be prominently displayed on the outside of the return packaging. Any request to return products must be made within ten (10) days from the receipt of the products by Buyer. Returned products must be in first class saleable condition, in their original container, shipment prepaid. The issuance of an RMA number is not an admission of liability on Seller's part for reimbursement of any type. The returned products will be examined upon receipt, at which time proper disposition will be determined. Buyer will be advised at that time of any adjustments or credits that may be made. All products that are returned for any reason other than defective material will be subject to inspection to ensure the item's resaleable condition. In any event, a 30% restocking fee, as well as the freight charges both ways will be deducted from any credit. Nonstandard or used material, and components designed to meet Buyer's unique requirements or specifications, are not returnable. Unless otherwise expressly agreed, an order for equivalent value must accompany returned products and all such products are accepted for credit only after factory inspection. Buyer returning products must pay transportation charges and bear risks of loss or damage to goods while in transit.

**Warranty:** Seller provides a limited warranty pursuant to the terms of its separate Limited Warranty Policy. The Warranty is Buyer's exclusive remedy.

**Limitation of Liability:** Seller shall not be liable to Buyer or any Customer of Buyer for any incidental, consequential, special or punitive damages. In no event shall Seller be liable for damages which exceed the purchase price for the products.

**Indemnification / Insurance:** Buyer shall indemnify and hold Seller harmless from any loss, including, but not limited to, attorneys' fees and expenses, which Seller may sustain as the result of any claim arising out of or relating to use or sale of the products by Buyer, Buyer's customer, or any third party. If Buyer maintains insurance which may be applied to any liability it has to Seller pursuant to these Terms and Conditions, then Buyer agrees to take whatever actions are necessary to perfect said insurance coverage for the benefit of Seller.

**Changes / Cancellation:** Buyer may request changes in its order provided that Seller receives written notice of and accepts the desired changes and that Buyer accepts the additional charges as determined by Seller. Seller's refusal of Buyer's request to change its purchase order shall not be cause for Buyer's cancellation of its order except upon payment of a cancellation charge to be determined by Seller. Seller shall have the absolute right to cancel any undelivered orders upon breach thereof by Buyer, failure by Buyer to make any payment required hereunder, or insolvency or bankruptcy of Buyer. A purchase order or any part thereof which is accepted by Seller may not be cancelled by Buyer until Seller receives written notice of the cancellation, has determined reasonable additional charge to be made and the charge has been paid by Buyer.

**Infringement:** With respect to the products which are made by Seller based on any specifications, directions, models, or samples furnished by Buyer or commercial standards of Buyer's industry, Buyer will defend and hold Seller harmless from any and all liability and expenses arising out of or relating to any claims based on infringement or alleged infringement of patents, trademarks or copyrights from the use or sale of products made by Seller either as such or as part of complete items.

**Notices:** Any notice given pursuant to these Terms and Conditions shall be sent by means providing proof of delivery and: (1) if to Buyer, to its regular place of business; and (2) if to Seller: PO Box 200, 1615 Wisconsin Avenue, New Holstein, Wisconsin 53061.

**Entire Agreement:** The parties agree that there are no understandings, agreements or representations, express or implied not specified in these Terms and Conditions and that this instrument contains the entire agreement between Seller and Buyer, and that, consequently, no course of prior dealings and no usage of the trade shall be relevant to supplement or explain any of the terms used in these Terms and Conditions.

**Governing Law:** These Terms and Conditions shall be construed and interpreted under the laws of the State of Wisconsin. Any disputes arising hereunder or relating to the products shall be brought in Calumet County, Wisconsin.

## **SPECIFICATION FOR 560 GALLON AIRLESS APPLICATION STRIPING UNIT**

### **1. GENERAL PROVISIONS:**

It is the intent and purpose of this specification to describe a truck-mounted self-contained airless application-striping machine. The machine shall apply reflectorized lines utilizing a waterbase (latex), low VOC traffic paint and glass beads. The equipment must be capable of applying this material at ambient temperatures of 70° Fahrenheit on clean, dry pavement. The machine shall be capable of applying three (3) lines of this material in two (2) colors in either a solid or skip pattern, or combination of these patterns.

The machine shall operate in a range of 6 to 10 MPH. All truck parts and materials shall conform to the truck manufacturers' recommendations and the applicable Federal SAE Standards.

### **MATERIALS & WORKMANSHIP:**

All equipment furnished and the parts thereof shall be of the manufacturer's latest listed and published stock models, which meet all the applicable requirements of the specification.

### **GUARANTEE:**

The machine shall be guaranteed against defective materials and workmanship for a period of 365 days after acceptance of the machine, if properly serviced, maintained and operated under normal conditions according to the manufacturer's instructions.

All guarantee claims (parts) will be repaired or replaced by the line striper manufacturer. All replacement parts shall be shipped to the user within one (1) working day, if the parts are available. The vendor shall agree to sell all parts needed for the operating life of the equipment, which shall be a minimum of ten (10) years.

The manufacturer will assume no field expense for service or parts unless authorization is granted in advance.

The manufacturer will assume no liability for normal maintenance items, consumable or damage resulting from neglect or abuse of the equipment.

### **FINISH:**

The complete machine and all components, including tanks, compressor, etc., shall have the following minimum protective coatings applied: one (1) prime coat and one (1) finish coat of paint, unless chromium plated or galvanized. The prime coat material shall be specifically compounded for the respective metals to which it is applied.

Finish Coat Color – platform and above deck: White to match chassis, Martin Senour High Solids Urethane with Enhancer™ or equal, unless otherwise stated. Below deck: components shall be painted black.

**2. TRUCK/CHASSIS RECOMMENDATION (PURCHASED SEPARATELY):**

The chassis shall be a new (No Exceptions) automotive chassis assembled to meet the specific requirements of this specification.

Manufacturer/Model	Peterbilt 220
Wheelbase	218 Inches
GVWR	33,000 Lbs. add pusher axle

When fully laden with fuel, striping material and operators, the chassis manufacturer's axle and total GVWR ratings, State Axle laws and Federal Bridge law shall not be exceeded or the unit may be rejected.

**OVERALL HEIGHT:**

The overall height of the striper shall not exceed 12'-0".

**AUXILIARY EQUIPMENT:**

The following auxiliary equipment shall be provided:

- Mud flaps, front and rear
- One (1) 5 Lb. dry powder fire extinguisher (mounted in chassis cab)
- Two (2) 10 Lb. dry powder fire extinguisher (mounted on equipment deck)
- Piped ¼ inch air supply for a hand take-off mounted at the right hand corner of the platform

**DIGITAL SPEED METER SYSTEM:**

A digital speed meter shall be included on the striping unit that will allow the truck operator to read his speed in three (3) digits to aid him in maintaining a desired speed. Shall be powered and protected by the skip timer system via a network cable.

**FENDERS FOR REAR WHEELS:**

Lightweight high density polypropylene ribbed fenders shall be supplied over the rear wheels. The fenders shall be easily removed and reinstalled on the vehicle to facilitate maintenance and serviceability. Mudguards shall be installed on the fenders' rear edge.

**REAR BACKUP COLOR VIDEO SYSTEM:**

There shall be a rear view backup video system installed on the vehicle. A 7" minimum Color monitor shall be mounted in the truck cab. The camera, in a weatherproof housing, shall be mounted on the rear of the unit. The system shall be pre-wired for 12-volt operation, including a 65 foot interconnect cable. This system shall also include a DVR recording system with ability to record information on a 32GB SD Card.

**3. PLATFORM:**

The platform shall not exceed 96 inches total width, including all projections. The platform framing shall be constructed of 3-inch structural channel cross members and 5-inch structural longitudinal members to support all required equipment mounted on it. The spacing of the cross members shall not exceed 18 inches. Perimeter tubing shall be 2" x 4".

The platform shall be supported by a minimum of eight (8) equally spaced risers. The risers shall be manufactured into a built-in structural channel and shall allow approximately 5 inch opening from the top of the chassis rail to the bottom of the platform. This opening will facilitate accessibility to material and control plumbing in the area located between the chassis rails. The risers shall be welded to the bottom of the platform and fastened to the chassis rails vertical flange by at least (2) 5/8-inch diameter, grade #8 bolts, in order to transfer the loading on the rails, a soft aluminum spacing shall be placed between the risers and the chassis rails top flange. Provisions shall be made to permanently secure these spacers in their locations. The platform shall have non-skid, 1/8-inch medium pattern steel safety tread surface.

Ladders with three skid resistant steps shall be furnished on both sides of the platform, one on the left side and two on the right.

#### RAILING:

A steel railing shall be installed around the platform where necessary, and bolted in place. Railing shall be constructed of 1¼" square tubing. The height of the railing shall be 42 inches with a 21" high cross member except around the operator's area where it shall be 30" high. Corners shall be rounded for operator safety.

#### REAR BUMPER:

The rear bumper shall have a minimum 4" width and extended across the rear of the truck platform. It shall be at least 15" above the road surface and have a safety plate surface. The bumper support shall be at least 4" x 5.4 channel steel on both sides, and the bumper should be of 1/8" thick safety tread plate steel channel with welded end sections forming a strong box section. A set of skid resistant steps, with grab handles, shall provide access to the operator stations from the bumper. These steps shall be a minimum of 24 inches wide.

#### TOOL BOXES:

Two (2) weatherproof tool boxes of adequate size shall be supplied and mounted on the truck. The box shall have a full face, bottom hinged door with a latch with integral lock. Any special tools needed for adjustments or disassembly of the various machine components shall be furnished in these boxes.

#### OPERATOR PROTECTIVE CANOPY:

An aluminum construction canopy shall be provided to protect the operators from the sun and weather. The structure shall be constructed so the roof is sufficiently secured and supported by tubular columns. The structure shall be designed to withstand normal traffic speeds. The approximate size of this canopy shall be 96 inches wide and 60 inches deep with an inside ceiling height of 73 inches. The outer edges shall be tapered down to prevent damage to the canopy from low hanging branches. For the operator's comfort, there shall be a padded armrest on the railing. Two (2) LED dome lights shall be mounted in the canopy ceiling, lights shall be capable of changing from white to red for night striping.

#### OPERATOR SEATS:

Two (2) air suspension, high back operator seats with armrests shall be mounted on the vehicle platform. They shall be fitted with foam rubber cushions and back. The covering shall be weather resistant plastic, and shall be fitted with seat belts in accordance with SAE and Federal Standards.

#### 4. MATERIAL SUPPLY:

##### PAINT SUPPLY:

The marking machine shall be equipped with two (2) stainless steel non-pressure vessels for storage of paint. The yellow vessel shall have a capacity of 280 U.S. gallons. The white vessel shall have a capacity of 280 U.S. gallons.

Hydraulic motor driven agitators shall be included for each tank with stainless steel shaft and paddles, and speed controls mounted near each motor.

Each container shall be constructed of minimum 10-gauge stainless steel sheet, with bracing as necessary.

One (1) quick opening inspection lid assembly using stainless steel construction shall be installed over each paint color compartment. The lid(s) shall be hinged to a 10 inch I.D. (minimum) neck ring.

The lids shall be latched by an over top and center clamp, with a secondary safety latch. Adjustments shall be provided to insure a proper seal due to wear on the Teflon gasket. Bolting of inspection lid will not be acceptable. Venting shall provide for normal operation of the paint supply.

With specified capacity of paint in each compartment, there shall be 4 inches remaining at the top of each compartment, providing a splash area for sudden stops, thus reducing the possibility of paint washing on the lid gaskets or splashing on the platform.

##### FILL/SUPPLY PUMPS:

Two (2) pumps, air operated diaphragm type, with 2 inch ports shall be furnished on the truck to transfer paint at the rate of 25 GPM from the storage containers to the tanks on deck (if necessary).

The pumps shall be equipped with Teflon balls and Teflon diaphragms.

The pump construction shall have stainless steel wetted parts. Two (2) 12-foot sections of 2-inch diameter suction hose and a strainer assembly shall be provided (one (1) for each paint color).

Transfer of paint shall be done from the right hand side of the truck.

Provisions shall be provided to clean the pumps by re-circulating cleaner from a cleaner bucket.

##### GLASS SUPPLY:

A pressurized tank having a capacity of 4,000 Lbs. of glass spheres is to be provided. This tank is to be of all steel A.S.M.E. certified construction with a top opening of not less than 14" in diameter. A 0-160 psi pressure gauge, pressure regulator, 100 psi pressure relief valve, and auto evacuating moisture trap are to be included and mounted on the tank.

In addition the tank shall have a minimum 2" diameter sight glass for viewing the bead levels. These sight glasses shall meet all A.S.M.E. and maximum pressure requirements. The sight glasses shall allow the operator to determine bead levels at 3/4 full stage, 1/2-full stage and 1/4 full stage.

A vacuum glass fill unit having a minimum loading capacity of 200 pounds of glass beads per minute is to be supplied. By creating a vacuum in the glass tank, glass is to be drawn into the tank without contaminating the vacuum unit. The speed of the unit is to be controlled and a muffler is to assure quiet operation at all times.

The glass filling system on this unit shall include a 12 foot long, 2 inch I.D. fill hose with all the necessary fittings, including quick disconnect fittings and a new, unused 55 gallon drum with a combination bag splitter and strainer top.

The glass spheres are to be conveyed under pressure to a central located sphere manifold with cleanout cap, then to glass sphere dispensing guns through clear pressure hoses. A finned tube-type air cooler and moisture separator are to be supplied to remove moisture from air used to operate the glass system.

## 5. PAINT APPLICATION SYSTEM:

The unit shall have a paint supply designed for two-color application and appropriate plumbing to allow single color loading of both tanks. A stainless steel strainer shall be inserted in each system. The strainer shall be cylindrical in design and made from a #16 gauge perforated stainless steel material. The perforation shall be an 1/8 inch in diameter and on approximately 3/16 inch centers (33 holes per square inch). No wire strainers are acceptable.

The strainer shall be readily accessible and where necessary, valving shall be provided to isolate the strainer from the feed line for cleaning. The strainers should be removed for cleaning with a single clamp sealed lid.

### AIRLESS PUMPS:

Two (2) hydraulic driven, 13 GPM @ 2,000 PSI airless pumps, one (1) for yellow and one (1) for white paint shall be provided and plumbed to deliver paint to the spray guns.

A minimum two-quart high pressure surge tank shall be incorporated into the paint plumbing design after each high pressure pump. This accumulator tank shall minimize any hour-glassing of the painted line on the road.

A high pressure manifold shall be provided with a 3/4-inch inlet and multiple 3/8 inch outlets.

A grounding strap shall be installed on the vehicle to discharge any static electricity build-up from the airless pumps.

### PROCESS PLUMBING:

Air piping, tubing or hose used on the vehicle shall be firmly attached to the frame or bed, except where flexible conductors are required for proper operation or services.

All plumbing on the low-pressure side shall be constructed of industrial style, stainless steel, 2-inch tube process-clamp type piping, fittings and ball valves, with at least one-bolt clamp on the low-

pressure side. All elbows shall be smooth 90° long radius style. Use of pipe thread fittings shall be minimized.

All plumbing on the high-pressure side shall be schedule 80 stainless steel threaded plumbing with full port ball valves. The high pressure paint hoses to the guns shall be designed to meet working pressure requirements of at least 2,000 PSI.

Paint plumbing shall be stainless steel. Valves will be ball type with Teflon seals, and valve construction on the low-pressure side shall be stainless steel with 4-bolt construction.

All material conductors other than pipe shall be non-metallic, paint and solvent resistant, Teflon lined, (no exceptions) insulated flexible hose. They shall be capable of withstanding the respective pressures produced in each system and shall not be less than 3/8-inch diameter.

The pumps, hoses fittings, valves and all components that are in contact with the marking materials shall be stainless steel.

A zippered vinyl jacket shall protect all airlines, paint and bead hoses to each gun carriage.

## 6. SPRAY GUNS:

### AIR NOZZLES:

Each carriage shall also have a multi-channel flat jet nozzle, mounted directly in front of each paint spray gun row, to remove dirt and debris from the road surface prior to the application of paint and glass beads. The "on/off/AUTO" air supply to these nozzles shall be located in the control boxes. Each air nozzle shall have a manual needle valve adjustment air flow control.

### PAINT GUNS:

The paint spray guns shall be Graco Model 238-377 or equal airless type, capable of processing paint in quantities, which will yield a 2 to 12-inch wide line of 15 mil wet film thickness and applied at speeds up to 12 MPH.

Each gun shall have a Reverse-A-Clean Tip or fixed tip shall be shipped with the unit. Size shall be determined by the customer.

### REMOTE ELEVATORS

All paint guns shall be mounted on electric elevators which will permit remote vertical adjustment for each individual gun to change line width anywhere from 4 inches to 8 inches. The controls shall be mounted at the operator's stations.

### BEAD GUNS:

There shall be installed pneumatically actuated, air atomized glass sphere application guns, Graco Model 238-338 or equal. Gun outlet shall be fitted with a glass deflector to allow even distribution of the glass beads on the painted line.

## 7. SPRAY GUN CARRIAGE ASSEMBLY:



Two gun carriage assemblies shall be supplied, mounted behind the vehicle's rear wheels, to support and align the spray guns.

The main carriage, mounted on the left-side of the vehicle. **The entire unit shall be mounted with linear bearings to allow vertical motion but yet keep the spray guns normal to the road surface.**

**Two (2) aircraft wheels mounted on a caster axle, and mounted on the front of each carriage, shall support the carriage and maintain it at a fixed height from the road surface.**

**A pneumatic lift system, with auto lock, shall be provided to raise the gun carriage for transport. The control switch shall be located in the gun box.**

The cross slide supporting the carriages shall allow the carriages to be positioned for transport within the width of the vehicle's platform and permit its use anywhere from this location outward for a distance of 4 feet. The slide mechanism shall consist of a rectangular tube within a rectangular tube telescoping design with UHMW, self-lubricating material bearing areas.

The second spray gun carriage shall be provided and mounted along the right side of the striping unit. The design of this carriage shall be identical to the main carriage, and it shall also extend 4 feet from the edge of the platform.

Each carriage slide shall be equipped with a hydraulic cylinder for moving the carriage to any point within its operating range. The cylinder shall be double-action, controlled by a power steering control, and the steering wheel shall be conveniently located for the operator.

A tilting and telescopic steering column shall be conveniently located for each operator.

Each column shall include a steering wheel with knob. The power steering control unit and hydraulic hoses shall be located under the equipment platform, out of the way of the operators.

Stacked body, quick acting solenoid valves with a manual override feature shall be mounted on each carriage. Valves shall be equipped with balanced spool designed to minimize back pressure or restriction in exhaust. The valves shall be of a one-piece aluminum design body.

LEFT CARRIAGE			BERM CARRIAGE			
A		A	A	A	A	AIR NOZZLES
Y (4")	4" space	Y (4")		W (4")	W (4")	PAINT GUNS
W (4")			Y (4")	4" space	Y (4")	PAINT GUNS
G		G	G	G	G	GLASS GUNS

**8. AUXILIARY POWER SYSTEM:**

**AIR COMPRESSOR:**

The air compressor shall be a Boss DUS unit capable of supplying at least 210 cubic feet of free air per minute at 100 psi.

All containers shall be A.S.M.E. approved for 100 psi working pressure. All necessary safety valves, piping and fittings shall be included.

The compressor engine shall be diesel powered, liquid-cooled, four-cycle, four cylinder, overhead valve construction, heavy duty industrial type. It shall include as standard equipment: a fin-tube type radiator, lubricating oil filter, 12 volt electrical system, pushbutton starting, and recommended air filter to be shared with the compressor air intake. The air compressor engine and chassis engine shall have a common fuel tank.

A heavy duty, high capacity filter/dryer Laman #140, capable of passing all air from the compressor, shall be installed in the air line.

An additional heavy duty, high capacity water separator shall be installed in the air line after a 16 ft. long finned after-cooler.

A common skid base shall be provided under the engine and compressor so they may be handled and mounted as a package unit. The compressor shall be mounted to the platform longitudinal members. A complete cover with hinged or sliding access panels shall be supplied for weather protection.

The operating control panel shall be located at the end of the compressor unit and the unit mounted so that it is at the curb side of the vehicle and include, in addition to operating controls, gauges showing oil and air pressures, water temperature, and voltmeter and an electric hour meter.

The unit shall be furnished with the following accessory items as a standard part of the package: hour meter, oil level gauge, automatic moisture trap for controls, automatic blowdown valve, minimum pressure valve and a hydraulic pump.

#### HYDRAULIC SUPPLY:

Hydraulic power for the controlling the outrigger and paint agitators, shall be from a gear type hydraulic pump, direct driven by the air compressor engine (no belts allowed). This pump shall have a minimum capacity of 1.08 cubic inches per revolution.

## 9. TRAFFIC CONTROL LIGHTING

#### LIGHTING, PLATFORM LED:

Marker and clearance lighting, stop, turn and taillights shall be LED.

#### CARRIAGE FLASHING LIGHTS:

Flashing amber/red LED lights shall be mounted at each extreme extension of the gun outrigger carriage.

#### MESSAGE BOARD:

The striping unit shall have a three line LED message board with eight characters per line, mounted on the rear area of the equipment platform.

The message board shall have dimensions of approximately 44 inches by 81 inches. It shall be 12 volt with solid state circuitry.

The message board shall be pivoted from a horizontal storage position to a vertical position for operation.

A 12 volt electric linear actuator shall be provided to raise and lower the signboard from the vertical to the horizontal position. The key pad type control shall be mounted on the unit in a location convenient to the end-user.

#### NIGHT LIGHTING SYSTEM:

Seven (7) 12 volt high-output rectangular LED work lights shall be provided on the unit for night time striping operations. Two (2) lights shall be mounted on the deck area to illuminate the equipment, two (2) lights shall be mounted on the front of the carriage to illuminate the road in front of the guns, two (2) lights shall be mounted behind the carriages, illuminating the carriage/guns and one (1) light shall be mounted near the paint fill pump.

## 10. CONTROL AND ELECTRICAL SYSTEMS

#### CONTROL CENTER:

An all aluminum control center shall be provided. This shall consist of an integral sheet metal covered framework providing space for control panel, electrical controls, spray equipment connections, heater thermostat control, and any other auxiliary parts required by the spray equipment.

The control center shall be mounted in an inclined position so that it can be observed from either operator's position. This control center shall have mounted on it, all the necessary regulators, gauges, valves, switches, and indicators required for operation of the striping equipment. All parts shall be of the panel type and located behind the panel if possible. An easily removable back plate with four (4) recessed latches shall allow access to the interior for service. Both a 110-psi safety valve and a condensate drain shall be located on the panel air manifold. All of the gauges shall be of the liquid-filled type. All control center switches shall be lighted rocker or push button type.

The spray equipment shall be electrically controlled by means of toggle switches and solenoid valves. The switches shall be located in two separate control panels within easy reach of the rear equipment operators. The switch sections shall also house additional switches and indicator lights for the skipline mechanism control.

Each control panel shall be located within a non-metallic enclosure with a clear hinged and latched cover. Each enclosure shall be mounted to the canopy railing and friction hinged to "flip" out of the way when necessary.

All line pattern combinations, skipline mechanism actuation, and skipline mechanism reset shall be controlled by toggle switches. Pre-selected combinations shall be obtained by activating only on switch that also simultaneously actuates or resets the skipline mechanism. One toggle switch shall be an "OFF" switch connected in such a way that when activated, it will turn off and cancel any of the above selected patterns, as well as automatically reset the skipline mechanism to a ready position. Provision shall be made so that any glass sphere guns may be controlled from the same system for simultaneous spray gun and glass gun operation.

The entire switch assembly shall be removable from the control panel for servicing and attached by a pin connector to an electrical junction box in which all electrical interconnections shall be made.

All electrical wiring shall be enclosed in conduit type protective case. Any wires passing through the deck shall have grommets around them.

All electrical controls shall be 12 volt power only.

#### SKIPTIMER SYSTEM:

##### SC-12

It is the stated intent of this specification to describe a highly reliable, easy to use, simple to install, compact skip-setting mechanism that requires little or no maintenance and no clutches, cams, gears, bearings or devices that must be adjusted while at rest.

The skip timer control boxes shall use mid-sized IP67 rated toggle switches and shall use sealed push-buttons for menu navigation.

The skip timer control box shall have a full color, 4.3" screen. The color menu system shall provide an animated preview of skip timer patterns, reflecting current settings and switch positions and shall provide guided calibration processes for distance and pump calibrations. The color menu system shall have a descriptive information system to provide the operator with information about errors, warnings, and skip timer operation. There shall be a switch test menu, for in-field diagnosis of switch failure, incorporated into the color menu system.

The skip timer system shall communicate using CAN bus serial communications protocol. It shall have an operating temperature range from 33° Fahrenheit to 140° Fahrenheit and a storage temperature range of 10° Fahrenheit to 160° Fahrenheit.

The skip timer output boxes shall directly drive all loads (air dusters, material guns, bead guns, double-drop bead guns, etc. where applicable). All outputs shall be solid state. To simplify diagnostics, the skip timer output boxes shall have driver indicator LEDs for all driver outputs.

The skip timer shall accept motion signals from a magnet-wrapped driveline collar. All motion signal sources will maintain a 0.1' resolution during normal road marking operations. The skip timer system software shall be field upgradeable via USB drive, and the hardware shall be field upgradeable using hub expansions ports for adding more driver output boxes, sensor input boxes, or data logging equipment.

The skip timer shall separately track skip and solid distance painted per gun, and paint consumption from pump strokes, into internal, non-volatile counters.

#### INTERCOM SYSTEM:

The unit shall have a MASTER STATION David Clark U3800 or approved equal.

The unit shall have a 12 VDC power source in-truck electrical system. The unit shall contain controls, power input and remote outputs, plus two (2) headset jacks. The unit shall be of rugged heavy gauge polycarbonate (-80 °to 212° F) housing with all controls, connectors and covers weather-tight. The unit shall have less than 300 milliamps current draw. The intercom system shall be a three (3)-station intercom system.

The remote head set station shall be a David Clark U3802 and U3801 via C38 Jumper Cord, or approved equal and have a headset jack with listen volume control. The remote headset shall have same housing and weather tight design as MASTER STATION.

Two (2) dual ear headsets for the rear operators shall be behind-the-head style to accommodate safety hats or helmets, they shall provide maximum noise attenuation for hearing protection and clear, isolated reception M-7A noise canceling microphone that provides clear transmission at normal voice levels. Two (2) single ear headsets shall have microphone on/off switch that allows hands free communication for the driver. The headsets shall have a five foot (extended) coil cord with weather protected PJ051 plug.

The unit shall have two conductor shielded power cord, twenty feet. Connects David Clark U3800 or approved equal to power source. One end of the power cord shall be stripped and tinned for connection to truck battery or fuse rack.

## 11. TECHNICAL SERVICES:

### TECHNICAL INFORMATION:

For the purpose of standardization of the unit, the availability of replacement parts, and whether or not components meet the specifications, the bidder will provide literature or system diagrams and details on the major components and systems.

A computer generated, engineers' detailed layout of equipment body components and vehicle weight distribution shall be provided with the bid submittal. The layout drawing shall show the location of material and glass bead supply equipment, air compressor package/engine equipment, and other components necessary for the successful construction and operation of the striping unit.

### TECHNICAL MANUALS:

The successful bidder shall supply two (2) sets of electronic version and one (1) paper version operator's manuals, service manuals, parts books, wiring diagrams and applicable technical information for each machine purchased.

### TECHNICAL SERVICES:

The services of at least one (1) competent technician, trained in the use and operation of the striping machine, shall be furnished for a period of three (3) consecutive days to be scheduled at the discretion of the Authority for each machine purchased. This service shall be provided to instruct the purchaser's personnel in the use, operation and maintenance of the machine on acceptance.

### PRE-CONSTRUCTION MEETING:

Successful bidder shall attend a virtual pre-construction meeting.

### PRE-DELIVERY CONFERENCE:

The successful bidder shall include in his bid, travel and living expenses at his manufacturing facility for up to three (3) agency personnel for a pre-delivery inspection visit. Travel for distances in excess of 200 miles shall be by air transportation.

## 12. WARRANTY:

The machine shall be guaranteed against defective materials and workmanship for a period of 365 days after acceptance of the machine, if properly serviced, maintained and operated under normal conditions according to the manufacturer's instructions.

Equipment parts manufactured by the vendor shall be guaranteed for 90 days or 500 hours.

Warranty period begins at time of startup training.

## 13. ADDITIONAL SPECIFICATION REQUIREMENTS:

### CLEANER SYSTEM:

An air-operated, gun cleaning system shall be installed on the striping machine. It shall consist of a 20 gallon ASME certified stainless steel pressure tank with safety valve and valves and piping necessary to introduce cleaner into each paint line.

An injector system shall be piped into the paint hose after the main line valve at the outlet of the heat exchanger. This system must be as close as possible to the outlet of the heat exchanger to clean the paint manifolds and hoses for overnight storage.

All piping shall be solvent resistant type. The tank construction shall be with a 4 inch threaded top opening and a full steel skirt support.

### HANDGUN WITH REEL:

A cleaner handgun and 25 feet of hose and reel shall be provided for cleanup.

### CLEANER SYSTEM:

The plumbing system shall have two (2) garden hose connections for flushing of the paint system. One (1) garden hose fitting at each fill pump for flushing and one (1) at each high pressure pump for flushing.

### FLUSH ON THE FLY:

A system shall be installed so that the spray gun tip can be cleaned. A 3-way valve shall be installed in the console for this purpose.

### PAINT HEATING SYSTEM SCAVENGED:

The paint heating system shall be capable of maintaining a paint temperature of 110° Fahrenheit at the paint spray guns, at an ambient temperature of 70° Fahrenheit.

The heat source shall be two heat exchangers, one for each color, constructed of stainless steel tubes which extracts heat from the auxiliary engine cooling water. A third heat exchanger shall be located between the engine and the paint heat exchangers to act as a buffer in case of leaks.

The paint heating system shall include two shell and tube type heat exchangers. They shall be 4-pass type units each having a minimum heat transfer area of 64 square feet. Structural steel brackets and covers shall be provided for mounting the exchangers in a vertical position with the inlet and outlet extending below the vehicle platform.

Each heat exchanger shall be provided with a fiberglass insulation blanket and an aluminum cover to retain heat within the exchangers.

Three 12-volt DC electric motor driven circulating pumps shall be provided. The pumps shall have a minimum rating of 25 GPM when pumping the heated water/ethylene glycol solution. The pumps shall control:

- PUMP A: Circulation to the white paint heat exchanger
- PUMP B: Circulation to the yellow paint heat exchanger
- PUMP C: Recirculation system.

A digital thermostatic heat control shall monitor the paint temperature in each heat exchanger. These controls shall turn off or on the pump feed to the heat exchangers on the temperature setting required by the paint manufacturer.

Incorporated in the water/glycol system will be an expansion tank at a convenient location to both fill or check the fluid level of the system. A 14-pound automotive type pressure cap shall be used to regulate the system. An overflow tube from the cap neck down through the platform shall safely vent any over flow to the ground.

Three (3) automatic air vents shall be installed in the heating system to vent any excess air that gets trapped into the heating system. One air vent shall be in the expansion tank line at the top of the intermediate exchanger and one on each paint heat exchanger. (MANUAL AIR VENTS WILL NOT BE ACCEPTED).

#### LASER GUIDANCE SYSTEM (cab mounted):

There shall be supplied a GL-3000-P Laser System using an ultrahigh visibility green laser to establish visual line control for the paint striping machine. The operator adjusts the laser spot to the desired reference point on the road via a remote control panel located in the cab of the truck.

The control shall have a three function switch for:

1. Laser On Steady mode.
2. Laser On Blinking mode.
3. Laser Off.

There shall be a corresponding green light located on the laser status panel indicating the laser status:

1. Light On Steady mode.
2. Light Blinking mode.
3. No Light (Off).

To position the laser spot to the desired location; i.e., center line, road edge, bike lane, etc., the operator shall push the proper buttons for the direction that he/she wants the laser spot to move in; left, right, forward, back, and the laser tracks simultaneously.

The laser, all optics, mechanical mechanisms, and electronics shall be located in a rugged, weatherproof housing that is typically mounted to the roof of the truck. This permanent installation shall eliminate the need to remove the laser at the end of the day. Two cables shall run from the laser housing, one for 12V DC power, the other for system control in the cab.

Specifications -

Laser - 532mm Class IIIA

Power - 12V DC 4.0 amps/hour (Max Operating)

Operating Temperature - +36° - +120° F.

Power/Control Cable Length - Approximately 20 Feet (from laser box) to DB15 Connector for Control Box

Laser Box – Approximately, 6-1/8 H x 6-1/2 W x 12 L Inches.

Shipping Weight - 25 Lbs. – Approximate

**LASER GUIDANCE SYSTEM (carriage mounted):**

There shall be supplied two (2) carriage mounted GL-3000-PM Laser Systems using an ultra high visibility green laser to establish visual line control for the paint striping machine. The operator adjusts the laser spot to the desired reference point on the road.

The control shall have a three function switch for:

4. Laser On Steady mode.
5. Laser On Blinking mode.
6. Laser Off.

There shall be a corresponding green light located on the laser status panel indicating the laser status:

7. Light On Steady mode.
8. Light Blinking mode.
9. No Light (Off).

The laser, all optics, mechanical mechanisms, and electronics shall be located in a rugged, weatherproof housing. Two cables shall run from the laser housing, one for 12V DC power, the other for system control in the cab.

Specifications -

Laser - 532mm Class IIIA

Power - 12V DC 4.0 amps/hour (Max Operating)

Operating Temperature - +36° - +120° F.

Power/Control Cable Length - Approximately 20 Feet (from laser box) to DB15 Connector for Control Box

Laser Box – Approximately, 4-1/2 H x 4-1/4 W x 9 L Inches.

Shipping Weight - 25 Lbs. - Approximate

**VIDEO MONITOR SYSTEM**

A closed circuit color television system with two (2) cameras and one (1) monitor shall be provided.

Cameras shall be mounted in weatherproof boxes. The cameras shall be fitted with (correct mm for manual zoom lense), or equal with auto iris. Camera units shall be mounted on individual electric extending outriggers, one (1) on each side of the truck.



The monitor shall be a 12" flat screen monitor mounted inside the truck cab in center, at a 45° angle facing driver.

The system shall be protected against radio frequency interference.

OPTIONAL EQUIPMENT:

Remove M-B Companies, Inc. provided nightlights, and wire in customer provided nightlights.

# Council Agenda Coversheet



Agenda Item Number	5.a.	Council Date	01/18/2022
Agenda Item Type	Ordinance		
Subject	Franchise Agreement with Zayo Group, LLC		
Ordinance/Reso #	5969	Contract #	
Project #		Permit #	
Department	Public Works		

Consent Agenda	<input type="checkbox"/>
Ordinance/Reso	<input checked="" type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Adopt Ordinance 5969, granting a non-exclusive franchise agreement to Zayo Group, LLC.

### Motion for Consideration

I move to adopt Ordinance 5969.

### Summary

Zayo Group, LLC is a telecommunications company with facilities in the City of Kennewick, with a fiber optic infrastructure to provide broadband Internet service.

On February 7, 2012 the City Council approved a franchise agreement with Zayo Group, LLC by Ordinance 5403. That agreement is set to expire in February 2022. Zayo Group, LLC desires to reenter into a continuing franchise agreement for up to an additional ten years (5 years renewable up to 10 years).

This franchise agreement is nearly identical to the previous agreement and other fiber optic franchise agreements previously approved in the City, and has been reviewed and approved by the City Attorney. It contains the same requirements for placing utilities in the public right-of-way, and Zayo Group, LLC will provide dark fiber for the City's non-commercial use where they install lines.

The franchise is non-exclusive, which allows other retail providers opportunities to enter into similar agreements for use of the public right-of-way.

### Alternatives

None recommended.

### Fiscal Impact

None.

Through	Bruce Mills Jan 05, 09:16:18 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 05, 13:51:15 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 16:18:05 GMT-0800 2022

Attachments: Ordinance

Recording Required?

CITY OF KENNEWICK  
ORDINANCE NO. 5969

AN ORDINANCE OF THE CITY OF KENNEWICK GRANTING A NON-EXCLUSIVE FRANCHISE TO ZAYO GROUP, LLC TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF KENNEWICK

WHEREAS, the Kennewick City Council passed Ordinance 5403 on February 7, 2012, adopting the classification of non-chartered code city for the City of Kennewick; and

WHEREAS, Article 11, Section 11, of the Washington State Constitution provides that the City of Kennewick “may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws;” and

WHEREAS, the Kennewick City Council, by Section 35A.11.020 of the Revised Code of Washington, through Section 35A.13.230 of the Revised Code of Washington, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto; and

WHEREAS, Section 35A.47.040 of the Revised Code of Washington authorizes the City to grant, permit, and regulate non-exclusive franchises for the use of public ways; and

WHEREAS, Zayo Group, LLC (Franchisee) has applied to the City of Kennewick, Washington for a non-exclusive franchise to enter, occupy, and use public ways to construct, install, operate, maintain, and repair fiber optic facilities to offer and provide telecommunications service for hire, sale, or resale in the City of Kennewick; and

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers recognizes and provides state and local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis; and

WHEREAS, Washington’s Telecommunications Services Act, 2000 Wash. Laws, chapter 83, as amended, RCW Ch. 35.99, relating to telecommunications providers recognizes and provides Washington cities authority to require franchises and use permits for constructing, installing, operating, maintaining, repairing, or removing telecommunication facilities in public rights-of-way; and

WHEREAS, a franchise is a legislatively approved master permit granting general permission to a service provider to enter, use, and occupy the public ways for the purpose of locating facilities subject to requirements that a franchisee must also obtain separate use permits from the City for

use of each and every specific location in the public ways in which the franchisee intends to construct, install, operate, maintain, repair or remove identified facilities; and

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

WHEREAS, the grant of a non-exclusive franchise requires submission to the City Attorney, an affirmative vote of at least a majority of the entire City Council and publication at least once in newspaper of general circulation; and

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

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Definitions.** For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will have the meaning ascribed to those words in the Kennewick Municipal Code unless inconsistent herewith.

"Cable Television Service" means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

"City" means the City of Kennewick, Washington, its agencies, departments, and divisions.

"City Property" means and includes all real property owned by the City, other than public ways, including without limitation, City parks, and all property owned in fee by the City.

"Conduit" means optical cable housing, jackets, or casing, and pipes, tubes, or tiles used for receiving and protecting wires, lines, cables, and communication and signal lines.

"Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

"Dark Fiber" means properly functioning optical cable which is not used or available for use by Franchisee or the general public.

"Effective Date" means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

"Emergency" means a condition of imminent danger to the health, safety, and welfare of property or persons located within the City including, without limitation, damage to persons or property from accidents or natural consequences, such as storms, earthquakes, riots or wars.

"Existing" means in actual physical being upon the effective date of this Franchise.

"Facilities" means all of the plant, equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver telecommunications services, including but not limited to poles with cross arms, poles without cross arms, wires, lines, conduits, cables, communication and signal lines and equipment, braces, guys, anchors, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of telecommunications services.

"Fiber Optics" means the technology of guiding and projecting light for use as a communications medium.

"Franchisee" means the person to whom this Franchise is granted by the Council pursuant to this Franchise and the lawful successor, transferee or assignee of said person subject to such conditions as defined herein.

"Governmental Use" means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means both internally and externally within or between their various agencies, departments, and divisions.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or pro-portion of costs, of any kind whatsoever, including without limitation overhead or labor costs, which would have otherwise been incurred.

"Information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols.

"Optical Cable" means wires, lines, cables and communication and signal lines used to convey communications by fiber optics.

"Overhead Facilities" means facilities located above the surface of the ground, including the underground supports and foundations for such facilities.

"Person" means natural person, joint venture, joint stock association or company, partnership, firm, association, club, company, corporation, business, trust, or organization.

"Personal Wireless Services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

"Public Street" means any highway, street, alley or other public right of way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes.

"Public Way" means and includes all public streets, utility easements, and other rights-of-way, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such public streets, utility easements, or other rights-of-way for telecommunications facilities. "Public way" does not include City property; State highways; land dedicated for roads, streets, and not opened and not improved for motor vehicle use by the public; structures, including poles and conduits, located within the public way; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights of way that are not open for motor vehicle use.

"Street Tree" means any tree located in, or that portion over-hanging, any public way and any tree planted on private property near a public way at the direction of the City.

"Telecommunications Service" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public.

"Telecommunications Service" excludes the over-the-air transmission of broadcast television or broadcast radio signals.

"State" means the State of Washington, its agencies, departments, and governmental subdivisions, and all agencies, departments, and divisions of its agencies, departments, and governmental subdivisions.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

"Utility Poles" means poles, and cross arms, devices, and attachments directly affixed to such poles which are used for the transmission and distribution of electrical energy, signals, or other methods of communication.

## **Section 2. Franchise.**

- A. The City grants to Franchisee, subject to the terms and conditions of this Franchise, a non-exclusive franchise to enter, occupy, and use public ways for constructing, installing, operating, maintaining, repairing, and removing wireline facilities necessary to provide telecommunications services. Except as expressly provided otherwise in subsections 4(E)(1)-(4) and 17(A) and (B), and 18(B), Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.

- B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use public ways for constructing, installing, operating, maintaining, repairing, or removing wireless communication facilities.
- C. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property.
- D. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.
- E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.
- F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.
- G. Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.
- H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.
- I. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Franchisee's facilities.
- J. Nothing in this Franchise grants authority to Franchisee to provide or offer cable television service.
- K. Franchisee may use the wireline facilities authorized by this Franchise for the transmission of information used to provide personal wireless services only as expressly provided in this Franchise.

- L. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.
- M. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.
- N. Nothing in this Franchise authorizes Franchisee to enter or construct improvements on, in, under, over, across, or within any property or right-of-way of any third party without that party's permission.

**Section 3. Term.** Authorization granted under this Franchise shall be for a period of five (5) years from the effective date of this Franchise. The franchise will automatically renew for one successive period of five (5) years unless terminated at the end of the term by either party by written notice to the other party no less than 180 calendar days prior to the end of the term.

**Section 4. Location of Facilities.**

- A. Franchisee must place its facilities underground except as otherwise expressly provided herein. Subject to the terms and conditions of this Franchise, Franchisee may place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead facilities if approved by the owner of the utility poles. All other facilities, including, without limitation, facilities required to operate or maintain such optical cable and optical cable housing, and splicing connections must be underground facilities if they are located in a public way.
- B. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons authorized to enter, occupy, or use public ways or City property. Whenever new facilities will exhaust the capacity of a public way to reasonably accommodate future users or facilities, the Franchisee shall provide nondiscriminatory access to its facilities to future users and facilities.
- C. Franchisee shall not impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.
- D. Franchisee shall provide the City with information in such form requested by the City which accurately reflects the horizontal and vertical location and configuration of all of Franchisee's facilities. Franchisee shall provide the City with updated information annually or upon request by the City.
- E. Franchisee shall relocate its facilities at the request of the City when there is construction, alteration, repair or improvement of a public way. Franchisee shall complete the relocation by the date specified by the City, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation



cannot be completed by the dates specified using best efforts and meeting safety and service requirements. Franchisee shall relocate its facilities at its expense except:

- (1) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.
- (2) Where the Franchisee has an ownership share of the existing utility poles upon which its optical cable and optical cable housing is located as overhead facilities, the additional incremental cost of underground to aerial relocation, or as provided for in an approved tariff if less, will be paid by the City if it required the underground relocation.
- (3) Where the City requests relocation of underground facilities solely for aesthetic purposes, the cost of relocation shall be paid by the City; provided, however, in no event shall a request by the City to relocate overhead facilities to underground be considered to be made for aesthetic purposes. Franchisee is authorized to place optical cable and optical cable housing on existing utility poles as overhead facilities only as an exception to pre-existing City policies which require undergrounding, and the cost of relocating overhead facilities to underground shall be paid by the Franchisee except as provided in Section 4(E)(2).
- (4) Where the construction, alteration, repair or improvement of a public way is primarily for private benefit, the Franchisee may seek reimbursement from the private party or parties for the cost of relocation in the same proportion as their contribution to the costs of the project; provided, however, in no event shall the City be considered a private party for purposes of seeking reimbursement under this section.

F. Franchisee shall relocate its facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.

**Section 5. Pole, Structures and Property Owned by Others.** Franchisee must obtain written approval from the owners of utility poles, structures and property not owned by Franchisee prior to attaching to or otherwise using such poles, structures or property, and provide proof of such approval to the City. The City makes no representation and assumes no responsibility for the availability of utility poles, structures, and property owned by third parties for the installation of Franchisee's facilities. The City shall not be liable for the unavailability of utility poles, structures, and property owned by third parties for any reason whatsoever. The installation of facilities by Franchisee on or in the poles, structures, or property owned by others shall be subject to and limited by the owner's authority to enter, occupy, and use public ways. In the event that the authority of the owner of poles, structures, or property to enter, occupy, and use the public ways either expires, terminates, or is cancelled, the authority of Franchisee to construct, install, operate, maintain, and repair Franchisee's facilities at such locations may be immediately cancelled at the sole option of the City. The City shall not be liable for the costs for removal of facilities arising from expiration, termination, or cancellation of any pole owner's authority to enter, occupy, or use public ways for any reason whatsoever.

## **Section 6. Construction and Installation Requirements.**

- A. The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City will have the full authority permitted by applicable law to enforce compliance with these technical standards.
- B. All installations of facilities will be durable and installed in accordance with good engineering, construction, and installation practices.
- C. All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.
- D. The plans shall conform to all federal, state, local, and industry codes, rules, regulations, and standards. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.
- E. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.
- F. Before constructing or installing facilities, Franchisee shall provide and maintain a restoration bond written by a corporate surety acceptable to the City in an amount equal to at least one hundred percent of the estimated cost of removing Franchisee's facilities and restoring public ways and other property to as good a condition as existed prior to construction or installation of facilities. Each such bond shall remain in full force and effect until at least sixty (60) days after completion of construction or installation, and shall warrant all restoration work for a period of one year following completion.

## **Section 7. Coordination of Construction and Installation Activities and Other Work.**

- A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the public ways at least annually or as determined by the City.
- B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.

- C. At least two (2) business days prior to entering a public way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger. Franchisee shall make a good faith effort to comply with the property owner or occupier's preferences, if any, on location or placement of underground facilities, consistent with sound engineering practices.
- D. Franchisee shall make available and accept the co-location of property of others within trenches excavated or used by Franchisee in the public ways provided the costs of the work are fairly allocated between the parties.
- E. Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property once determined by the Franchisee.
- F. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the public way to be opened. When notice has been given, Franchisee may only construct or install facilities during such period that the City has opened the public way for construction or installation.
- G. In the event of an unexpected repair or emergency, Franchisee may commence such repair and emergency response work as required under the circumstances, provided Franchisee shall notify the City as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

**Section 8. Temporary Removal, Adjustment or Alteration of Facilities.**

- A. Franchisee shall temporarily remove, adjust or alter the position of its facilities at its cost at the request of the City for public projects, events, or other public operations or purposes.
- B. If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:

- (1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;
  - (2) Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route which causes the least interference with the operations of Franchisee, in the sole discretion of the City;
  - (3) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents, servants or employees of the person moving or removing such building or other object; and
  - (4) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.
- C. The City may temporarily remove, adjust or alter the position of Franchisee's facilities as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall not be liable to Franchisee or any other party for any direct, indirect, or other damages suffered as a direct or indirect result of the City's actions.
- D. The temporary removal, adjustment or alteration of the position of Franchisee's facilities shall not be considered relocation for any purpose whatsoever.

**Section 9. Safety and Maintenance Requirements.**

- A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.
- B. Franchisee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself at the cost of the Franchisee or have them made at the cost of Franchisee.

- C. Franchisee, and any person acting in its behalf shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property.
- D. Franchisee shall maintain its facilities in proper working order. Franchisee shall restore its facilities to proper working order upon receipt of notice from the City that facilities are not in proper working order. The City may, after discussions with Franchisee, establish a reasonable time for Franchisee to restore its facilities to proper working order. If the facilities are not restored to proper working order within the established time frame, the City may restore the facilities to proper working order or have them restored at the cost of Franchisee.

**Section 10. Removal of Unauthorized Facilities.** Within ninety (90) days following written notice from the City, Franchisee shall, at its expense, remove unauthorized facilities and restore public ways and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

- A. Upon expiration, termination, or cancellation of this Franchise;
- B. Upon abandonment of the facilities. Facilities shall be deemed abandoned if they are unused by Franchisee for a period of ninety (90) days;
- C. If the facilities were constructed or installed prior to the effective date of this Franchise; unless such facilities were constructed or installed upon the condition of subsequent approval of this Franchise with the consent of the City;
- D. If the facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits;
- E. If the facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise; or
- F. If the facilities are unauthorized for any reason whatsoever.

Provided, however, that the City may, in its sole discretion, allow a Franchisee to abandon facilities in place. No facilities may be abandoned in place without the express written consent of the City. Upon consensual abandonment in place of facilities, the facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such facilities. The failure of Franchisee to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

**Section 11. Restoration of Public Ways and Other Property.**

- A. When Franchisee, or any person acting on its behalf, does any work in or affecting any public way or other property, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways and property to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's cost, and Franchisee lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Franchisee or have them made at the cost of Franchisee.

**Section 12. Use and/or Development Authorization and Permits.** Franchisee shall obtain use and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a public way. The City must act on applications for use and/or development authorization or required permits within thirty (30) days of receipt of a completed application, unless Franchisee consents to a different time period.

- A. Franchisee shall provide the following information for all facilities that it proposes to construct or install:
  - (1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:
    - a. The location and route of the proposed facilities;
    - b. When requested by the City, the location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other facilities in the public way along the proposed route;
    - c. When requested by the City, the location(s), if any, for interconnection with the telecommunication facilities of others;
    - d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.
  - (2) If Franchisee is proposing to install overhead facilities, evidence of Franchisee's authorization to use each utility pole along the proposed route together with any conditions of use imposed by the pole owner(s) for each pole; if the overhead facilities are subsequently relocated underground, the Franchisee shall relocate underground at no cost to the City.

- (3) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:
    - a. Evidence of ownership or authorization to use such ducts or conduits;
    - b. Conditions of use imposed by the owner(s) of the ducts or conduits;
    - c. If known to Franchisee or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and
    - d. If known to Franchisee or reasonably ascertainable to Franchisee, amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.
  - (4) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:
    - a. The location proposed for new ducts or conduits;
    - b. The total capacity of such ducts or conduits; and
    - c. The initial listing of collocated facilities located within Franchisee constructed or installed ducts or conduits.
  - (5) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the Manual on Uniform Traffic Control Devices (MUTCD) for any construction.
  - (6) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.
  - (7) Such other documentation and information regarding the facilities requested by the City.
- B. The requirements of this section do not apply to installation of optical cable necessary to connect a customer of Franchisee to a previously approved facility; provided that neither excavation nor trenching in the public right of way is required, that the optical cable does not cross a distance of more than twenty feet from its point of connection to the approved facility and the point where it exits the public right-of-way, that the optical cable connection meets or exceeds all applicable technical standards required by law, that the optical cable connection is durable and installed in accordance with good engineering, construction, and installation practices and does not interfere with the public use of the public ways, or adversely affect public health safety or welfare, that the optical cable connection is constructed and installed to conform to all federal, state, local, and industry codes, rules, regulations, and standards, and that the optical cable connection does not damage or impair the City's urban forest.
- C. The requirements of this section do not apply to repair or maintenance of previously approved overhead facility; provided that the location and size of the previously approved facility is not materially changed, that no additional new facilities are constructed or installed, that the repair or maintenance activities are conducted in accordance with good engineering, repair, and maintenance practices and do not interfere with the public use of the public ways, or adversely affect public health, safety, or welfare, that maintenance or repair activities conform to all federal, state, local, and industry codes, rules, regulations, and standards, and that the repair or maintenance activities comply with Chapter 5.56 of the Kennewick Municipal Code.

- D. Franchisee shall not be granted development authorization or issued permits for construction or installation of new facilities unless Franchisee is in full compliance with the provisions of this Franchise and all of Franchisee's existing facilities have been expressly approved by the City in writing.

**Section 13. Hold Harmless and Assumption of Risk.**

A. Hold Harmless.

- (1) Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, to any person, including claims by Franchisee's own employees to which Franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property arising out of the acts or omissions of Franchisee, its officers, employees, servants, agents or representatives.
- (2) Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives from any and all claims, costs, damages, judgments, awards, or liability to any person, including claims by Franchisee's own employees, including those claims to which Franchisee might otherwise have immunity under Title 51 RCW, arising out of Franchisee's exercise of the rights, privileges, or authority granted by this Franchise which are made against the City, in whole or in part, due to the City's ownership or control of the public ways or other City property, by virtue of the City permitting the Franchisee's entry, occupancy or use of the public ways, or based upon the City's inspection or lack of inspection of work performed by Franchisee, its officers, employees, servants, agents or representatives.
- (3) These hold harmless covenants include, but are not limited to claims against the City arising as a result of the acts or omissions of Franchisee, its officers, employees, servants, agents or representatives in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public way or other public place in performance of work or services permitted under this Franchise.
- (4) Franchisee further agrees to indemnify, hold harmless and defend the City, its elected officials, officers, employees, servants, agents, and representatives against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Franchisee's facilities as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of damage or destruction of Franchisee's facilities, except to the extent any such damage or destruction is caused by or arises from the active sole negligence of the City.



- (5) In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence.
- (6) It is further specifically and expressly understood that the hold harmless covenants provided herein constitutes the Franchisee's waiver of immunity under Title 51 RCW. This waiver has been mutually negotiated by the parties.
- (7) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction or installation shall not be grounds for avoidance of any of these hold harmless covenants. Said hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.
- (8) In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the hold harmless covenants contained herein, 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, then Franchisee shall pay and be responsible for all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this hold harmless clause.

B. Assumption of Risk.

- (1) Franchisee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by third parties or the City, its elected officials, officers, employees, servants, agents, or representatives. Franchisee releases and waives any and all claims against the City, its elected officials, officers, employees, servants, agents, and representatives for damage to or destruction of the Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence of the City.
- (2) Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, servants, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, servants, agents, and representatives against any and all subrogation claims if it fails to do so.

**Section 14. Insurance.** Franchisee shall obtain and maintain, at its cost, worker's compensation insurance and the following liability insurance policies insuring both Franchisee and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
- (1) \$5,000,000.00 for bodily injury or death to each person;
  - (2) \$5,000,000.00 for property damage resulting from any one accident; and
  - (3) \$5,000,000.00 for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 per occurrence.
- C. The liability insurance policies required by this section shall be maintained by Franchisee throughout the term of this Franchise, such other periods of time during which Franchisee's facilities occupy public ways, and while Franchisee is engaged in the removal of its facilities. Franchisee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any construction or installation of any facilities pursuant to this Franchise or other work in a public way. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.
- D. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain an endorsement in a form which substantially complies with the following:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 10 days after receipt by the City, by registered mail, of a written notice addressed to the Kennewick City Manager of intent to cancel or not to renew for reason of nonpayment of premium and until 30 days after receipt by the City, by registered mail, of a written notice addressed to the Kennewick City Manager of intent to cancel or not to renew for reason for any other reason."
- E. At least ten (10) days prior to said cancellation or non-renewal, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

**Section 15. Security Fund.** Franchisee shall establish and maintain a security fund in the amount of eight thousand dollars (\$8,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a public way.

- A. The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards, or permits of the City.
- B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:
  - (1) Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;
  - (2) Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;
  - (3) Providing a reasonable opportunity for Franchisee to pay any monies due the City before the City withdraws the amount thereof from the security fund, if applicable; and
  - (4) Franchisee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.
- C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.
- D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility.

**Section 16. Taxes, Charges, and Fees.**

- A. Franchisee shall pay and be responsible for all charges and fees imposed to recover actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, any use and/or development authorizations which may be required, or any permit which may be required, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to RCW Ch. 43.21C. Regular application and processing charges and fees imposed by the City shall be deemed to be attributable to actual administrative expenses incurred by the City but shall not excuse Franchisee from paying and being responsible for other actual administrative expenses incurred by the City.

- B. Franchisee shall pay and be responsible for taxes permitted by law.
- C. In addition to penalties and other remedies for which Franchisee may be subjected, the City reserves the right to impose site-specific charges for placement of structures used to provide personal wireless services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least one hundred percent (100%) of the costs of construction or installation of such structures.
- D. Franchisee shall pay an administrative fee for franchise renewal to the City of One Thousand Two-Hundred Fifty Dollars (\$1,250.00).

**Section 17. Additional Ducts and Conduits.**

- A. Franchisee shall construct and install additional ducts and conduits when and where requested by the City and related structures necessary to access the ducts and conduits. Such ducts and conduits shall be readily accessible and available for governmental use as determined by the City in its sole discretion. Such ducts and conduits shall not be used to provide telecommunications or cable television service for hire, sale, or resale to the general public unless otherwise agreed by the parties. The City shall not be charged or responsible for any more than the incremental costs to construct and install such ducts and conduits, and the City shall not be charged or responsible for any use, maintenance, or repair costs.
- B. In lieu of constructing and installing additional conduits in overhead facilities, and as a condition of being allowed to place optical cable, optical cable housing, or splicing connections on existing utility poles as overhead facilities, Franchisee shall construct, install, maintain, and repair dark fiber, loops, splicing connections, and related structures necessary to access the dark fiber, for governmental use, at all locations where Franchisee constructs or installs overhead facilities. Franchisee shall construct, install, maintain, and repair ten (10) strands of dark fiber for governmental use at all locations along any route constructed by Franchisee, unless some other amount is mutually agreed by the parties for a particular location. Loops, splicing connections, and related structures necessary to access such dark fiber shall be constructed and installed by Franchisee at locations designated by the City along any route constructed by Franchisee under this Franchise. Such dark fiber, loops, and splicing connections shall be readily accessible and available for governmental use as determined by the City in its sole discretion. It is the City's responsibility to reimburse the Franchisee for Franchisee's actual costs to install the dark fiber service drops from the storage loops into the City's buildings or facilities as required. Such costs shall be provided to and approved by the City prior to commencement of any construction of such service drops by Franchisee. All such dark fiber, loops, splicing connections, and related structures shall be dedicated to governmental use and shall not be used by Franchisee. All such dark fiber, loops, splicing connections, and related structures shall not be used by the City to provide telecommunications or cable television service for hire, sale, or resale to the general public unless otherwise agreed by the parties.

- C. Except as expressly provided in this section, Franchisee shall not charge the City for any costs, of any kind whatsoever, for facilities provided by Franchisee in accordance with this section.

**Section 18. Access to Facilities and Universal Service.**

- A. Franchisee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis. If Franchisee purports to serve the general public, it shall make its telecommunications services available to any customer within its franchise area who shall request such service whenever feasible, without discrimination as to the terms, conditions, rates or charges for the Franchisee's services; provided, however, that nothing in this section shall prohibit Franchisee from making any reasonable classifications among differently situated customers.
- B. Franchisee shall provide facilities to City in accordance with Section 17(B) above, which the City may use for Internet access, in accordance with this Ordinance, to users of City property, at locations requested by the City, if it is practicable. Franchisee and the City may enter into a separate agreement or agreements regarding the allocation of costs to construct, install, operate, maintain, repair, and remove facilities needed to provide such access; provided, however, that nothing herein shall require the City to accept construction or installation of facilities on City property.

**Section 19. Acquisition of Facilities.** Upon Franchisee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

**Section 20. One-Call System.** Franchisee is responsible for complying with the provisions of Washington's One-Call statutes: RCW Ch. 19.122.

**Section 21. Vacation of Public Ways.** The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Franchisee has facilities in such public way, the City shall reserve an easement for Franchisee.

**Section 22. Duty to Provide Information.** Within ten (10) days of a written request from the City, Franchisee shall furnish the City with all requested information sufficient to demonstrate:

- A. That Franchisee has complied with all requirements of this Franchise;
- B. That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid; and
- C. Franchisee's obligations under this section are in addition to those provided in subsection 4(E).

**Section 23. Records.**

- A. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.
  
- B. All documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.
  
- C. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) days of the City's request, that the City inspect them at Franchisee's local office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the City, and if the City determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Franchisee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

**Section 24. Assignment or Transfer.** Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, except as provided herein, or without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

- A. No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve 12 months after the effective date of this Franchise.

- B. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.
- C. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:
  - (1) Complete information setting forth the nature, terms and condition of the proposed assignment, transfer, or disposal;
  - (2) Any other information reasonably required by the City; and
  - (3) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.
- D. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.
- E. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section shall be void and is cause for termination of this Franchise.
- F. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ownership or working control of the Franchisee, of the ownership or working control of affiliated entities having ownership or working control of Franchisee, or of control of the telecommunications capacity or bandwidth of Franchisee, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval. Franchisee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. City approval shall not be required for mortgaging purposes or if said transfer is from Franchisee to another person controlled by Franchisee.
- G. All terms and conditions of this Franchise shall be binding upon all successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

**Section 25. Violations, Noncompliance, and Other Grounds for Termination or Cancellation.**

- A. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:
- (1) Violation of or noncompliance with any term or condition of this Franchise by Franchisee;
  - (2) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Franchisee;
  - (3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;
  - (4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;
  - (5) Misrepresentation or lack of candor by or on behalf of Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;
  - (6) Abandonment of facilities;
  - (7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or
  - (8) Insolvency or bankruptcy of Franchisee.
- B. In the event that the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice, and providing Franchisee a reasonable period of time not exceeding thirty (30) days to furnish evidence:
- (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;
  - (2) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or
  - (3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.
- C. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (B) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.
- D. If the City Council determines that the violation, noncompliance, or other grounds for termination or cancellation arose from willful misconduct or gross negligence by Franchisee, then, Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council.



The City Council may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:

- (1) Whether the misconduct was egregious;
- (2) Whether substantial harm resulted;
- (3) Whether the violation was intentional;
- (4) Whether there is a history of prior violations of the same or other requirements;
- (5) Whether there is a history of overall compliance; and
- (6) Whether the violation was voluntarily disclosed, admitted or cured.

E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit by Franchisee. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

**Section 26. Notices.**

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

The City:	City of Kennewick Attn: City Manager P.O. Box 6108 Kennewick, WA 99336 Phone: (509) 585-4238
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Franchisee:	Zayo Group, LLC Attn: Director, Underlying Rights – West Region 1821 30 <sup>th</sup> St., Unit A Boulder, CO 80301
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With a Copy to:

Zayo Group, LLC Attn: General Counsel – West Region 1821 30 <sup>th</sup> St., Unit A Boulder, CO 80301
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Emergencies:

Network Operations Center & Repair

Phone: (888) 404-9296

E-mail: [zayoncc@zayo.com](mailto:zayoncc@zayo.com)

- B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make best efforts to immediately respond to minimize damage, protect the health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

**Section 27. Non-Waiver.** The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

**Section 28. Eminent Domain.** This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

**Section 29. Limitation of Liability.** Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, servant, agents, and representatives for any injury or damage from the failure of the Franchisee to comply with the provisions of this Franchise; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Except for a party's indemnification obligations set forth herein and except for claims arising from a party's intentional misconduct (including employee conduct), in no event shall either party be liable to the other party for any indirect, incidental, special, punitive or consequential damages whatsoever, arising out of, or in connection with, this agreement, including but not limited to, lost profits, lost revenue, loss of goodwill, loss of anticipated savings, loss of data, incurred or suffered by either party.

**Section 30. Damage to Facilities.** Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

**Section 31. Governing Law and Venue.** This Franchise and use of the applicable public ways will be governed by the laws of the State of Washington, unless preempted by federal law. Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Benton County, or in the case of a federal action, the United States District Court for the Eastern District of Washington at Richland, Washington, unless an administrative agency has primary jurisdiction.

**Section 32. Severability.** If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise nor its application to any other person or entity; provided that, if any term or condition of this Franchise relating to Franchisee's right, privilege, or authority to place optical cable, optical cable housing, and splicing connections on existing utility poles as overhead facilities is held to be invalid or unconstitutional by a court of competent jurisdiction, Franchisee's authority to construct, install, operate, maintain, or repair overhead facilities shall be deemed void *ab initio*, any overhead facilities shall be deemed to be unauthorized, and Franchisee shall be authorized only to place facilities underground.

**Section 33. Miscellaneous.**

- A. Equal Employment and Nondiscrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.
- B. Local Employment Efforts. Franchisee will use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever the Franchisee employs contractors to perform work under this Franchise.
- C. Descriptive Headings. The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.
- D. Costs and Attorneys' Fees. If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its reasonable costs, including attorneys' fees, as well as costs and reasonable attorneys' fees on appeal, in addition to such other relief as the court may deem proper.
- E. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either

party act toward third persons or the public in any manner that would indicate any such relationship with the other.

- F. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.
- G. Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.
- H. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise, and sufficient grounds for the City to invoke any relevant remedy.
- I. Entire Agreement. This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.
- J. Modification. The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this subsection shall impair the City's exercise of authority reserved to it under this Franchise.
- K. Non-exclusivity. This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of telecommunications services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.
- L. Rights Granted. This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and term stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.
- M. Contractors and Subcontractors. Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

**Section 34. Acceptance of Franchise.** Within thirty (30) days after the passage and approval of this ordinance, this Franchise may be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights,

privileges, and authority herein granted shall, after the expiration of the 30-day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

**Section 35. Publication.** The City Clerk is authorized and directed to publish a summary hereof in accordance with Revised Code of Washington §§ 35A.13.200 and 35A.12.160.

**Section 36. Effective Date.** This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Franchisee has endorsed this ordinance and accepted the terms and conditions thereof prior to 30 days after passage.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 18th day of January, 2022, and signed in authentication of its passage this 18<sup>th</sup> day of January, 2022.

Attest:

\_\_\_\_\_  
W D MCKAY, Mayor

\_\_\_\_\_  
TERRI WRIGHT, City Clerk

ORDINANCE NO. 5969 filed and recorded in the office of the City Clerk of the City of Kennewick, Washington this 19<sup>th</sup> day of January, 2022.

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

\_\_\_\_\_  
TERRI WRIGHT, City Clerk

DATE OF PUBLICATION \_\_\_\_\_

**ACCEPTANCE:**

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Franchisee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the franchise and the municipal code and ordinances of the City.

**ZAYO GROUP, LLC**

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

Printed Name: \_\_\_\_\_

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

**CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:**

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the City Council in accordance with this Franchise; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this Franchise; and (3) the Franchisee has paid all applicable processing costs set forth in the franchise.

The effective date of this Franchise ordinance is: \_\_\_\_\_.

**CITY OF KENNEWICK**

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

Printed Name: Terri Wright

Title: City Clerk

# Council Agenda Coversheet



Agenda Item Number	5.b.	Council Date	01/18/2022
Agenda Item Type	Ordinance		
Subject	US Cellular Small Cell Franchise Agreement		
Ordinance/Reso #	5970	Contract #	
Project #		Permit #	
Department	City Attorney		

Consent Agenda	<input type="checkbox"/>
Ordinance/Reso	<input checked="" type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Staff recommends adopting Ordinance 5970.

### Motion for Consideration

I move to adopt Ordinance 5970.

### Summary

Ordinance 5970 grants a citywide franchise to USOC of Richland, Inc. d/b/a US Cellular for a ten-year term. The Franchise grants US Cellular the right to install small cell facilities within the right of way according to the terms and conditions of the Franchise document. While the primary purpose for the public right of way is travel, as council may recall, secondary uses are also permitted when not inconsistent with the primary object of the right of way. A franchise is a grant of authority by a city to a provider to use the right of way to provide or distribute its services. Franchises are most commonly used to provide utility or telecommunications service.

The Franchise in this instance imposes a number of conditions requiring US Cellular to install small cell facilities on existing utility poles first before applying to install a new pole. US Cellular will be required to separately apply for small cell permits for the installation of its infrastructure. If US Cellular intends to use city light poles, they will be required to enter into a master license agreement for use of city light poles. The Franchise requires that US Cellular comply with the City's design standards found in KMC 4.14. There are additional requirements pertaining to bonding, indemnification and insurance to protect the City against loss related to the installation and maintenance of the small cell facilities. The Franchise requires US Cellular to comply with FCC RF emission standards and to provide proof of compliance. The Franchise contains provisions related to remedies to enforce compliance.

### Alternatives

None recommended.

### Fiscal Impact

N/A

Through	Lisa Beaton Jan 11, 16:51:22 GMT-0800 2022
Dept Head Approval	Lisa Beaton Jan 11, 16:49:30 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 16:21:22 GMT-0800 2022

Attachments:

Recording Required?

CITY OF KENNEWICK  
ORDINANCE NO. 5970

AN ORDINANCE OF THE CITY OF KENNEWICK, WASHINGTON, GRANTING TO USCOC OF RICHLAND, INC. AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF KENNEWICK, WASHINGTON

WHEREAS, USCOC of Richland, Inc., a Washington corporation (the “Franchisee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”); 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; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS FOLLOWS:



**Table of Contents**

Section 1 Franchise Granted. .... 3

Section 2 Authority Limited to Occupation of Public Rights-of-Way for Services. .... 3

Section 3 Non-Exclusive Franchise Grant..... 4

Section 4 Location of Telecommunications Network Facilities..... 5

Section 5 Relocation of Telecommunications Network Facilities..... 5

Section 6 Undergrounding of Facilities ..... 8

Section 7 Maps and Records..... 9

Section 8 Work in the Rights-of-Way ..... 10

Section 9 One Call Locator Service..... 12

Section 10 Safety Requirements. .... 12

Section 11 Work of Contractors and Subcontractors..... 13

Section 12 Restoration after Construction ..... 13

Section 13 Emergency Work/Dangerous Conditions. .... 14

Section 14 Recovery of Costs, Taxes and Fees ..... 15

Section 15 Small Cell Facilities..... 16

Section 16 Indemnification..... 19

Section 17 Insurance. .... 21

Section 18 Abandonment of Franchisee’s Telecommunications Network..... 22

Section 19 Bonds ..... 23

Section 20 Remedies to Enforce Compliance..... 25

Section 21 Forfeiture and Revocation..... 26

Section 22 Non-Waiver..... 26

Section 23 City Ordinances and Regulations..... 26

Section 24 Cost of Publication..... 26

Section 25 Acceptance .....	27
Section 26 Survival .....	27
Section 27 Assignment. ....	27
Section 28 Extension.....	28
Section 29 Entire Agreement .....	28
Section 30 Eminent Domain .....	28
Section 31 Vacation .....	28
Section 32 Notice.....	28
Section 33 Severability. ....	29
Section 34 Compliance with All Applicable Laws.....	29
Section 35 Amendment.....	29
Section 36 Attorneys’ Fees .....	30
Section 37 Hazardous Substances.....	30
Section 38 Licenses, Fees and Taxes.....	30
Section 39 Miscellaneous .....	31
Section 40 Ordinance Effective Date .....	31

## **Section 1 Franchise Granted.**

Section 1.1 Pursuant to RCW 35A.47.040, the City of Kennewick, a Washington municipal corporation (hereinafter 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 ten (10) years, beginning on the effective date of this ordinance, set forth herein.

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 Small Cell Facilities, as defined in Section 2, for its telecommunications network, in, under, on, across, over, through, along or below the public Rights-of-Ways located in the City of Kennewick, as approved pursuant to City codes and permits issued pursuant to this Franchise. Public “Rights-of-Way” means land acquired or dedicated for public roads and streets, but does not include: WSDOT managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use. 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 Kennewick Zoning Code, the Comprehensive Plan, the Standard Specifications & Details and the Kennewick 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. Franchisee hereby warrants that it expects to provide the following services within the City: small cell network consisting of a collection of interrelated Small Cell Facilities designed to deliver personal wireless services (the “Services”).

Section 2.2 As used herein, “Small Cell Facilities” or “Facilities” means small cell facilities as defined in 47 CFR Section 1.6002, as may be amended. Small Cell Facilities shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceeds the noise limits allowed in the Codes or associated permit are excluded from “Small Cell Facilities.” Services do not include those personal wireless services and associated facilities that fall outside of the definition of Small Cell Facilities (i.e. macro facilities).

Section 2.3 This Franchise does not grant Franchisee the right to install and operate wires and facilities to provide wireline backhaul, wireline broadband transmission services, or any other wire-based services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Rights-of-Way outside of this Franchise. Further, this Franchise does not grant the right to offer a Cable System or Cable Services as those terms are defined in 47 U.S.C. § 522(6).

Section 2.4 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 2.5 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
- (d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to the citizens of the City without all required business licenses, franchise or other form of state wide approval.

**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 Standard Specifications & Details and subject to the City's applicable Code requirements in effect at the time of the specific Facility application. 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. The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove and/or temporarily disconnect its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third party private entities. Collectively all such projects described in this Section 5.1 shall be considered a "Public Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.1 shall be borne by Franchisee. Franchisee shall complete the relocation of its Facilities at no charge or expense to the City.

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. Franchisee acknowledges and agrees that the placement of Small Cell Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees, that to the extent Franchisee's Small Cell Facilities are on poles owned by third parties, the City shall not be responsible for any costs associated with requests arising out of a Public Project.

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), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Cell Facilities in order to provide consideration for the City's approval to site a Small Cell Facility on Franchisee owned structures or poles in a portion of the Right of Way designated or proposed for a Public Project. 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. The parties acknowledge that this provision is mutually beneficial to the parties, as the City may otherwise deny the placement of the Small Cell Facility at a particular site because of the cost impact of such relocation and the conflict with the City's Comprehensive Plan.

Section 5.4 Locate. Upon request of the City, or of a third-party performing work in the Right-of-Way on behalf of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Projects shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

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 in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with 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. 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). 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) The City will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, endeavoring to provide no less than ninety (90) days prior to the commencement of the construction of such Public Project; provided, however that 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) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Public Project consistent with the timeline provided by the City and at no charge or expense to the City. Such timeline may be extended by a mutual agreement.
- (f) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, that necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

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). 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 16, 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 negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.9 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 5.10 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 Franchisee shall not be permitted to erect poles, unless permitted by the City pursuant to Section 15.3 and the Codes. Franchisee acknowledges and agrees that if the City allows the placement of Small Cell Facilities above ground the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to an underground installation or relocated at Franchisee's expense if the existing poles on which Franchisee's Facilities are located are designated for removal due to a Public Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting of wireless facilities.

Section 6.2 Franchisee shall not be required to underground any portion of the Facility that must for technological reasons remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above ground, then Franchisee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Franchisee, at no cost to the City.

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 6.3. 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. 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 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Cell Facility, Franchisee shall provide the City with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Cell Facilities in the Franchise Area. These plans and maps shall be provided at no cost to the City and shall include hard copies and digital files in Autocad or other industry standard readable formats that are acceptable to the City and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) days following a request from the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided to the City.

Section 7.2 Within thirty (30) days of a written request from the City Engineer, the Franchisee shall furnish the City with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All maps and as-build drawings maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. 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 7.5 Nothing in Section 7.3 or Section 7.4 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 for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way. 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 for a period of two (2) years. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

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 reason determined by the Public Works Director.

Section 8.4 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; and
- (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.
- (d) Franchisee may only charge the incremental costs to the City of installing facilities supplied by the City in such joint or shared excavations.

Section 8.5 Franchisee shall comply with all notice requirements of intended construction that the applicable permit may require that Franchisee provide to entities or persons adjacent to the affected area. Such notice shall contain the information required under the permit, which may include 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.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. 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 negligent act or omission 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 City Engineer 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 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 inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 8.9 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 to meet the Public Works Engineering and Construction Standards. 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) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

- (b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.
- (c) 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 Standard Specifications & Details. 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 for a period of two (2) years and for undiscovered defects as is standard and customary for this type of work.

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 upon fifteen (15) days' notice to Franchisee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. 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 by the City 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 the Kennewick 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 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 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. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee. 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 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. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in

preparing the billing may also be included in said billing. 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 15 Small Cell Facilities.**

Section 15.1 City Retains Approval Authority. The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7), and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Cell Facilities by Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Cell Facility.

Section 15.2 City Approvals and Permits. The granting of this Franchise is not a substitute for any other City required approvals to construct Franchisee's Facilities in the Rights-of-Way ("City Approvals"). The parties agree that such City Approvals (except Right-of-Way use permits as described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Cell Facilities. Therefore, City Approvals are not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, and with state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

### **Section 15.3 Preference for Existing Infrastructure; Site Specific Agreements.**

- (a) Franchisee shall utilize existing infrastructure in the City whenever possible and consistent with the design, concealment and siting regulations of the Codes. The erection of new poles or structures in the Right-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Cell Facility, or if the City prefers new poles or infrastructure in a particular area of the City, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the Codes.
- (b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way, then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 in order to construct such Facilities in the Right-of-Way. Such agreements may require a site-specific charge paid to the City. The approval of a site-specific agreement is separate



from this Franchise and must be approved and executed by the City Manager or his/her designee.

- (c) Unless otherwise required by the Codes, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the Codes are permissible, provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than ninety (90) days after the installation of the replacement pole or structure.
- (d) This Section 15.3 does not place an affirmative obligation on the City to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any Code provision related to the siting or design of wireless facilities.

Section 15.4 Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as described in the Codes, as the same exist or are hereafter amended, or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 Reserved.

Section 15.6 Inventory. Franchisee shall maintain a current inventory of Small Cell Facilities throughout the Term of this Franchise. Franchisee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this ordinance and shall provide the City with an updated copy of the inventory report within thirty (30) days of request by the City. The inventory report shall include GIS coordinates, date of installation, and type of pole used for installation. Small Cell Facilities that are considered Deactivated Facilities, as described in Section 18.1, shall be included in the inventory report and Franchisee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Right-of-Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Franchisee is not required to report on future inventory reports any Deactivated Facilities that were removed from the Right-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 Unauthorized Facilities. Any Small Cell Facilities installations in the Right-of-Way that were not authorized under this Franchise or other required City Approval ("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Franchisee. The City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged an amount of Five Hundred and 00/100 Dollars (\$500.00) per day per Unauthorized Facility ("Unauthorized Facility Fee"). The Unauthorized Facility Fee shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Fee shall be suspended upon the submission of

a complete application to the City requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Fee will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from the City's Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. Upon the conclusion of any matter involving an Unauthorized Facility, City shall provide Franchisee an invoice detailing the total amount of the Unauthorized Facility Fee, if any, which penalty Franchisee shall pay within thirty (30) days after receipt of notice thereof. This Franchisee remedy is in addition to any other remedy available to the City at law or equity. Notwithstanding the foregoing, an Unauthorized Facility Fee pursuant to this Franchise shall not be assessed if Franchisee received City Approval for the Small Cell Facilities but such Small Cell Facilities are technically inconsistent with the City Approval; provided, however, Franchisee is still required to fix any inconsistencies with the permit requirements and that this provision does not restrict the City's other enforcement rights.

Section 15.8 Graffiti Abatement. As soon as practical, but not later than thirty (30) days from the date Franchisee receives notice or is otherwise aware, Franchisee shall remove all graffiti on any of its Small Cell Facilities of which it is the owner of the pole or structure or on the Small Cells Facilities themselves attached to a third-party pole (i.e., graffiti on the shrouding protecting the radios). The foregoing shall not relieve Franchisee from complying with any City graffiti or visual blight ordinance or regulation.

Section 15.9 Emissions Reports.

- (a) Franchisee is obligated to comply with all applicable laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Rights-of-Way, including all applicable FCC standards. Franchisee shall comply with the RF emissions certification requirements under applicable Law.
- (b) Unless exempt from routine evaluation pursuant to FCC rules and regulations, nothing in this Franchise prohibits the City from requesting an RF certification letter for Franchisee's Facilities, which the City may request no more than once per year. The City may inspect any of Franchisee's Facilities and equipment located in the Rights-of-Way. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Franchisee to immediately turn off the Facility or portion thereof committing the violation, until the emissions exposure is remedied. Such order shall be made orally by calling 1-800-510-6091 and also by written notice pursuant to Section 32. Franchisee is required to promptly turn off that portion of the Facility that is in violation, no later than forty-eight (48) hours after receipt of notice. If the City finds that the emissions from a Facility exceed the FCC standards, then Franchisee shall reimburse the City for any costs incurred by the City for inspecting the Facility and providing notice as described in Section 14.3 and Section 14.4.

Section 15.10 Interference with Public Facilities. Franchisee's Small Cell Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or with the emergency communications operation or equipment. If the Small Cell Facilities cause such harmful interference, Franchisee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Franchisee power down the specific Small Cell Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) days after receipt of such written notice from the City of such interference, Franchisee has not abated such interference in a manner that is consistent with federal guidelines, such Small Cell Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by the City consistent with Section 13. The Small Wireless Facility, or interfering portion thereof, must remain powered down (except for testing purposes) during the abatement period; otherwise the City may take more immediate action consistent with Section 13 to protect the public health, safety, and welfare.

Section 15.11 Interference with Other Facilities. Franchisee is solely responsible for determining whether its Small Cell Facilities interfere with telecommunications facilities of other utilities and franchisees within the Rights-of-Way. Franchisee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Cell Facilities within the Franchise Area. Franchisee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise.

## **Section 16 Indemnification**

Section 16.1 Franchisee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials (elected and appointed) 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 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.

Section 16.2 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 16.

Section 16.3 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 16.3. 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 16.4 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials (elected and appointed), employees, or agents, the obligations of Franchisee under the indemnification provisions of this Section 16, 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 (elected and appointed), 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 16.5 Notwithstanding any other provisions of this Section 16, 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, 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, elected or appointed officials, or contractors. In no event shall either party be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss

of business opportunity in connection with its performance or failure to perform under this Franchise. Each party releases and waives any and all such claims against the other, its officers, agents, employees, or elected or appointed officials, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

**Section 17 Insurance.**

Section 17.1 Franchisee shall procure and 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. Franchisee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure 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 blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

- (a) Commercial Automobile Liability insurance with limits of \$5,000,000 combined single limit each accident for bodily injury and property damage;
- (b) Commercial General Liability insurance, written on an occurrence basis with limits of \$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; 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; and
- (e) Excess Umbrella liability policy with limits of \$10,000,000 per occurrence and in the aggregate.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee's umbrella liability insurance policy shall be at least as broad as its primary coverage.

Section 17.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Franchisee shall include the City, its officers, officials, and employees ("Additional Insureds"), as an additional insured as their interest may appear under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 20 11, or its equivalent. 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 blanket 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 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 17.4 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, required pursuant to this Section 17. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 20 below. Notwithstanding the cure period described in Section 20.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 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.

Section 17.6 The City may review all insurance limits once every three (3) years during the Term, and upon prior written notice to, review, and acceptance by Franchisee, may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Franchisee. Franchisee shall provide a certificate of insurance to the City showing compliance with these adjustments and the additional insured endorsement.

Section 17.7 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 18 Abandonment of Franchisee's Telecommunications Network.**

Section 18.1 Where any Facilities or portions of Facilities are no longer needed, and their use is to be discontinued, the Franchisee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions addressed in Section 15.6. 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.

Section 18.2 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.

Section 18.3 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 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 18.4 Notwithstanding Section 18.1 above, the City may permit Franchisee's Facilities to be abandoned in place in such a manner as the City may prescribe. 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 18.5 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 18 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 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

### **Section 19 Bonds and Security Fund**

Section 19.1 If required by permit, Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits,

technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in 19.2. Compliance with the Performance Bond requirement of the City's current Standard Specifications & Details shall satisfy the provisions of this Section 19.1.

Section 19.2 Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work. The Maintenance Bond in this Section 19.2 must be in place prior to City's release of the bond required Section 19. Compliance with the Maintenance Bond requirement of the City's current Standard Specifications & Details shall satisfy the provisions of this Section 19.2. In lieu of a separate Maintenance Bond for individual projects involving work in the Franchise Area, Franchisee may satisfy the Maintenance Bond requirement by posting a single on-going Maintenance Bond in an amount approved by City.

#### Section 19.3 Security Fund

A. Franchisee shall establish and maintain a security fund in the amount of fifty thousand dollars (\$50,000), at its cost, with the City by depositing such monies, bonds, letters of credit, or other instruments in such form and amount acceptable to the City and running renewable for the term of this Franchise. No sums may be withdrawn from the fund by Franchisee without consent of the City. The security fund shall be maintained at the sole expense of Franchisee so long as any of the Franchisee's facilities occupy a Public Way.

(1)The fund shall serve as security for the full and complete performance of this Franchise, including any claims, costs, damages, judgments, awards, or liability, of any kind whatsoever, the City pays or incurs, including civil penalties, because of any failure attributable to Franchisee to comply with the provisions of this Franchise or the codes, ordinances, rules, regulations, standards or permits of the City.

B. Before any sums are withdrawn from the security fund, the City shall give written notice to Franchisee:

(1)Describing the act, default or failure to be remedied, or the claims, costs, damages, judgments, awards, or liability which the City has incurred or may pay by reason of Franchisee's act or default;

(2)Providing a reasonable opportunity for Franchisee to first remedy the existing or ongoing default or failure, if applicable;



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

(4) Franchisee will be given an opportunity to review the act, default, or failure described in the notice with the City or his or her designee.

C. Franchisee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the fund.

D. Insufficiency of the security fund shall not release or relieve Franchisee of any obligation or financial responsibility. 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 20 Remedies to Enforce Compliance.**

Section 20.1 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 20.2 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. Excluding delays due to contractor labor or equipment supply shortages, 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 Security Fund set forth in Section 19.3, or (3) suspend the issuance of additional permits, or (4) pursue other remedies as described in Section 20.1 above.

Section 20.3 If the City 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 City under the provisions

of this Franchise, the Franchisee shall provide City with written notice specifying with reasonable particularity the nature of any such breach and City 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 thirty (30) days, the Franchisee 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 work to completion. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Franchisee may, at its discretion, terminate this Franchise and pursue any other rights and remedies as provided by law and equity.

**Section 21 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 Kennewick 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 Kennewick 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 Kennewick 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 Kennewick City Council does not grant any additional period, the Kennewick 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 22 Non-Waiver.** The failure of either party 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 23 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 ordinance(s) shall take precedence over the provisions set forth herein.

**Section 24 Cost of Publication.** The cost of publication of this Franchise shall be borne by Franchisee.

**Section 25 Acceptance.** Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any Performance Bond, if applicable, pursuant to Section 19 and the Security Fund required pursuant to Section 19.3. The administrative fee pursuant to Section 14.1 is due within thirty (30) days of receipt of the invoice from the City.

**Section 26 Survival.** All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 18, Section 26, and 38, 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, as well as all 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 27 Assignment.**

Section 27.1 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 27.2 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 27, 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 27.2 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 27.3 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, a copy 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 27.3 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 28 Extension.** If this Franchise expires without renewal, 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 18.

**Section 29 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 30 Eminent Domain.** The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of 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 31 Vacation.** If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to 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 32 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 KENNEWICK:  
Attn: Bruce Mills  
P. O. Box 6108  
Kennewick, WA 99336

Franchisee:  
USCOC of Richland, Inc., a Washington  
corporation  
Attn: Real Estate Lease Administration  
8410 W. Bryn Mawr Avenue  
Chicago, Illinois 60631

With a Copy to:  
Lisa Beaton  
Kennewick City Attorney  
P. O. Box 6108  
Kennewick, WA 99336

With a Copy to:  
USCC Services, LLC  
Attention: Real Estate Lease Administration  
8410 W. Bryn Mawr Avenue  
Chicago, Illinois 60631

**Section 33 Severability.** If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

**Section 34 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 further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address Small Cell deployment and such Code modifications shall apply to Franchisee's Facilities, except to the extent of a vested right or right under state or federal 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 ordinance(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

**Section 35 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 36 Attorneys' 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 37 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 38 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..

**Section 39 Miscellaneous.**

Section 39.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

Section 39.2 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 Eastern District of Washington, or Benton County Superior Court.

Section 39.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 39.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 39.5 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 39.6 This Franchise may be enforced at both law and equity.

Section 39.7 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 39.8 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 40 Ordinance 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").

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this \_\_\_\_ day of \_\_\_\_\_, 2022, and signed in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
BILL MCKAY, Mayor

Attest:

ORDINANCE NO. 5970 filed and recorded  
in the office of the City Clerk of the City of  
Kennewick, Washington this \_\_\_\_ day of  
\_\_\_\_\_, 2022.

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

Approved as to Form:

\_\_\_\_\_  
LISA BEATON  
City Attorney

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

DATE OF PUBLICATION \_\_\_\_\_

FILED WITH THE CITY CLERK: \_\_\_\_\_

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

ORDINANCE NO.: 5970



**SUMMARY OF ORDINANCE NO. 5970**

City of Kennewick, Washington

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On the 18th day of January, 2022, the City Council of the City of Kennewick passed Ordinance No.5970. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

**AN ORDINANCE OF THE CITY OF KENNEWICK, WASHINGTON, GRANTING TO USCOC OF RICHLAND, INC. AND ITS AFFILIATES, SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF KENNEWICK, WASHINGTON.**

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

---

TERRI L. WRIGHT, City Clerk

FILED WITH THE CITY CLERK: \_\_\_\_\_, 2022

PASSED BY THE CITY COUNCIL: \_\_\_\_\_, 2022

PUBLISHED: \_\_\_\_\_, 2022

EFFECTIVE DATE: \_\_\_\_\_, 2022

ORDINANCE NO.: 5970

STATEMENT OF ACCEPTANCE

USCOC of Richland, Inc. for itself, its successors 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.

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )

)ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, 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.

\_\_\_\_\_

Notary Public in and for the State of \_\_\_\_\_,

Residing at \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

# Council Agenda Coversheet



Agenda Item Number	6.a.	Council Date	01/18/2022
Agenda Item Type	Ordinance		
Subject	Right-Of-Way Vacation at 7114 W Hildebrand Blvd		
Ordinance/Reso #	5968	Contract #	
Project #		Permit #	ENG-2021-5249
Department	Public Works		

Consent Agenda	<input type="checkbox"/>
Ordinance/Reso	<input checked="" type="checkbox"/>
Public Mtg / Hrg	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

### Recommendation

Staff recommends vacation of a portion of right-of way located at 7114 West Hildebrand Boulevard, following a public hearing.

### Motion for Consideration

I move to adopt Ordinance 5968.

### Summary

At the December 21, 2021 Council meeting, the date of January 18, 2022 was set for a public hearing, and all conditions of proper notice have been fulfilled.

Hayden Homes is requesting the vacation of a portion of the old abandoned Hildebrand right of way abutting 7114 West Hildebrand Boulevard as part of their proposed 192 lot Sherman Heights Subdivision.

Public Works has assessed this portion of West Hildebrand Boulevard and with the completion of Bob Olson Parkway has determined it is no longer needed.

Pursuant to RCW 35.79.030, the adjacent property owner and beneficiary (HHIF VI LLC, an Oregon Limited Liability Company) shall compensate the City in the amount of one half the value of the vacated right-of-way. For this subject property, the value is \$0.45 per square foot, so we are applying 53,984 square feet x \$0.225/sf = \$12,146.40.

### Alternatives

None recommended.

### Fiscal Impact

HHIF VI LLC to pay the City \$12,146.40 upon approval.

Through	Bruce Mills Jan 10, 11:28:39 GMT-0800 2022
Dept Head Approval	Cary Roe Jan 10, 12:47:39 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 16:23:39 GMT-0800 2022

Attachments:  Ordinance  Map

Recording Required?

When recorded, return to:

Kennewick City Clerk  
P. O. Box 6108  
Kennewick, WA 99336

CITY OF KENNEWICK  
ORDINANCE NO. 5968

AN ORDINANCE RELATING TO VACATION OF STREET RIGHT-OF-WAY  
ON A PORTION OF PUBLIC RIGHT-OF-WAY ABUTTING 7114 WEST  
HILDEBRAND BOULEVARD

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS  
FOLLOWS:

WHEREAS, the City Council of the City of Kennewick, Washington, by Resolution No. 21-13 initiated proceedings to vacate a portion of right-of-way abutting 7114 West Hildebrand Boulevard and by said resolution fixed the 21st day of December, 2021, at 6:30 p.m. at Kennewick City Hall as the time when the vacation of a portion of right-of-way abutting 7114 West Hildebrand Boulevard should be heard and determined, and notice of such hearing was given as required by law; and

WHEREAS, such hearing was duly held at the time and place appointed by resolution and objections to said resolution were heard and considered by the City Council, and the City Council having determined to make said vacation; and

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS  
FOLLOWS:

**Section 1.** That portion of street right-of-way described as follows:

**Parcels 1-0889-301-3488-002**

Portion of West Hildebrand Boulevard to be vacated

A PORTION OF A 60 FOOT RIGHT OF WAY FOR HILDEBRAND ROAD AS  
ESTABLISHED PER AUDITOR'S FILE NUMBER 373624 RECORDS OF  
THE BENTON COUNTY AUDITOR, CITY OF KENNEWICK, STATE OF  
WASHINGTON, LOCATED IN A PORTION OF LOT 2 OF SHORT PLAT

NO. 3488 FILED IN VOLUME 1 OF SHORT PLAT AT PAGE 3488 UNDER AUDITOR'S FILE NUMBER 2016-007168 RECORDS OF BENTON COUNTY, WASHINGTON. LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 8 NORTH, RANGE 29 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF KENNEWICK, COUNTY OF BENTON, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH SIXTEENTH CORNER OF SAID SECTION 8 BEING A 3 INCH BRASS CAP; THENCE SOUTH 00°18'37" EAST ALONG THE WEST LINE OF SOUTHWEST QUARTER OF SAID SECTION 8 A DISTANCE OF 1335.22 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 8 BEING A 5/8 IRON PIN; THENCE NORTH 00°18'37" WEST BACK ALONG THE WEST LINE OF SAID SECTION 8 A DISTANCE OF 337.40 FEET TO A POINT ON THE WEST LINE OF SAID SECTION 8 AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG THE WEST LINE OF SAID SECTION 8 NORTH 00°18'37" WEST A DISTANCE OF 24.92 FEET; THENCE SOUTH 77°56'05" EAST LEAVING THE WEST LINE OF SAID SECTION 8 A DISTANCE OF 184.34 FEET; THENCE NORTH 76°03'55" EAST A DISTANCE OF 152.60 FEET; THENCE SOUTH 64°56'05" EAST A DISTANCE OF 253.64 FEET TO THE INTERSECTION WITH THE NORTHERLY RIGHT OF WAY MARGIN OF BOB OLSON PARKWAY AS ESTABLISHED PER SHORT PLAT NO. 3488 FILED UNDER AUDITOR'S FILE NUMBER 2016-007168 RECORDS OF BENTON COUNTY, WASHINGTON; THENCE NORTH 81°24'26" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 211.60 FEET; THENCE NORTH 64°56'05" WEST LEAVING SAID RIGHT OF WAY A DISTANCE OF 29.48 FEET; THENCE SOUTH 76°03'55" WEST A DISTANCE OF 21.82 FEET TO THE INTERSECTION WITH THE NORTHERLY RIGHT OF WAY MARGIN OF SAID BOB OLSON PARKWAY; THENCE NORTH 81°24'26" WEST ALONG SAID RIGHT OF WAY A DISTANCE OF 304.31 FEET TO THE INTERSECTION WITH THE WEST LINE OF SAID SECTION 8 AND THE TRUE POINT OF BEGINNING.

HAVING AN AREA OF 18,017 SQUARE FEET, 0.41 ACRES, MORE OR LESS.

TOGETHER WITH A PORTION OF A 30 FOOT RIGHT OF WAY FOR HILDEBRAND ROAD AS ESTABLISHED PER AUDITOR'S FILE NUMBER 373624 RECORDS OF THE BENTON COUNTY AUDITOR, LOCATED IN A PORTION OF LOT 2 OF SHORT PLAT NO. 3488 FILED IN VOLUME 1 OF SHORT PLAT AT PAGE 3488 UNDER AUDITOR'S FILE NUMBER 2016-007168 RECORDS OF BENTON COUNTY, WASHINGTON. LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 8 NORTH, RANGE 29 EAST OF THE

WILLAMETTE MERIDIAN, IN THE CITY OF KENNEWICK, COUNTY OF BENTON, STATE OF WASHINGTON, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 8 BEING A 5/8 IRON PIN; THENCE NORTH 88°03'42" EAST ALONG THE SOUTH LINE OF SAID SECTION 8 A DISTANCE OF 2657.30 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 8 BEING A MAG NAIL IN ASPHALT AT THE CENTER OF SOUTH SHERMAN STREET; THENCE SOUTH 88°03'42" WEST BACK ALONG THE SOUTH LINE OF SAID SECTION 8 A DISTANCE OF 30.01 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY MARGIN OF SOUTH SHERMAN STREET AS ESTABLISHED PER SOUTHCLIFFE PHASE 1 RECORDED IN VOLUME 15 OF PLATS AT PAGE 476 FILED UNDER AUDITOR'S FILE NUMBER 2013-041495, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF SAID LOT 2 AND THE TRUE POINT OF BEGINNING;

THENCE SOUTH 88°03'42" WEST CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 8 A DISTANCE OF 1,175.27 FEET TO THE SOUTHWEST CORNER OF SAID LOT 2, ALSO BEING THE INTERSECTION WITH THE NORTHEASTERLY RIGHT OF WAY MARGIN OF BOB OLSON PARKWAY AS ESTABLISHED PER SHORT PLAT NO. 3488 FILED UNDER AUDITOR'S FILE NUMBER 2016-007168 RECORDS OF BENTON COUNTY, WASHINGTON AND ALSO BEING A POINT ON THE ARC OF A NON TANGENT CURVE TURNING TO THE LEFT, HAVING A RADIUS OF 812.00 FEET; THE RADIUS POINT OF WHICH BEARS SOUTH 32°11'58" WEST; THENCE ALONG SAID CURVE AND SOUTHWESTERLY BOUNDARY LINE OF SAID LOT 2, HAVING AN ARC LENGTH OF 56.39 FEET, WITH A DELTA ANGLE OF 03°58'44", A CHORD BEARING OF NORTH 59°47'24" WEST, AND A CHORD LENGTH OF 56.38 FEET; THENCE NORTH 88°03'42" EAST LEAVING THE BOUNDARY LINE OF SAID LOT 2 A DISTANCE OF 1,223.80 FEET TO THE INTERSECTION WITH THE WESTERLY RIGHT OF WAY MARGIN OF SAID SOUTH SHERMAN STREET, SAID POINT ALSO BEING THE INTERSECTION WITH THE EASTERLY BOUNDARY LINE OF SAID LOT 2; THENCE SOUTH 00°25'21" EAST ALONG THE WESTERLY RIGHT OF WAY OF SAID SOUTH SHERMAN STREET A DISTANCE OF 30.01 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 8 AND THE TRUE POINT OF BEGINNING.

HAVING AN AREA OF 35,967 SQUARE FEET, 0.83 ACRES, MORE OR LESS.

**Section 2.** Pursuant to RCW 35.79.030, the adjacent property owner and beneficiary (HHIF VI LLC, AN OREGON LIMITED LIABILITY COMPANY) shall compensate the City in the amount of one half the appraised value of the vacated right-of-way.

1. **Parcel No. 1-0889-301-3488-002:** The assessed value is \$0.45 per square foot. The established value of the 53,984 square foot right-of-way at one-half \$0.45 per square foot is \$12,146.40.

**Section 3. Findings of Fact.**

1. The vacation has been approved by affected utility companies.
2. The vacation has been approved by City staff.
3. No abutting property owners object to this vacation.
4. In accordance with RCW 35.79.030, HHIF VI LLC, An Oregon Limited Liability Company will pay half the appraised value of the property being vacated in the amount of \$12,146.40.
5. This ordinance will be in effect once payment for the property being vacated has been received by the City.

**Section 4.** This ordinance shall be in full force and effect five days from and after its passage, approval receipt of the \$12,146.40, and publication as required by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 18<sup>th</sup> day of January, 2022, and signed in authentication of its passage this 18<sup>th</sup> day of January, 2022.

Attest:

\_\_\_\_\_  
W. D. MCKAY, Mayor

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

ORDINANCE NO. 5968 filed and recorded in the office of the City Clerk of the City of Kennewick, Washington this 19<sup>th</sup> day of January, 2022.

Approved as to Form:

\_\_\_\_\_  
LISA BEATON, City Attorney

\_\_\_\_\_  
TERRI L. WRIGHT, City Clerk

DATE OF PUBLICATION \_\_\_\_\_

TAX PARCEL #  
1-0889-301-2693-003  
7114 W. HILDEBRAND BLVD

HILDEBRAND RIGHT OF WAY  
A.F. 373624 TO BE  
VACATED 53,984 SF

BOB OLSON PARKWAY

115.38'  
TS NAWMREHS S

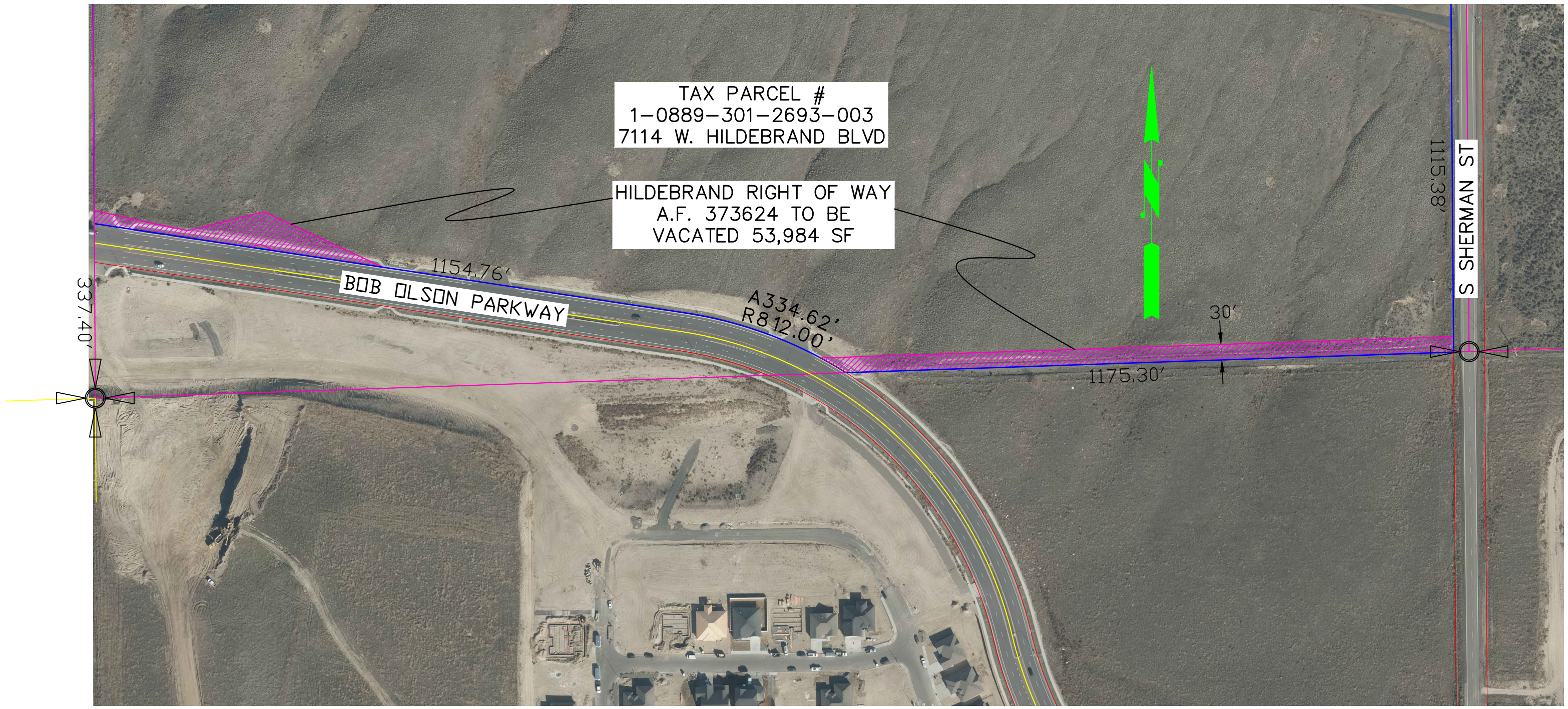
337.40'

1154.76'

A334.62'  
R812.00'

1175.30'

30'





# Council Agenda Coversheet



Agenda Item Number	7.a.	Council Date	01/18/2022
Agenda Item Type	General Business Item		
Subject	Police Reform Legislation		
Ordinance/Reso #		Contract #	
Project #		Permit #	
Department	City Attorney		

Consent Agenda	<input type="checkbox"/>
Ordinance/Reso	<input type="checkbox"/>
Public Mtg / Hrg	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>
Quasi-Judicial	<input type="checkbox"/>

## Recommendation

Authorize the Mayor to sign the Police Reform Legislation Letter 2022.

## Motion for Consideration

I move to authorize the Mayor to sign the Police Reform Legislation Letter 2022.

## Summary

Please see attached Memo.

## Alternatives

None

## Fiscal Impact

None

Through	Kristi Johnson Jan 13, 15:12:26 GMT-0800 2022
Dept Head Approval	Lisa Beaton Jan 13, 15:27:39 GMT-0800 2022
City Mgr Approval	Marie Mosley Jan 14, 16:26:44 GMT-0800 2022

Attachments:

Presentation Letter Memo
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Recording Required?



# 2021 Legislative Update



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CITY ATTORNEYS OFFICE / POLICE DEPARTMENT/  
FIRE DEPARTMENT

July 27, 2021



# Definitions

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- ***Criminal Justice Training Commission (CJTC)*** – Governor appoints 21 members: 1 incumbent Sheriff, 1 incumbent Chief of Police, 1 alternate Chief of Police, 2 officers at or below the level of first line supervisor, 1 tribal police officer who is at or below the level of first line supervisor, 1 corrections employee, 1 incumbent county PA, 1 licensed attorney, 1 elected local government official, 1 civilian with LE oversight/auditing experience, 7 community members (2 from east of the Cascade mountains, 3 from historically underrepresented communities), 1 enrolled tribal member, the Attorney General, the Chief of the State Patrol.
  - Their purpose shall be to establish and administer standards and processes for certification, suspension, and decertification of peace officers and corrections officers. The commission shall provide programs and training that enhance the integrity, effectiveness, and professionalism of peace officers and corrections officers while helping to ensure that law enforcement and correctional services are delivered to the people of Washington in a manner that fully complies with the Constitutions and laws of this state and United States. In carrying out its duties, the commission shall strive to promote public trust and confidence in every aspect of the criminal justice system.

# Definitions

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- ***Reasonable Suspicion*** – Based on specific, articulable facts known to the officer at the time, that the individual has committed, is committing or is about to commit a crime.
- ***Probable Cause*** – Where the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that the person to be arrested has committed or is committing an offense.



# HB 1054 – Tactics – July 25, 2021

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- Prohibits the use of chokehold or neck restraint in any circumstance.
- Prohibits the use of no-knock warrants.
- CJTC to develop a model policy for the training and use of canine teams
- Prohibits the use of tear gas except in three circumstances: harm posed by a riot, barricaded subject or hostage situation.
  - Prior to deploying tear gas, the law enforcement officers must: exhaust available and appropriate alternatives, obtain authorization from a supervising officer, announce the intent to use tear gas; and allow sufficient time and space for the subject(s) to comply.
  - Prior to deploying tear gas (for a riot outside a correctional facility), the law enforcement agency also receives authorization from the highest elected official of the jurisdiction in which the tear gas is to be used.



# HB 1054 – Tactics – cont.

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- Prohibits use or acquisition of “military equipment” and agencies must return or destroy any “military equipment by December 31, 2022. – “Military equipment” means firearms and ammunition of .50 caliber or greater...
- Requires uniformed peace officers are reasonably identifiable (name badge).
- Defines a vehicular pursuit and prohibits a vehicular pursuit unless the officer has probable cause that a crime (violent or sex offense) has/is committed and reasonable suspicion of driving under the influence, necessary for the purpose of identifying or apprehending the person, poses an imminent threat to the safety of others and the officer receives authorization to engage in the pursuit from a supervising officer.
- Prohibits a law enforcement officer from firing a weapon at a moving vehicle.



## SB 5476 – State v. Blake – May 13, 2021

---

- Amends the Uniform Controlled Substances Act to specify the knowing possession of a controlled substance, counterfeit substance, or legend drug without a prescription constitute a simple misdemeanor (No amounts specified, benefits of Federal partnerships).
- Law enforcement officers are required, in lieu of jail booking and referral to the prosecutor, to offer a referral to assessment and services on the first two controlled substance violations (cannot refer case to the PA's office for charges until the third offense).
- Encourages prosecutors to divert simple possession charges to assessment, treatment, or other services.
- Modifies the drug paraphernalia statute to remove reference to paraphernalia used to test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a controlled substance into the human body.
- Requires basic law enforcement training to include training on interactions with persons with substance use disorders.



# HB 1310 – Use of Force – July 25, 2021

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- Authorizes a law enforcement officer to use deadly force only when necessary to protect against an imminent threat of serious physical injury or death.
- Authorizes a law enforcement officer to use physical force when necessary to:
  - Protect against criminal conduct where there is probable cause to:
    - Make an arrest;
    - Effect an arrest;
    - Prevent an escape as defined in RCW 9A.76; or
  - Protect against an imminent threat of bodily injury to:
    - The law enforcement officer;
    - Another person; or
    - The person against whom force is being use.
- Requires an officer exhaust available and appropriate de-escalation tactics prior to using any physical force – Bill identifies time, distance, cover as well as use of “crisis intervention team or mental health professional”. Also mentions leaving when there is no threat of imminent harm and no crime committed.
- When using physical force, use the least amount of physical force necessary to overcome resistance under the circumstances.





# HB 1310 – cont.

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- Terminate the use of physical force as soon as the necessity for such force ends.
- By July 1, 2022, the Attorney General will develop and publish a model policy on law enforcement use of force and de-escalation tactics.
- Require agencies submit their policies to the Attorney General.
- Requires the Attorney General, by December 31<sup>st</sup> of each year, to publish on its website a report of the model policy.
- Requires basic training provided by CJTC to be consistent with the use of force requirements and limitations of the bill and the Attorney General's model policy on the use of force and de-escalation.
- Graham standard still exists – Severity of crime, immediate threat to officers or others, subject actively resisting arrest, and attempting to evade arrest by flight.



# SB 5051 – Decertification – July 25, 2021

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- Establishes criteria for mandatory CJTC de-certification of peace officers and corrections officers.
- Grants authority to the CJTC to suspend certification of a peace officer or corrections officer (no timeframes provided).
- Grants authority to the CJTC to require remedial training for a peace officer or corrections officer.
- Grants authority for the CJTC to receive complaints from any person.
- CJTC may conduct investigation into allegations of improper conduct – independent of any employing agency investigation.
- CJTC may issue public recommendations regarding law enforcement agencies' command decisions, inadequacy of policy or training, investigations or disciplinary decisions regarding misconduct, potential systemic violations of law or policy, unconstitutional policing, or other matters.
- Requires law enforcement and corrections agencies to report to CJTC within 15 days of occurrence of any death or serious injury caused by the use of force by an officer or any time an officer has been charged with a crime.
- Authorizes the CJTC to impose a civil penalty up to \$10,000 for the failure by an officer or an employing agency to timely and accurately report information to the CJTC.
- Requires law enforcement and corrections agencies to retain personnel records for the duration of the officer's employment plus a minimum of 10 years thereafter.

# Change

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Law enforcement and the fire service will both be adapting to the new reality given the legislation that has been put in place.

In other words, we will all be making changes to align with the current “*what is*”.





# Personnel Safety

- Law enforcement and EMS have had clearly defined roles.
- Our approach will need to shift in some instances
- The safety of our personnel must continue to be a major focus
- Fear of decertification and/or criminal charges





# Resources Available

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- Lower reliance upon dispatch
- Fire/Police personnel will need direct contact with the reporting party
- KPD Sergeant consultation
- KFD Battalion Chief consultation
- Increased communication between KPD and KFD supervision
- City Attorney consultation
- Medical control consultation





# A Methodical Approach

- Slow down
- Evaluate all of the information
- Consult Supervisors/Legal
- Develop a plan of action





# Short-Term Plan

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- Adjust to the new normal
- Increase communication – both internally and externally
- Modify delivery of care, in some instances
- Inability to respond in some instances
- Utilize available resources
- Deployment of Mental Health Professionals (MHP's) for both KPD and KFD





# Mid-Term Plan

- Continue Discussions between law enforcement and fire
- Identify MHP funding
- Continue to evaluate the most effective deployment of MHP's
- Communicate and educate our community
- Evaluate the success and take-away's of our current programs







# Long-Term Plan

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- Encourage all Benton and Franklin County policy makers to collaborate for funding
- Implement our proposed long-term regional solution
- Work towards regional resources that can provide service after the incident
- Evaluate our successes and make the appropriate adjustment



# Questions ??

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# KENNEWICK CITY ATTORNEY'S OFFICE

January 13, 2022

## MEMORANDUM

TO: City Council

FROM: Lisa Beaton, City Attorney

RE: Police Reform Legislation Letter 2022

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At the July 27, 2021 workshop the Kennewick Police Department, Kennewick Fire Department, and City Attorney's Office provided City Council a presentation regarding the Police Reform Legislation that passed during the 2021 Legislative Session. The intent of the presentation was to educate council and the public on the significant impacts the legislation would have on the ability of Law Enforcement and EMS to respond to 911 calls. The presentation focused primarily on the Use of Force bill HB1310 and the Tactics bill HB 1054.

HB 1310 authorizes an officer to use physical force when necessary to protect against criminal conduct where there is *probable cause* to: make an arrest; effect an arrest; prevent an escape as defined in RCW 9A.76; or protect against imminent threat of bodily injury to the officer, another person or the person against whom force is being used. HB 1310 requires an officer to exhaust available and appropriate de-escalation tactics prior to *using any* physical force – such as time, distance, cover, and even leaving the scene when there is no threat of imminent harm and no crime committed. HB 1310 eliminated the ability of law enforcement to detain a person based upon reasonable suspicion that they had committed a crime. HB 1310 failed to clarify law enforcement authority to use force in other scenarios like behavioral health interventions allowed under state law or the execution of court orders.

HB 1054 prohibits the use or acquisition of “military equipment”; the bill defined “military equipment” as including “firearms and ammunition of .50 caliber or greater. . .” This broad definition eliminated the use of certain less than lethal rounds universally relied upon by law enforcement. HB 1054 also limited the circumstances under which law enforcement can engage in a vehicular pursuit. The Police Reform Legislation left a number of unanswered questions for both law enforcement and emergency medical first responders. Since the effective date of the legislation, there have been a number of incidents throughout the region where the tactics required by the legislation have resulted in additional property damage, assaults and threats to public safety. The upcoming 2022 Legislative Session is a short session, however, there will be a significant push to clarify and amend these laws. With input from our agency partners, staff prepared a letter on behalf of the Cities and Counties of the Tri-Cities Region recommending several amendments to HB 1310 and 1054.



City of  
**Pasco**  
Washington



January 18, 2022

Representative Jesse Johnson  
369 John L. O'Brien Building  
P.O. Box 40600  
Olympia, WA 98504

email: [Jesse.Johnson@leg.wa.gov](mailto:Jesse.Johnson@leg.wa.gov)

Representative Roger Goodman  
436B Legislative Building  
P.O. Box 40600  
Olympia, WA 98504

email: [Roger.Goodman@leg.wa.gov](mailto:Roger.Goodman@leg.wa.gov)

RE: Police Reform Clarifications

Dear Rep. Goodman and Rep. Johnson,

This letter is written on behalf of the Tri-Cities Region. We thank you in advance for your attention to this very important issue. Maintaining a good quality of life for our community is a top priority, however, we cannot have quality of life without public safety. We have heard from law enforcement, fire and emergency medical services, as well as a number of our citizens about their safety concerns. We appreciate your commitment to consider clarifying amendments to the police reform legislation that passed during the 2021 Legislative Session. Please review the following items for legislative action.

First, while HB 1310 required law enforcement to utilize less than lethal alternatives, SB 1054 implemented a restriction on military equipment utilizing a definition (“firearms and ammunition of .50 caliber or greater”) which resulted in a prohibition of certain less lethal rounds. Based upon our discussions with local law enforcement, we recommend an amendment to RCW 10.116.040(3)(a), which defines the terms “firearms and ammunition of .50 caliber or greater” and “machine guns,” as well as replacing the term “military equipment” with “prohibited equipment”.

Second, HB 1310 limited the use of physical force to when there is probable cause to make an arrest, to effect an arrest, to prevent escape or to protect against an imminent threat of bodily injury to the officer, others, or the person force is being used against. The legislation did not address whether this standard changed the use of force in other scenarios such as behavioral health interventions under RCW 71.05.153(2)(a)(i),(ii) or RCW 71.05.150, taking a minor into

protective custody, or executing or enforcing a court order. We recommend an amendment authorizing the use of force under the above noted circumstances. Further, we recommend an amendment which restores the ability of law enforcement to detain an individual based upon reasonable suspicion that a violent offense or assault has occurred. There have been a number of incidents locally where clarity regarding use of force would have allowed police intervention sooner thus minimizing or eliminating a risk of assault and property damage.

Third, SB 1054 prohibits vehicular pursuits, unless probable cause exists for a violent offense or sex offense, or escape, or reasonable suspicion of DUI and the pursuit is necessary for identifying or apprehending the person and the suspect poses an imminent threat to safety, which outweighs the safety risks of the pursuit. We recommend amending RCW 10.116.060 to allow pursuits when there is reasonable suspicion the driver has committed an offense where the public safety risks of failing to apprehend them are greater than the safety risks of the pursuit.

The following are details of three separate incidents, while just a snapshot of what is occurring in our region, highlight the need for clarification:

On July 31<sup>st</sup>, 2021 Kennewick Police Officers received several welfare check and disturbance type calls on a 16 year old Kennewick resident. The 16 year old was described as acting strangely by walking into random people's yards, in the street and in front of vehicles, including buses. Officers were able to identify the individual and make contact with his parents. They advised that he has become mentally unstable over the prior weeks. Crisis Response was contacted and advised the 16 year old could come and speak with them, if he was willing. Calls continued to come into dispatch, as the male traveled over several blocks committing crimes along the way. The crimes included stealing a bicycle from an open garage, assaulting a female at a gas station while she was pumping gas, stealing a large bottle of vodka at a liquor store, breaking a bottle of alcohol on the ground, pushing staff who tried to stop him as he left the store, and damaging vehicles. At this point, an Officer arrived and obtained a visual of the suspect. As this was all going on, other officers were calling and contacting victims to get the details of the above listed incidents, to develop probable cause, and confirm they wanted to pursue charging. Officers now had the probable cause to detain the individual. Officers made contact with the individual and he would not stop with verbal commands. The Patrol Sergeant on scene grabbed the suspects arm from behind to stop him. The male responded by attempting to hit the Patrol Sergeant in the head with the glass bottle of vodka. The Sergeant ducked the blow as he pushed the male, which prevented injury. The suspect tried to run away, and a Taser application was successful in stopping him. He was placed into custody a short time later and was medically cleared at a local hospital prior to being booked into a Juvenile Detention Center for Assault 4/sexual motivation, Malicious Mischief X2, Disorderly Conduct, Theft, Resisting Arrest, Robbery, & Assault 3.

Current police reform legislation played a significant role in how this incident was handled.

- Prior to HB 1310, Police along with a co-responder Mental Health Professional, would have evaluated the suspect to determine if an involuntary mental health detention (ITA) was appropriate. The suspect had been contacted multiple times in the days leading up to this incident regarding his mental state.
- Prior to HB 1310, the suspect would have been physically detained on reasonable suspicion for the first reported crime. Officers would have then obtained probable cause through further investigation.

- To comply with HB 1310, officers did not detain the suspect until probable cause was established. This required officers to interview different victims while the suspect continued to commit a series of crimes, which included assault with sexual motivation, robbery, destruction of property and assault of a police officer.
- In an effort to fully comply with HB 1310, eight (8) of the twelve (12) on duty Kennewick Police Officers responded to this call for service. Officers worked to establish probable cause and monitor the suspect's movements while utilizing the de-escalation technique of time and distance.

On October 25<sup>th</sup>, 2021 Richland Police Officers responded for a report of a suspicious vehicle inside the compound of Watts Mini Storage. The owner had been contacted by a female who claimed she had been accidentally locked inside the compound. The owner did not believe her and requested police assistance. When officers arrived, we contacted the suspect in her vehicle inside the compound and found that the license plates on her vehicle had been reported stolen. It was later discovered that the vehicle itself was stolen as well. Officers attempted to speak with the suspect, but she refused to follow commands from officers to exit her vehicle and began driving around the compound. The business owner had the suspect's phone number, so officers established phone contact with her and spent over an hour attempting to deescalate the situation and convince the suspect to surrender peacefully. Unfortunately, the suspect refused to cooperate. During phone conversations, the suspect told officers that she knew about the new police reform laws and she would have us fired if we attempted to pursue her. We later learned that the suspect had no intention of surrendering to the police because she knew that she had several warrants for her arrest.

The suspect continued to drive around the storage compound and eventually stop sticks were used to flatten the suspect vehicle's tires. The suspect then began driving erratically and rammed the perimeter fence in several places causing well over \$10,000 in damage. Due to the suspect's dangerous behavior, the decision was made to have officers back out of the compound and open the front gate, providing a route for her to exit. The suspect drove out of the compound and then rammed an unoccupied RPD patrol vehicle several times, struck several mailboxes, and then drove out into an open field. The suspect vehicle became stuck, but the driver still refused to surrender. Officers pinned the suspect vehicle with patrol cars, manually breached a passenger window, and then deployed less-lethal Pepper Ball munitions into the vehicle to convince the suspect to surrender, which was successful, and the suspect was taken into custody. The suspect has been charged with two counts of Malicious Mischief 1<sup>st</sup> degree, Possession of a Stolen Vehicle, Attempting to Elude, and Trespass 1<sup>st</sup> degree.

Current police reform legislation played a significant role in how this incident was handled:

- In an effort to fully comply with ESSHB 1310, significant police resources (BCSO and KPD had officers assisting as well) and time were spent attempting to verbally deescalate the situation and use a minimal amount of force even though the suspect displayed no intention of cooperating. Had we swiftly and decisively intervened, the property damage may have been avoided and the situation could have been resolved much faster.
- The suspect obviously had knowledge of current police reform legislation and she was emboldened in her criminal behavior by that knowledge. None of the above listed crimes are pursuable under ESHB 1054.
- Officers had to move up and manually breach the suspect vehicle's window to introduce PepperBall munitions. This placed Officers at higher risk of injury due to having to be in

close proximity to the suspect and suspect vehicle. Prior to current police reform legislation, a 37mm less lethal impact munition could have been used to break the vehicle window from a safe distance. 37mm less lethal systems are currently considered “Military equipment” under ESHB 1054 and are therefore prohibited.

On September 24, 2021, Pasco Officers responded to Long Fellow Elementary School, where a school bus driver had just been stabbed. The bus driver was leaving Long Fellow Elementary School with a bus full of young children. An individual entered the bus and stabbed the bus driver many times in front of the children. When the first officer arrived on the scene, school staff pointed out the suspect. The officer on the scene had reasonable suspicion that the suspect identified by staff may have committed a crime. Before HB1310, an officer in the same circumstance would have physically detained (handcuffed) that individual whether they were cooperative or not, per US Supreme Court Case Law Terry vs. Ohio. In the case described above, the officer was forced to verbally detain the individual and wait for other officers to arrive on the scene and establish probable cause before using physical force to detain the suspect. Had the suspect walked or driven away, officers would not have been able to stop him. The bus driver died of his wounds. Valuable time and life-saving resources were deferred to dealing with the suspect instead of providing emergency medical aid to the bus driver.

Current police reform legislation played a significant role in how this incident was handled.

- To comply with HB 1310, Officers did not physically restrain the suspect in this case because there was no probable cause to make an arrest.
- Resources that would have been dispatched to administer life-saving measures for the bus driver were diverted to maintain overwatch of the suspect until probable cause was established.
- Before HB 1310, the suspect would have been immediately handcuffed by the initial officer allowing other responding units to make the scene and provide medical aid to victims.

To maintain a good quality of life for our citizens a proper balance must be struck between the goals of public safety and police reform; as leaders we need to care about the laws we implement and the effects those laws have on the people we represent. As outlined in the examples provided, which again are just a snapshot, last session’s police reform legislation has had unintended consequences and has created an imbalanced approach to public safety . This next legislative session is an important opportunity to strike that balance by evaluating the effects of the 2021 police reform legislation and adopting the amendments recommended above.

Respectfully,

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W.D. McKay, Mayor  
City of Kennewick

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Randy Taylor, Mayor  
City of Prosser

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Michael Alvarez, Mayor  
City of Richland

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Brent Gerry, Mayor  
City of West Richland

---

Blanche Barajas, Mayor  
City of Pasco

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Shon Small, Chairman  
Benton County Board of Commissioners

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Clint Didier, Chairman  
Franklin County Board of Commissioners

CC:

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<b>Council Agenda Coversheet</b>  	Agenda Item Number	7.b.	Council Date	01/18/2022	Consent Agenda	<input type="checkbox"/>
	Agenda Item Type	General Business Item			Ordinance/Reso	<input type="checkbox"/>
	Subject	Council Order of Business and Agenda			Public Mtg / Hrg	<input type="checkbox"/>
	Ordinance/Reso #		Contract #		Other	<input checked="" type="checkbox"/>
	Project #		Permit #		Quasi-Judicial	<input type="checkbox"/>
	Department	City Manager				

**Recommendation**

Provide direction to staff regarding any modifications the Council would like to make to the order of business and visitor section.

**Motion for Consideration**

I move to direct the City Manager to modify the order of business and bring the amendments for Council consideration at the next council meeting.

**Summary**

The City Council has mentioned that they would like to have more interaction with the public. In an effort to allow for more opportunity for public comment, staff is bringing forward the Kennewick Municipal Code 2.04.120 describing the order of business and agenda for Council discussion and consideration.

There has been some discussion about modifying when citizen comment occurs and move it prior to, rather than after, the consent agenda. This would allow the public to comment on any items being considered on the consent agenda. In addition, Council could consider adding a second opportunity for visitor comment towards the end of the agenda after all items of business have concluded. The second visitor section could be added after new business and prior to Council comments/discussion. The current order of the agenda is:

- (1) Call to Order-Roll Call
- (2) Approval of the Agenda
- (3) Consent Agenda
- (4) Visitors
- (5) Ordinances and Resolutions
- (6) Public Hearings/Meetings
- (7) Unfinished Business
- (8) New Business
- (9) Council Comments/Discussion
- (10) Adjournment

**Alternatives**

N/A

**Fiscal Impact**

N/A

Through	<input type="text"/>	Attachments: <input type="text" value="KMC"/>
Dept Head Approval	<input type="text"/>	
City Mgr Approval	Marie Mosley Jan 14, 15:18:23 GMT-0800 2022	
		<input type="checkbox"/> Recording Required?

#### **2.04.120: Order of Business.**

The business of all regular meetings of the Council shall be transacted in the following order, unless the Council, by a majority vote of the members present, suspends the rules and changes the order:

- (1) Call to order—Roll call;
- (2) Approval of agenda;
- (3) Consent agenda;
- (4) Visitors;
- (5) Ordinances and resolutions;
- (6) Public hearings/Meetings;
- (7) Unfinished business;
- (8) New business;
- (9) Council Comments/Discussion;
- (10) Adjournment.

The consent agenda may contain items which are of a routine and noncontroversial nature which may include, but are not limited to, the following: communications, memos and reports for information of Council, resolutions, agreements, petitions, minutes of commission and boards, applications, approval of accounts, which may be accepted by consent of the Council by a single vote without reading, unless a member of the Council should request such reading and such request shall be granted. Minutes of the preceding meeting, and bills tendered for payments shall not be read in detail at each meeting prior to approval, unless a member of the Council should request such reading. In such instances the request shall be granted. Any item on the consent agenda may be removed and considered separately as an agenda item at the request of any Council Member.

(Ord. 5327 Sec. 4, 2011; Ord. 3242 Sec. 1(part), 1990; Ord. 2774 Sec. 1, 1983; Ord. 2180, 1978; Ord. 1996 Sec. 1, 1976; Ord. 1286 Sec. 12, 1964)



# City Council Meeting Schedule January 2022

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The City broadcasts all City Council meetings on the City's website  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

January 4, 2022  
Tuesday, 6:30 p.m.                      REGULAR COUNCIL MEETING

January 11, 2022  
Tuesday, 6:30 p.m.                      WORKSHOP MEETING (the workshop meeting will be done  
via Zoom and broadcast on the City's website  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>)  
1. OPMA and PRA Training  
2. Council Boards & Committee Assignments  
3. Ethics Policy & Ethics Officer

January 18, 2022  
Tuesday, 6:30 p.m.                      REGULAR COUNCIL MEETING

January 25, 2022  
Tuesday, 6:30 p.m.                      WORKSHOP MEETING (the workshop meeting will be done  
via Zoom and broadcast on the City's website  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>)  
1. Fire Department Strategic Plan Update  
2. Fire Station No. 1 Update  
3. Accessory Dwelling Unit Sewer & Water  
Connections

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped



# City Council Meeting Schedule February 2022

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The City broadcasts all City Council meetings on the City's website  
<https://www.go2kennewick.com/CouncilMeetingBroadcasts>.

February 1, 2022  
Tuesday, 6:30 p.m.                      REGULAR COUNCIL MEETING

February 8, 2022  
Tuesday, 6:30 p.m.                      WORKSHOP MEETING

1. Facilities Master Plan Update
2. Hanford Update (Brian Vance)
3. 2022 Parks & Recreation Commission Work Plan Update
4. River of Fire Update

February 15, 2022  
Tuesday, 6:30 p.m.                      REGULAR COUNCIL MEETING

February 22, 2022  
Tuesday, 6:30 p.m.                      WORKSHOP MEETING

1. Entertainment District Partnership Update (A-1 Pearl)
2. Public Facilities Update
3. Animal Control Update

To assure disabled persons the opportunity to participate in or benefit from City services, please provide twenty-four (24) hour advance notice for additional arrangements to reasonably accommodate special needs.

Please be advised that all Kennewick City Council Meetings are Audio and Video Taped