

**City Council
Study Session
Community Wellness Special Focus Area
October 27, 2025 - 5:30 PM
City Hall Council Chambers**

AGENDA

CALL TO ORDER

PUBLIC PARTICIPATION

- A. The Auburn City Council Study Session Meeting scheduled for Monday, October 27, 2025, at 5:30 p.m. will be held in person and virtually.

Virtual Participation Link:

To view the meeting virtually please click the below link, or call into the meeting at the phone number listed below. The link to the Virtual Meeting is:

<https://www.youtube.com/user/watchauburn/live/?nomobile=1>

To listen to the meeting by phone or Zoom, please call the below number or click the link:

Telephone: 253 215 8782

Toll Free: 877 853 5257

Zoom: <https://us06web.zoom.us/j/83727791099>

ROLL CALL

AGENDA MODIFICATIONS

ANNOUNCEMENTS, REPORTS, AND PRESENTATIONS

- A. Ordinance No. 7004 (Thomas) (60 Minutes)
Water, Sanitary, Sewer and Storm Drainage Utility Rate Study Presentation

COMMUNITY WELLNESS DISCUSSION ITEMS

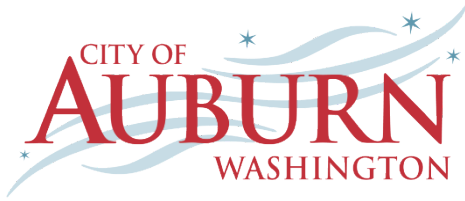
- A. Housing Repair Program Update (Krum) (15 Minutes)

AGENDA ITEMS FOR COUNCIL DISCUSSION

- A. Ordinance No. 7005 (Gaub) (10 Minutes)
An Ordinance granting to Soos Creek Water and Sewer District, a Washington Municipal Corporation, a Franchise for Sanitary Sewer Facilities
- B. Ordinance No. 7007 (Gaub) (10 Minutes)
An Ordinance granting to Hyperfiber of Washington, LLC dba Ripple Fiber, a Delaware Limited Liability Company, a Franchise for Wireline Telecommunications

ADJOURNMENT

Agendas and minutes are available to the public at the City Clerk's Office and on the City website (<http://www.auburnwa.gov>).



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 7004 (Thomas) (60 Minutes)
Water, Sanitary, Sewer and Storm Drainage Utility Rate Study Presentation

Meeting Date:

October 27, 2025

Department:

Finance

Attachments:

Auburn Council Presentation
10.27 - Updated with City
comments

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

The City of Auburn provides water, sewer, and stormwater services to its utility customers. In 2025, the City contracted with FCS Group to perform a Water, Sanitary Sewer, and Storm Drainage Utility Rate Study to review the adequacy of existing rates and to propose new rates as appropriate.

The FCS study elements completed to date includes:

1. A review of "revenue requirements" for each utility, which encompass the costs that the City needs to recover on an ongoing basis from utility ratepayers.
2. A cost of service analysis that determines the relative burden each customer class places on the utility. A comparison of existing revenues with the cost of service results then indicates whether each class is paying its fair share of costs for each utility system.

This is the first of two discussions that will review the work performed by FCS Group and summarize their findings. The second presentation will be on November 11, 2025. These presentations set the framework and context for the rate increases Council will be asked to adopt on November 17, 2025, with Ordinance No. 7004.

Councilmember: Kate Baldwin

Staff: Jamie Thomas



City of Auburn Utility Rate Study

October 27th, 2025





Presentation Overview

- Background
- Overview of rate setting process
- Summary of findings
 - » Revenue requirement
 - » Cost of service
 - » Rate design
- Next steps
- Question / discussion



Rate Setting Background

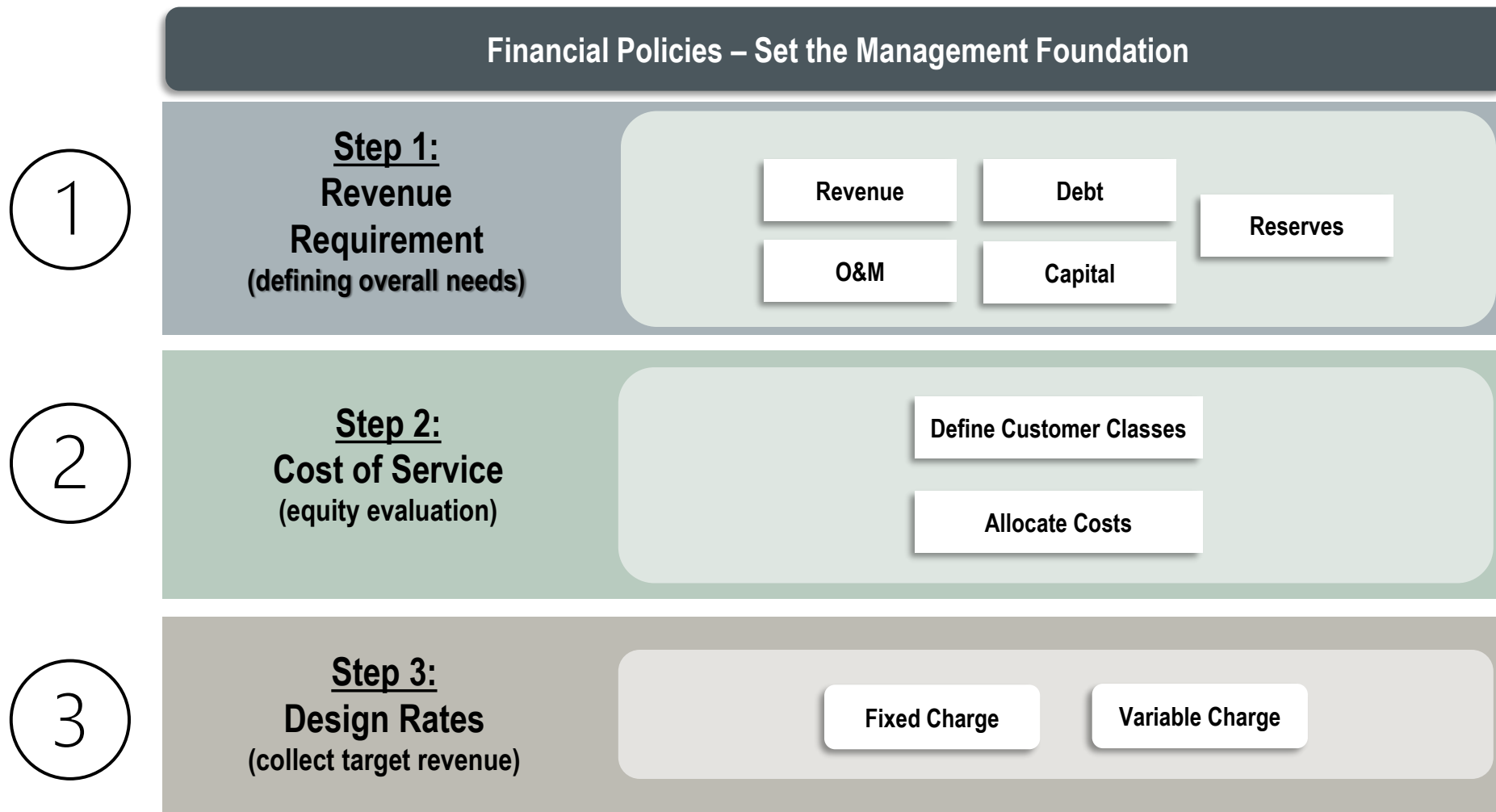
- Last comprehensive rate study completed in 2022
- Resulted in a three-year rate strategy for each utility

Utility	2023	2024	2025
Water	7.50%	7.50%	7.50%
Sewer	7.50%	7.50%	7.50%
Stormwater	6.75%	6.75%	6.75%

- Rate strategy included
 - » Plan to continue funding renewal and replacement needs for each utility
 - » Maintained cost of service between classes
- Revisit rates every 3-5 years to evaluate progress



Overview of Rate Setting Process





Revenue Requirement Objectives

- Determine the amount of annual revenue necessary to fund all financial obligations on a ***standalone*** basis
 - » Operating expenses
 - » Debt service (principal & interest)
 - » Capital cost and funding approach
- Meet financial parameters and targets
 - » Target debt service coverage ratios
 - » Maintain target reserve balances
- Evaluate revenue sufficiency over a multi-year period
- Develop a balanced rate plan while minimizing impacts



Key Assumptions

- Study period 2025-2031
 - » Analysis projected through 2045 | rate setting period 2026-2028
- Projected rate revenues based on 2024 statistics & growth
 - » Water: 0.45% annually
 - » Sewer & Storm: 0.40% annually
- 2025/2026 budget used as baseline escalated with various factors
 - » Water average: 3.2%
 - » Sewer average: 3.1%
 - » Storm average: 3.1%
- New debt assumes revenue bonds
 - » 20-year term | 5% interest cost | 1% issuance cost



Overview of the Rate Setting Process

Policy	Purpose	Target
Operating Reserve	Liquidity cushion to accommodate cyclical cash flow fluctuations	<u>60-90 days of O&M</u> <i>Water (90 days): \$3.6M - \$4.5M</i> <i>Sewer (60 days): \$1.4M - \$1.7M</i> <i>Stormwater (60 days): \$1.9M - \$2.3M</i>
Capital Contingency Reserve	To meet emergency repairs, unanticipated capital, and project cost overruns	<u>1% of plant asset values</u> <i>Water: \$2.1M - \$2.8M</i> <i>Sewer: \$1.3M - \$1.6M</i> <i>Stormwater: \$1.2M - \$1.4M</i>
System Reinvestment	Promote ongoing system replacement through reinvestment in the system	<u>Annual Depreciation Expense</u> <i>Water: \$4.3M - \$6.1M</i> <i>Sewer: \$2.8M - \$3.3M</i> <i>Stormwater: \$2.3M-\$2.6M</i>
Debt Service Coverage	To ensure compliance with existing loan/debt covenants and maintain credit worthiness for future debt issuance.	Minimum Bond Covenant Requirement 1.25

The background of the slide is a green-tinted photograph of a business meeting. Several people in business attire are seated at a table. One person in the foreground is holding a pen and pointing at a tablet that displays a bar chart. Another person's hand is visible near the tablet. A glass of water is on the table. Overlaid on the photograph are various digital graphics: a network of glowing green dots connected by thin lines, a bar chart on the tablet, and a line graph on a document in the lower left. A dark grey arrow-shaped banner points to the right across the middle of the slide.

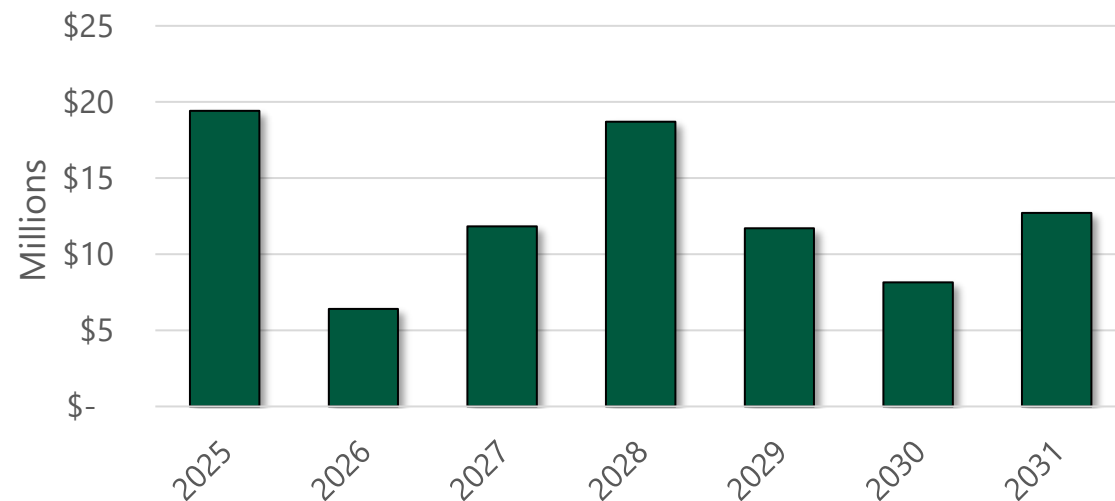
Water Revenue Requirement



Water Key Components

Description	2025 – 2031
Existing Rate Revenue	\$20.1M - \$20.6M
O&M Expenses	\$14.7M - \$18.2M
System Reinvestment	\$2.0M – \$5.5M
Ex. Debt Service	\$2.9M-\$2.0M
Total CIP	\$88.9M

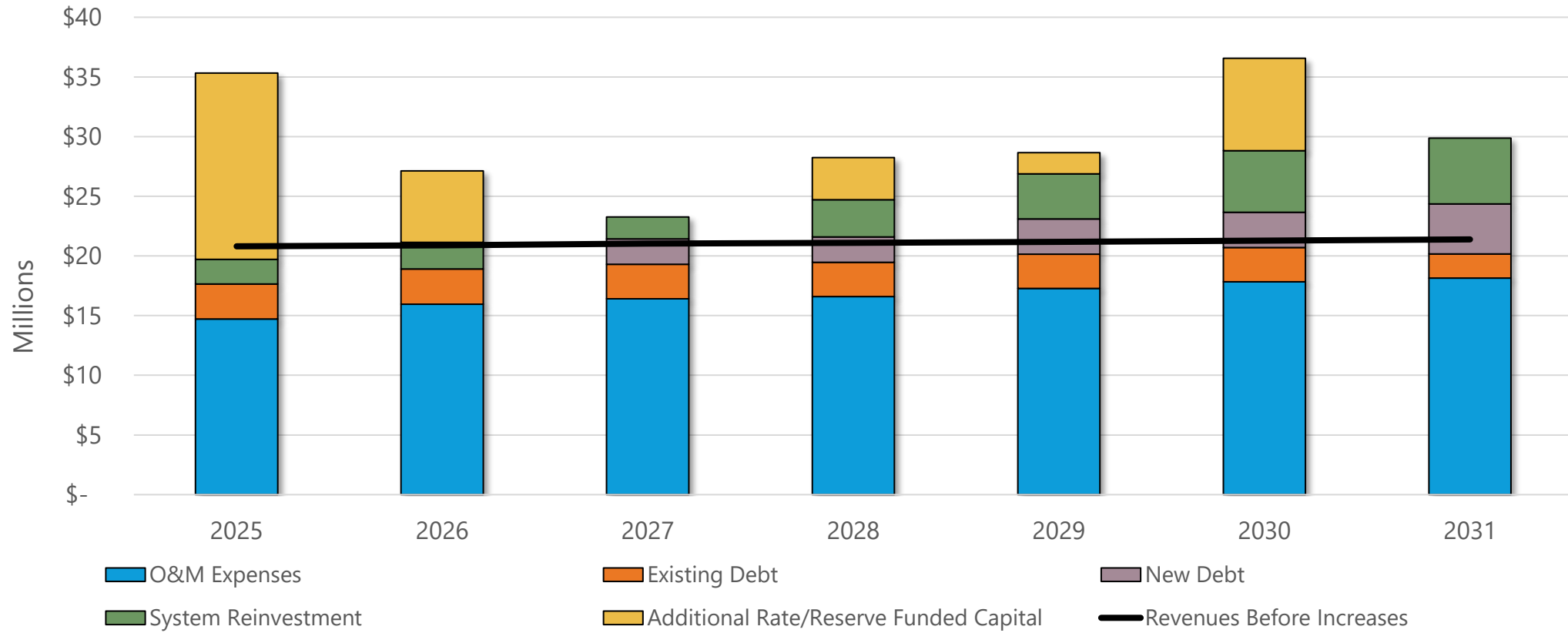
Annual Capital Costs



- Rate setting period CIP of \$88.9M funded through rates, SDCs, grants, & new debt proceeds
 - » Total debt of \$47.5M across three issuances in 2027 | 2029 | 2031



Water Revenue Requirement

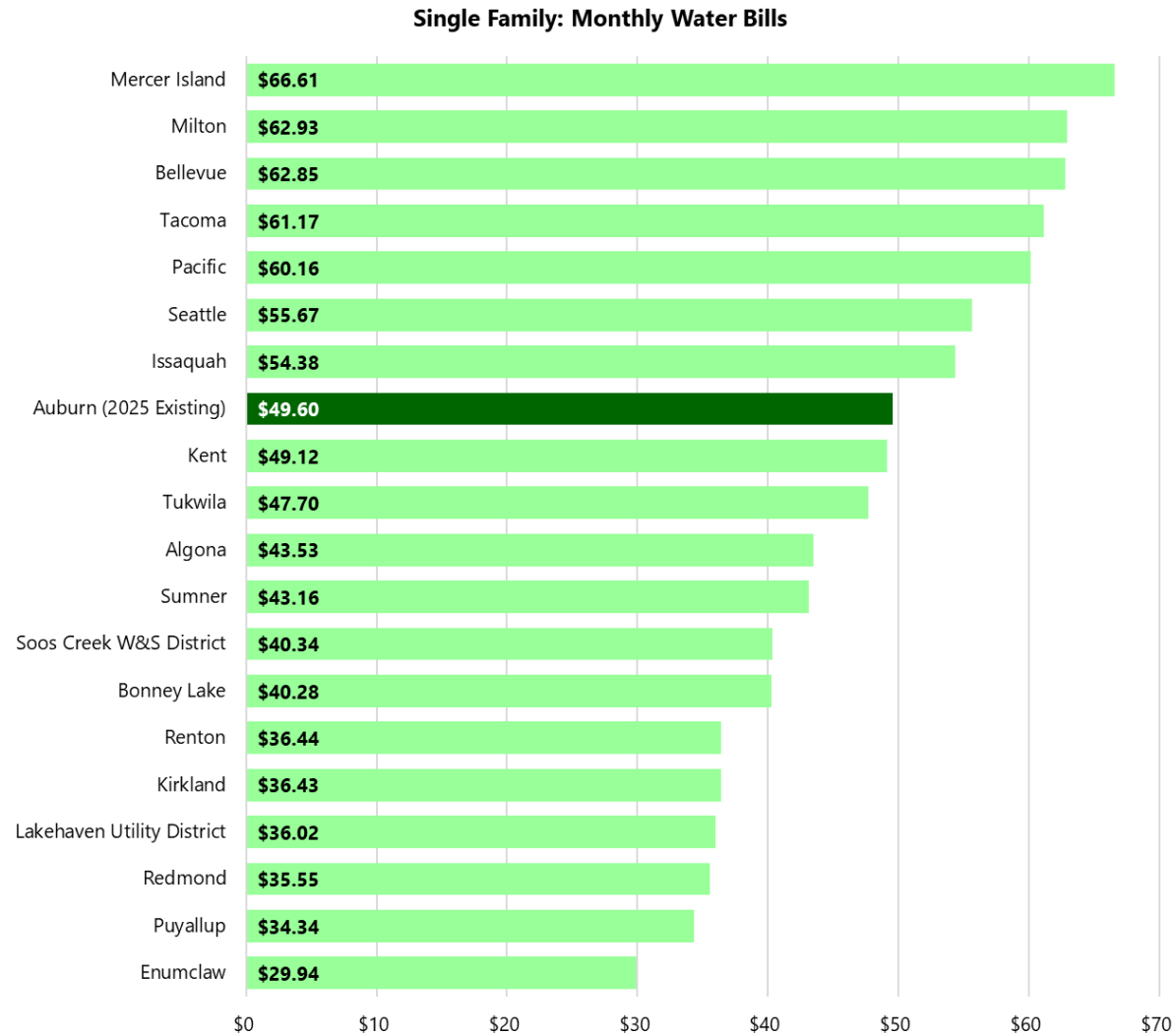


Sample Water Bill	Existing	2026	2027	2028	2029	2030	2031
Proposed Increases		7.80%	7.80%	7.80%	7.80%	7.80%	3.75%
Sample Residential Mo. Bill	\$ 49.60	\$ 53.47	\$ 57.64	\$ 62.14	\$ 66.98	\$ 72.21	\$ 74.91
\$ Difference		\$ 3.87	\$ 4.17	\$ 4.50	\$ 4.85	\$ 5.22	\$ 2.71

Note: assumes 3/4" or smaller meter and 6 ccf of monthly usage



Water Rate Survey



Notes:

1. Assumes smallest meter size and 6 ccf of usage
2. Averages seasonal rates for applicable jurisdictions
3. Rates are as of 2025 and are not inclusive of additional utility taxes added on top of the utility rate billed.



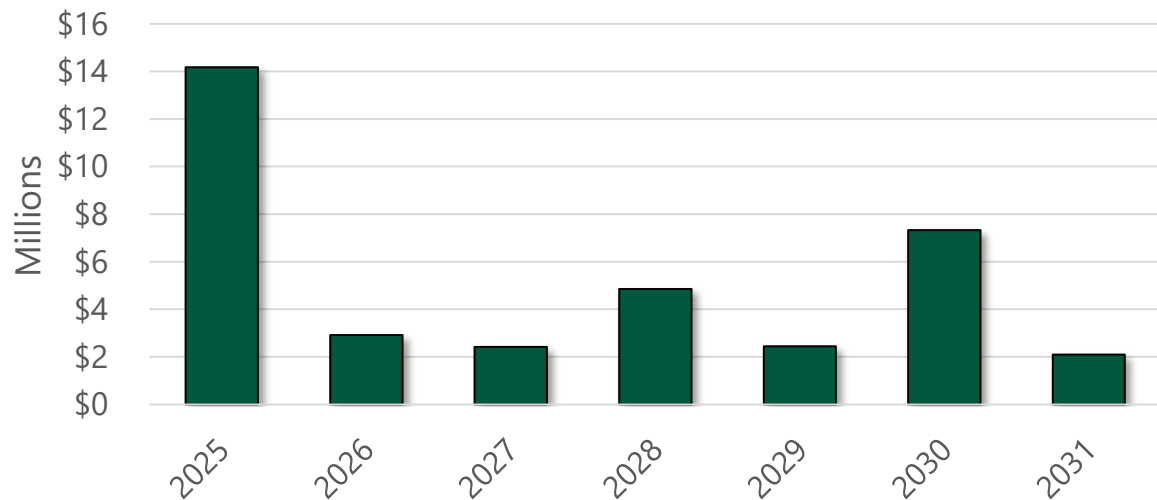
Sewer Revenue Requirement



Sewer Key Components

Description	2025 – 2031
Existing Rate Revenue	\$11.6M - \$11.8M
O&M Expenses	\$8.3M - \$10.1M
System Reinvestment	\$2.1M – \$2.4M
Existing Debt	\$0.6M - \$0
Total CIP (escalated)	\$36.2M

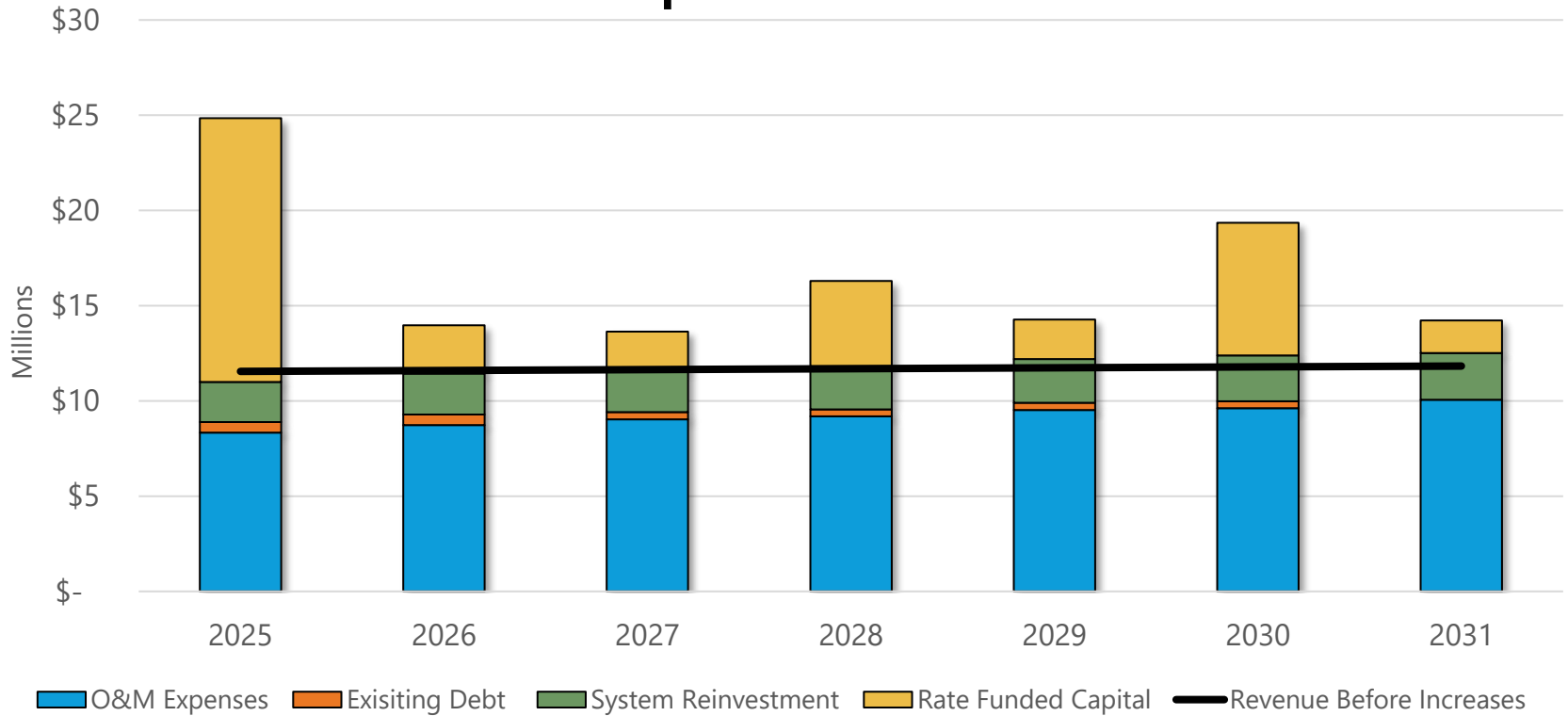
Annual Capital Costs



- Rate setting period CIP of \$36.2M funded through rates & SDCs
 - » No new debt assumed within the rate setting period
- Existing debt fully repaid by 2030
- Since the 2022 rate study the sewer utility no longer assesses City utility taxes on King County Treatment revenues



Sewer Revenue Requirement

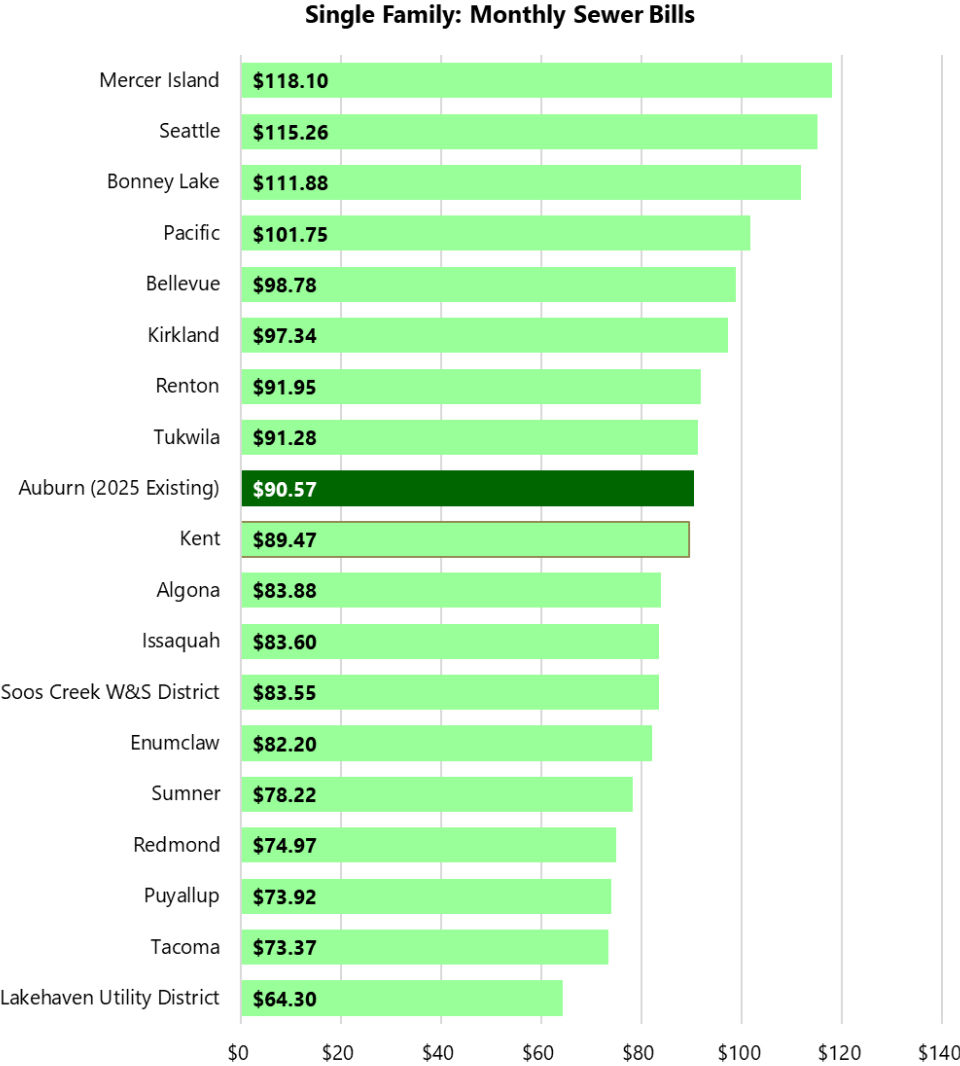


Notes: Rate funded capital is net of grant and GFC revenues.

Sample Sewer Bill		Existing	2026	2027	2028	2029	2030	2031
Proposed Increases - City Portion			2.00%	2.00%	2.00%	2.00%	2.00%	2.00%
Sample Residential Mo. Bill - Auburn	\$ 32.29		\$ 32.94	\$ 33.59	\$ 34.27	\$ 34.95	\$ 35.65	\$ 36.36
\$ Difference			\$ 0.65	\$ 0.66	\$ 0.67	\$ 0.69	\$ 0.70	\$ 0.71
Sample Residential Mo. Bill - KC	\$ 58.28		\$ 62.66	\$ 70.65	\$ 79.66	\$ 90.42	\$ 102.63	\$ 116.49
\$ Difference			\$ 4.38	\$ 7.99	\$ 9.01	\$ 10.76	\$ 12.21	\$ 13.86
Sample Residential Mo. Bill - Total	\$ 90.57		\$ 95.60	\$ 104.24	\$ 113.93	\$ 125.37	\$ 138.28	\$ 152.85
\$ Difference			\$ 5.03	\$ 8.65	\$ 9.68	\$ 11.45	\$ 12.91	\$ 14.57



Sewer Rate Survey



- Notes:**
- 1. Assumes one single family residence and 6 ccf of usage
 - 2. Rates shown are as of 2025 and include applicable disposal charges
 - 3. Rates are not inclusive of additional utility taxes added on top of the utility rate billed.



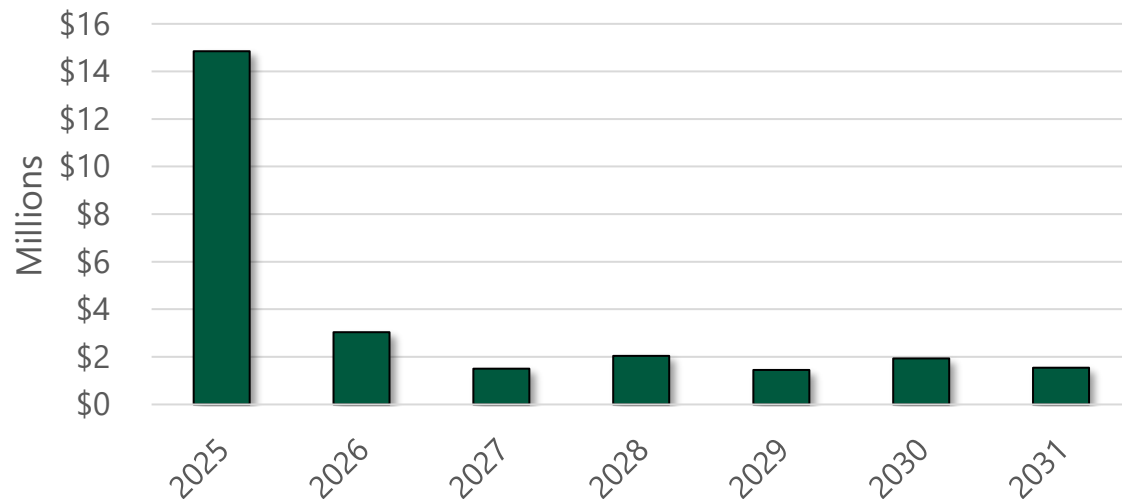
Stormwater Revenue Requirement



Stormwater Key Components

Description	2025 – 2031
Existing Rate Revenue	\$13.4M - \$13.7M
O&M Expenses	\$11.7M - \$14.1M
Debt Service	\$0.7M-\$0.3M
Total CIP	\$26.4M

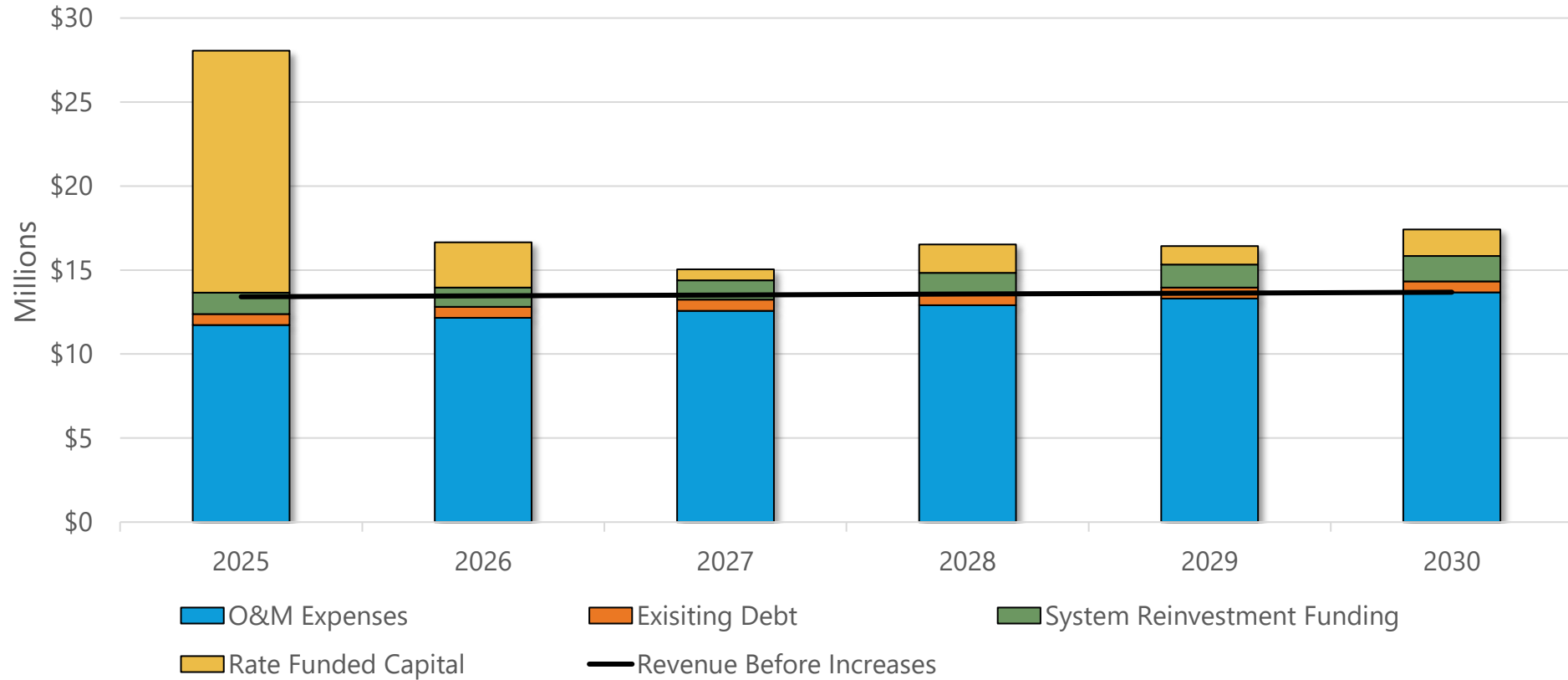
Annual Capital Costs



- Rate setting period CIP of \$26.4M funded through rate revenues, SDCs, & grant funding
 - » No new debt assumed within the rate setting period



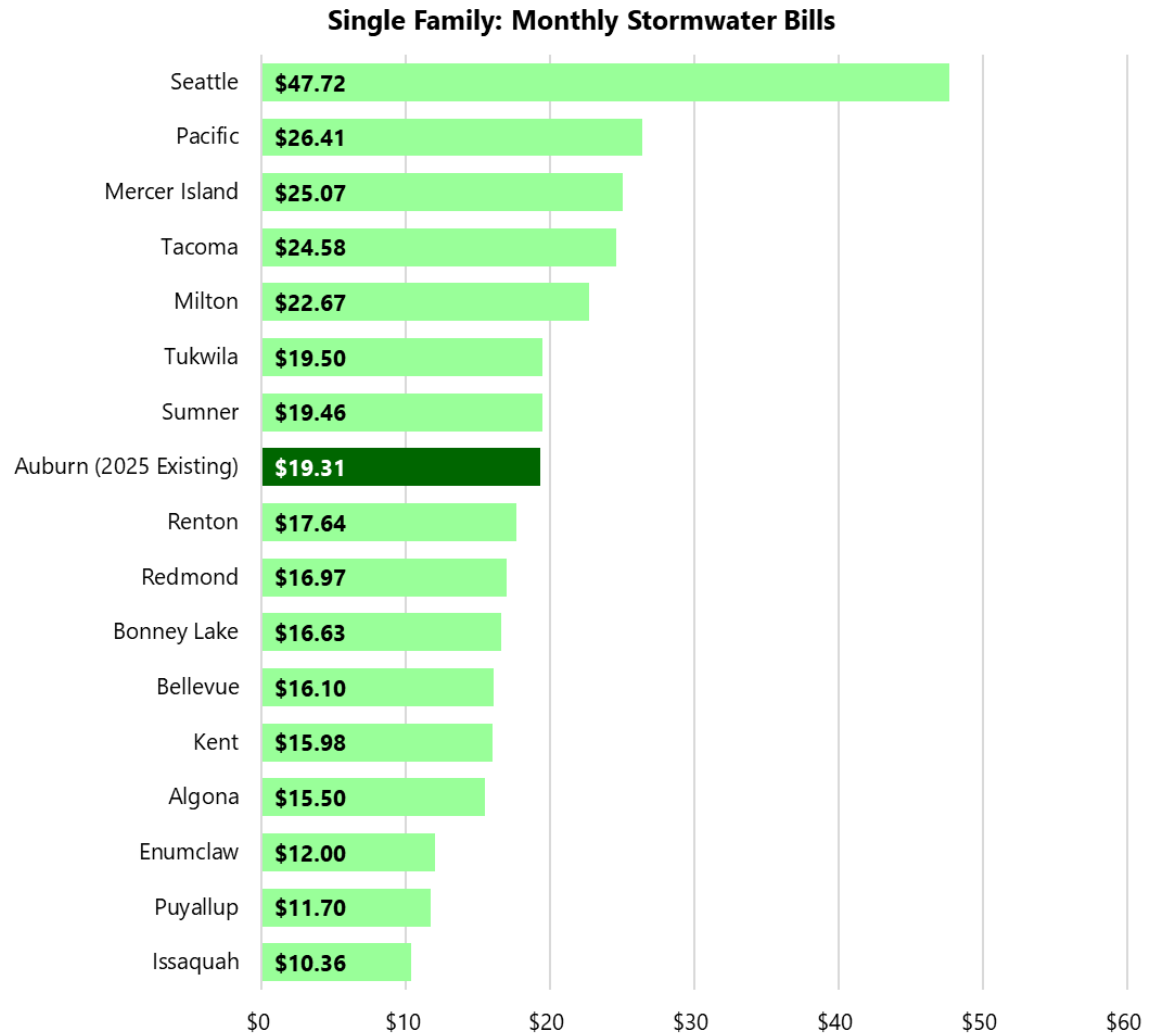
Stormwater Revenue Requirement



Sample Stormwater Bill	Existing	2026	2027	2028	2029	2030	2031
Proposed Increases		3.25%	3.25%	3.25%	3.25%	3.25%	3.25%
Sample Residential Mo. Bill	\$ 19.31	\$ 19.94	\$ 20.59	\$ 21.25	\$ 21.95	\$ 22.66	\$ 23.39
\$ Difference		\$ 0.63	\$ 0.65	\$ 0.67	\$ 0.69	\$ 0.71	\$ 0.74



Stormwater Rate Survey



Notes:

1. Assumes one equivalent service unit
2. Rates shown are as of 2025 and are not inclusive of additional utility taxes added on top of the utility rate billed.



Combined Residential Sample Bill

Utility	Existing	2026	2027	2028	2029	2030	2031
Water	\$ 49.60	\$ 53.47	\$ 57.64	\$ 62.14	\$ 66.98	\$ 72.21	\$ 74.91
Sewer (local charge only)	32.29	32.94	33.59	34.27	34.95	35.65	36.36
Storm	19.31	19.94	20.59	21.25	21.95	22.66	23.39
Avg. Res. Mo. Bill	\$ 101.20	\$ 106.34	\$ 111.82	\$ 117.66	\$ 123.88	\$ 130.52	\$ 134.67
\$ Mo. Difference		\$ 5.14	\$ 5.48	\$ 5.84	\$ 6.22	\$ 6.64	\$ 4.16
% Difference		5.08%	5.15%	5.22%	5.29%	5.36%	3.19%

Notes:

1. Water bill assumes 6 ccf of usage
2. Sewer bill does not include King County portion

The background of the slide is a green-tinted photograph of a business meeting. Several people in business attire are seated around a table. One person in the foreground is holding a pen and pointing at a tablet that displays a bar chart. Another person's hand is visible near the tablet. On the table, there is a glass of water and some papers. Overlaid on the photograph are various digital graphics: a network of glowing green dots connected by thin lines, a bar chart on the tablet, and a line graph on a paper in the lower left. A large, dark grey arrow-shaped banner is positioned horizontally across the middle of the image, containing the title text.

Cost of Service Analysis



What is Cost of Service?

- An equitable distribution of cost share that considers utility specific data
 - » Measures of usage and demand
 - » Planning, engineering and design criteria
 - » Facility requirements
- Cost of Service analysis determines
 - » Total cost by class (equity)
 - » Unit costs (\$/usage; \$/customer)
- Fundamental question: Do cost differences exist to serve different classes of service?



Cost-of-Service Process

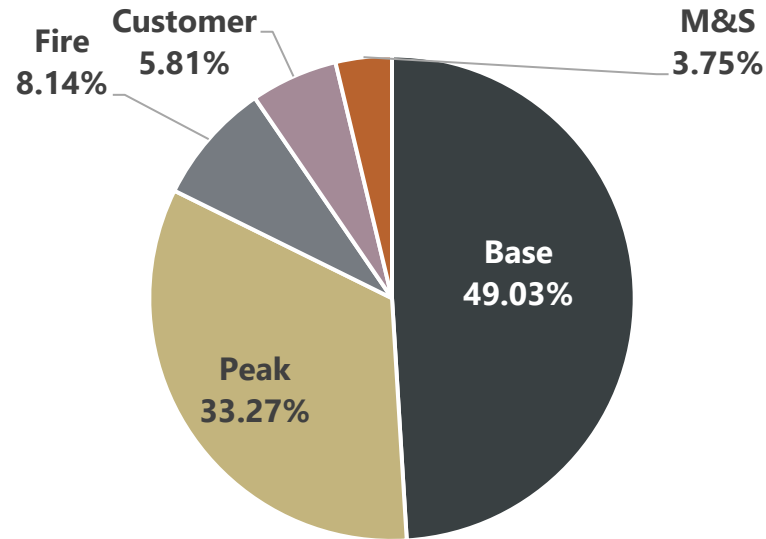
- Step 1: Allocate total utility cost by function and classification

Water Utility Functions*	Sewer Utility Functions*	Stormwater Functions
• Customer	• Customer	• Base
• Meters & Services	• Flow	• Use – Water Quality
• Base Demand (avg. use)		• Use – Water Quantity
• Peak Demand (peak use)		
• Fire Protection		

- Step 2: Develop allocation factors using customer facility requirements and usage characteristics
- Step 3: Allocate costs to customer classes



Cost of Service Classification - Water



Base

Costs relate to average service provided on demand and are essentially correlated with year-round water consumption.

Peak

Costs relate to peak demand service; associated with the ability of the system to provide capacity to customers with higher-than-average volume.

Fire

Costs associated with providing adequate capacity and water flow corresponding to min. fire safety standards. Incremental costs for storage, T&D, and hydrants for fire protection.

Customer

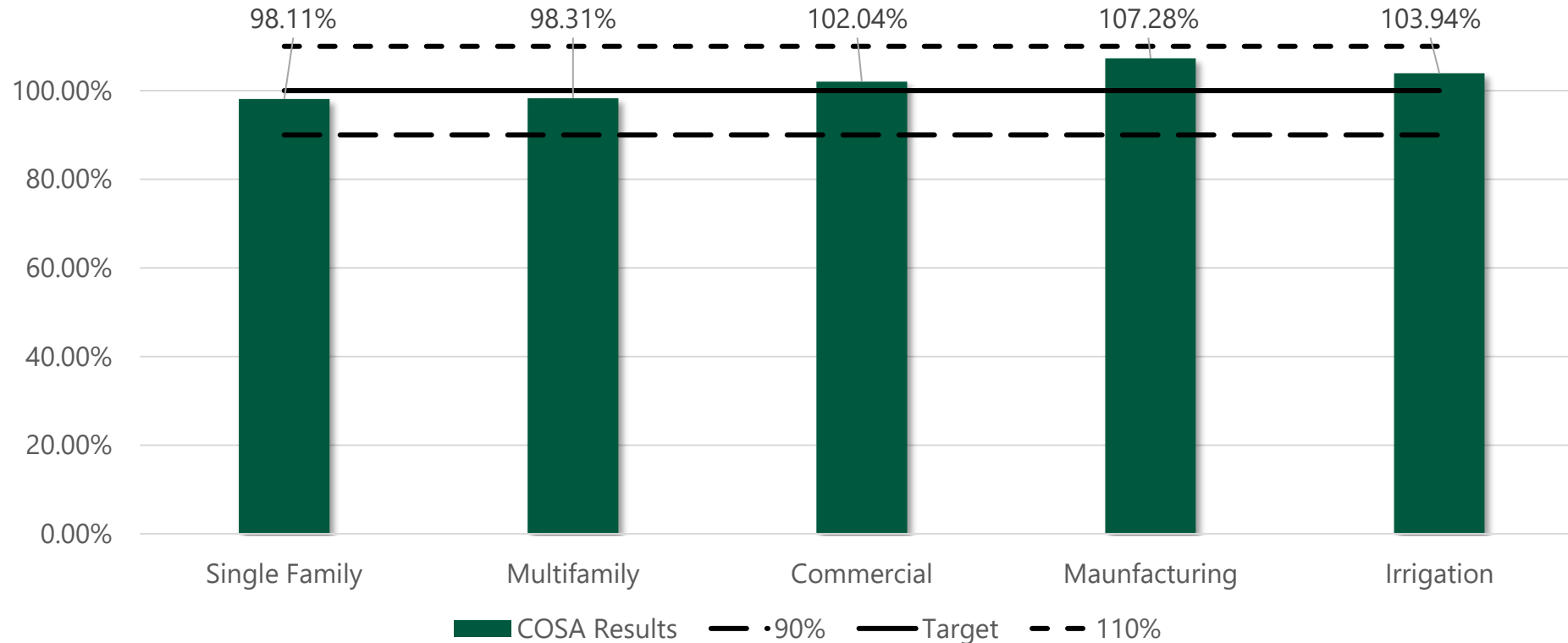
These are the costs associated with establishing, maintaining, and serving water customers and tend to include administrative, billing, and customer service costs.

M&S

Costs associated with installation, maintenance, and repairs of meters and services.



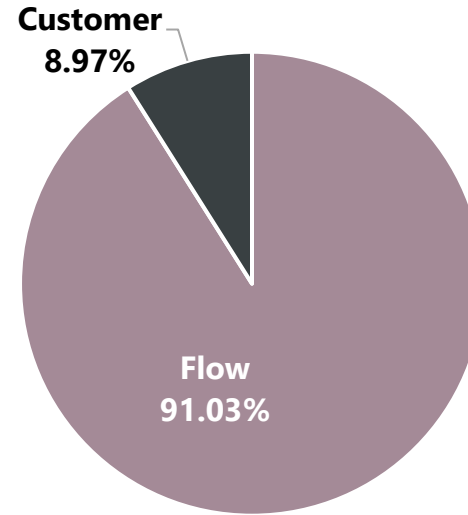
Water COSA Results



- $\pm 10\%$ within COSA range of reasonableness
 - » All classes within range of reasonableness



Cost of Service Classification - Sewer



Customer

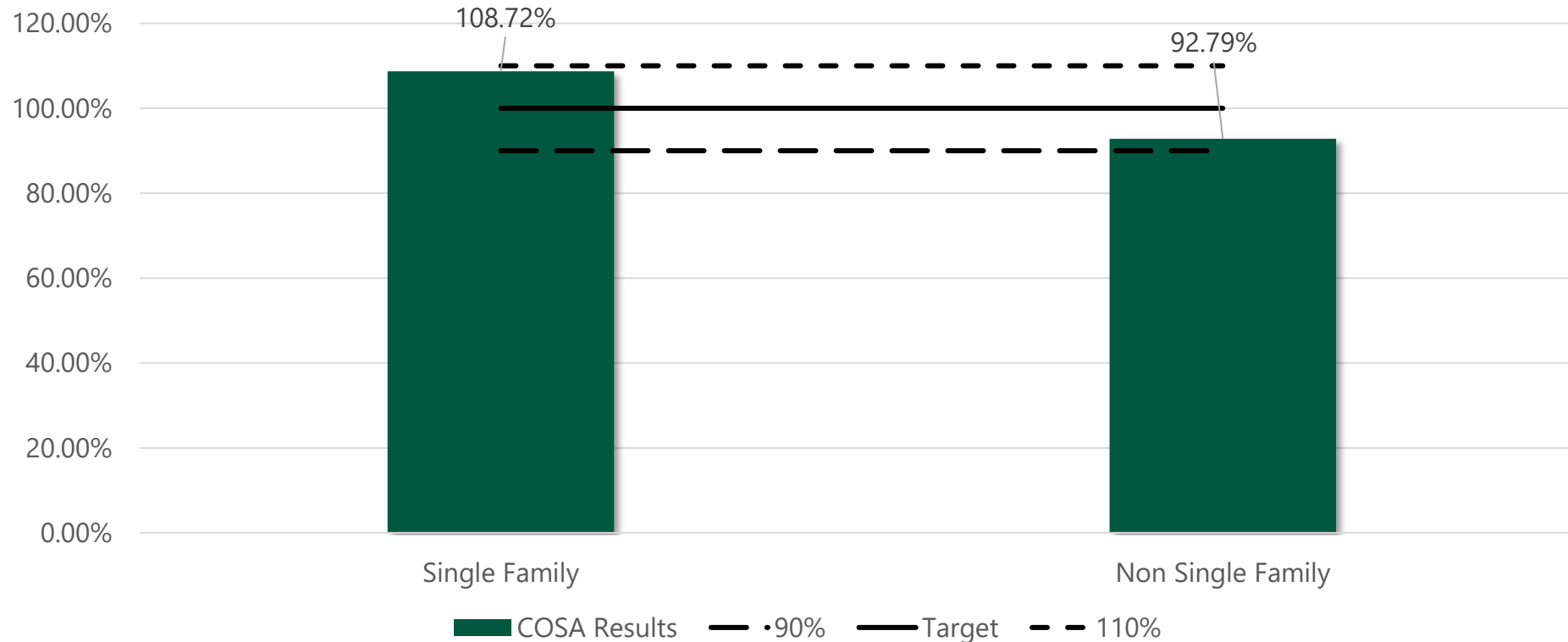
These are the costs associated with establishing, maintaining, and serving sewer customers and tend to include administrative, billing, and customer service costs.

Flow

Costs relate to actual and estimated sewer volume processed within the system in a year



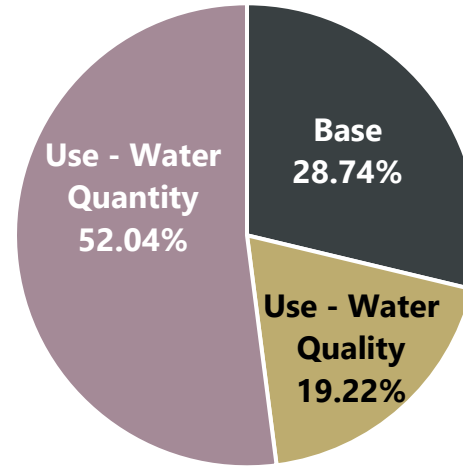
Sewer COSA Results



- $\pm 10\%$ within COSA target range of reasonableness
 - » All classes are within the range of reasonableness



Cost of Service Classification - Stormwater



Base

Costs not related to on-site stormwater mitigation and are incurred regardless of quantity or quality of runoff and tend to include administrative, billing, and customer service costs

Use – Water Quality

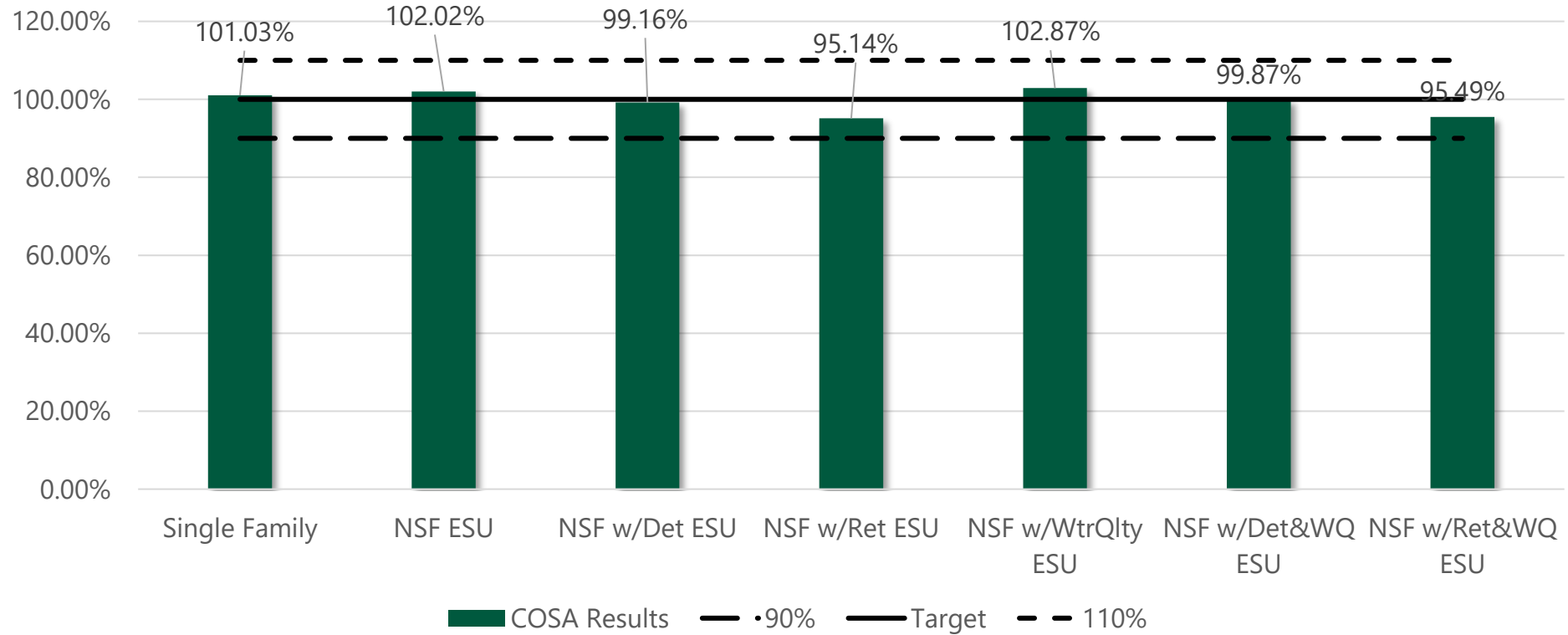
Cost related to management of non-point source pollution

Use – Water Quantity

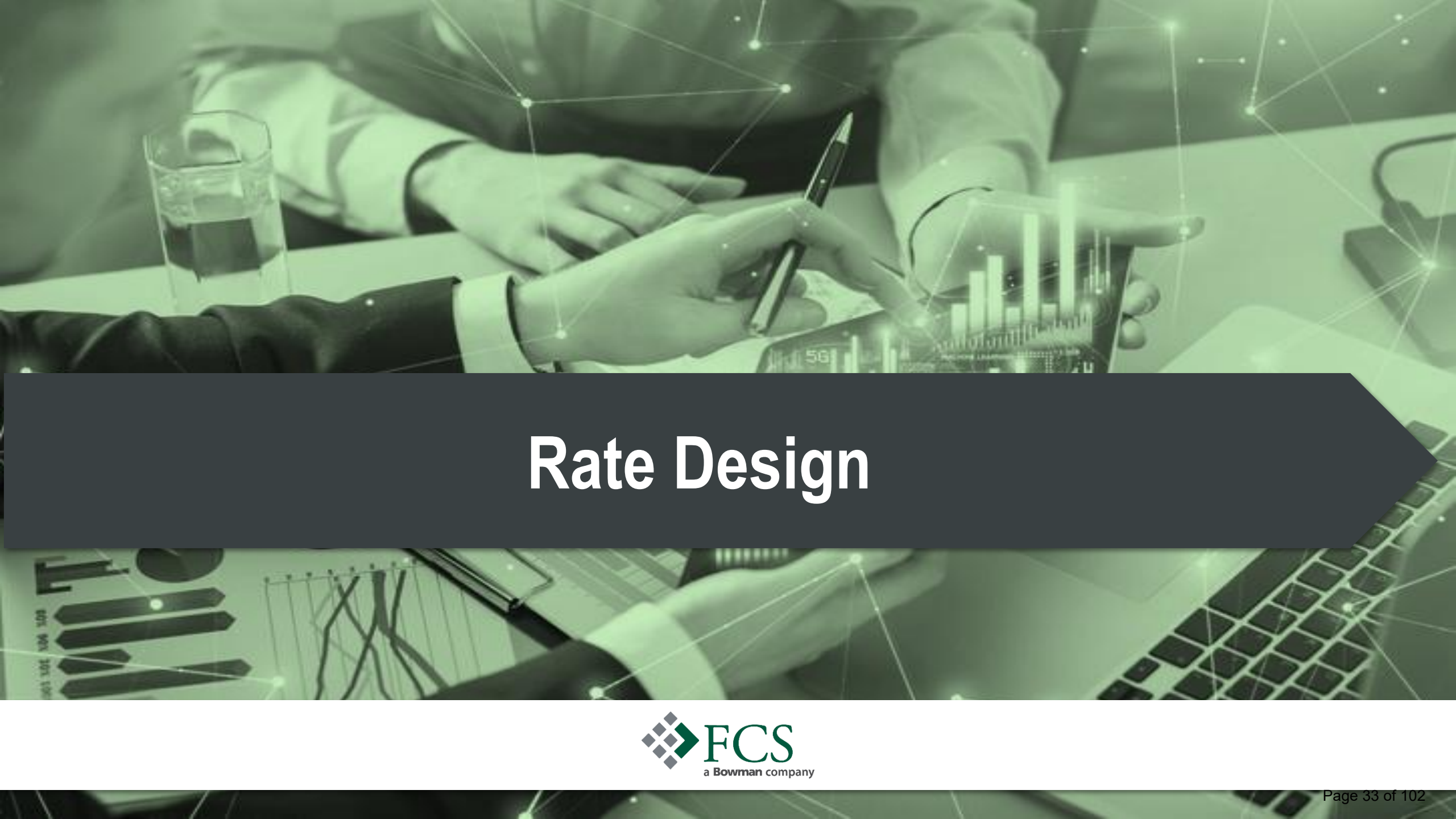
Cost incurred to manage the overall volume of stormwater runoff.



Stormwater COSA Results



- $\pm 10\%$ within COSA range of reasonableness
 - » All classes within range of reasonableness



Rate Design



Overview of Rate Design

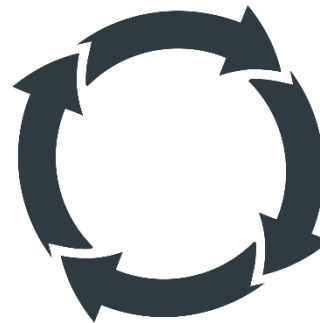
- **Development of fixed and variable charges assessed to customers**



Aligns fixed and variable costs with fixed and variable revenue sources



Generates sufficient revenue to meet utility requirements



Meet goals and objectives of the utility (e.g., conservation)

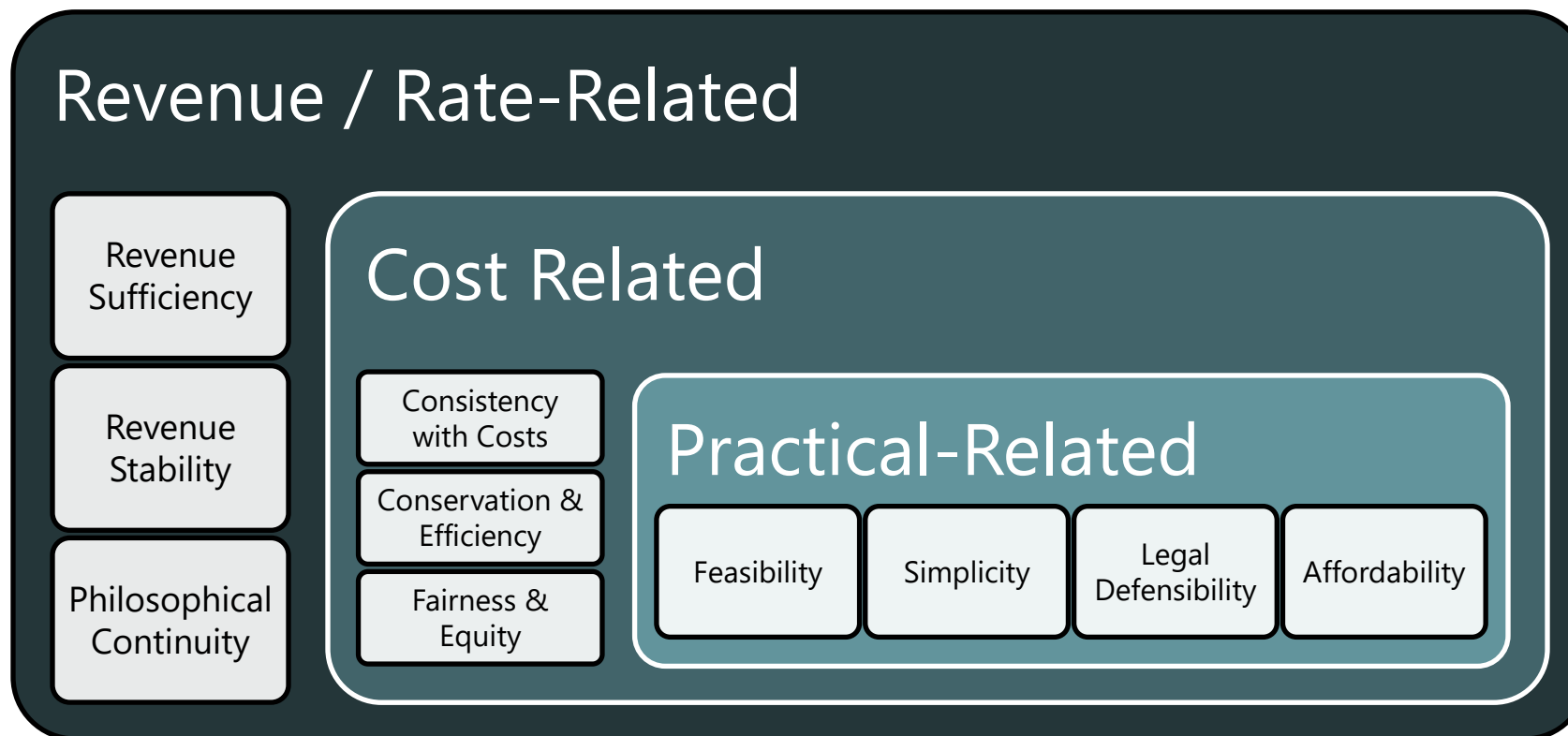


Evaluate monthly rate impact for different levels of use



Rate Design Goals

- No structure can completely achieve all the objectives – it's a balancing act



Source: *Principles of Public Utility Rates*, Bonbright, Danielson and Kamerschen



Proposed Water Rates

Description	Existing	2026	Proposed 2027	2028
Monthly Fixed Charges All Classes				
3/4"	\$ 22.66	\$ 24.43	\$ 26.34	\$ 28.39
1" - Single Family	22.66	24.43	26.34	28.39
1" - All Other Classes	25.43	27.41	29.55	31.85
1.5"	27.69	29.85	32.18	34.69
2"	31.92	34.41	37.09	39.98
3"	61.39	66.18	71.34	76.90
4"	77.03	83.04	89.52	96.50
6"	98.44	106.12	114.40	123.32
8"	127.17	137.09	147.78	159.31
10"	180.57	194.65	209.83	226.20
Volume Charges (per ccf)				
Single Family				
Block 1 (0-7 ccf)	\$ 4.49	\$ 4.84	\$ 5.22	\$ 5.63
Block 2 (7-15 ccf)	5.49	5.92	6.38	6.88
Block 3 (15 ccf+)	6.25	6.74	7.27	7.84
Multi Family	5.38	5.80	6.25	6.74
Commercial	5.67	6.11	6.59	7.10
Manufacturing	5.54	5.97	6.44	6.94
Schools	6.03	6.50	7.01	7.56
Municipal	5.58	6.02	6.49	7.00
Irrigation	7.46	8.04	8.67	9.35

- No significant rate structure changes
- Increases applied across the board
 - » Equal increases to fixed and variable charges
 - » Equal increases applied to each customer class



Proposed Sewer Rates

Description	Existing	Proposed		
		2026	2027	2028
Monthly Fixed Charges All Classes				
Single Family	\$ 32.29	\$ 32.94	\$ 33.60	\$ 34.27
Non-Single Family	35.42	36.13	36.85	37.59
Non Single Family Volume Charges (per ccf)				
Above 7.5 ccf	\$ 3.59	\$ 3.66	\$ 3.73	\$ 3.80

- No significant rate structure changes
- Increases applied across the board
 - » Equal increases to fixed and variable charges
 - » Equal increases applied to each customer class



Proposed Stormwater Rates

Description	Existing	Proposed		
		2026	2027	2028
Monthly Fixed Charges All Classes				
Single Family	\$ 19.31	\$ 19.94	\$ 20.59	\$ 21.26
NSF ESU	19.31	19.94	20.59	21.26
NSF w/Det ESU	16.62	17.16	17.72	18.30
NSF w/Ret ESU	13.92	14.37	14.84	15.32
NSF w/WtrQty ESU	17.76	18.34	18.94	19.56
NSF w/Det&WQ ESU	15.07	15.56	16.07	16.59
NSF w/Ret&WQ ESU	12.37	12.77	13.19	13.62

- No significant rate structure changes
 - » City evaluating SF credit application for qualifying accounts
- Increases applied across the board
 - » Equal increases applied to each customer class



Next Steps

- Direction / feedback

- » Move forward with the following

Utility	2026	2027	2028
Water	7.80%	7.80%	7.80%
Sewer	2.00%	2.00%	2.00%
Stormwater	3.25%	3.25%	3.25%

- All increases applied across the board

- Next steps

- » Review connection charges and wholesale rates

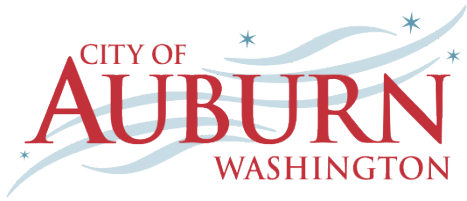
- » Adopt rates effective January 1, 2026

Thank you! Questions?

Brooke Tacia, Project Manager
(425) 502-6445
Brooke.tacia@bowman.com

www.fcsgroup.com





AGENDA BILL APPROVAL FORM

Agenda Subject:

Housing Repair Program Update (Krum) (15 Minutes)

Meeting Date:

October 27, 2025

Department:

Community Development

Attachments:

2025 Housing Repair
Presentation

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

The City of Auburn Building Official will present an update on the City's Housing Repair Program. The presentation will focus on how the program works and highlights some of the projects accomplished over the past year.

Councilmember: Tracy Taylor

Staff: Jason Krum

STUDY SESSION

AUBURN'S HOUSING REPAIR PROGRAM

**PRESENTED BY CRUE WOODARD
BUILDING OFFICIAL
OCTOBER 27, 2025**

Department of Community Development
Planning • Building • Development Engineering • Permit Center
Economic Development • Code Enforcement

AUBURN VALUES

S E R V I C E
E N V I R O N M E N T
E C O N O M Y
C H A R A C T E R
S U S T A I N A B I L I T Y
W E L L N E S S
C E L E B R A T I O N

AUBURN'S HOUSING REPAIR PROGRAM

- City of Auburn Minor Home Repair Program is for low to moderate income homeowners.
- This program provides eligible homeowners with grants up to \$25,000 for eligible home repairs.
- These grants enable homeowners to remain in safe and comfortable housing.

QUALIFICATIONS

To qualify applicants must:

- **Live inside Auburn city limits.**
- **Own home needing repairs.**
- **Have lived there at least one year & plan to stay at least one year after repairs are done.**
- **Meet low to moderate income guidelines.**
- **50% King County median income = up to \$55,000/year for one person**
- **Once approved applicants can access any remaining funds for up to 3 years for approved repairs and reapply after 5 years from last approval date.**

REQUIRED PRIOR TO WORK

The following may also be required before work can begin on a Housing Repair project.

- Lead paint assessment for homes built prior to 1978.
- Check with WA State Dept. of Archaeology & Historic Preservation Section 106 submitted for stick-built homes over 45 years old.

ELIGIBLE REPAIRS

Some examples of work funded with minor home repair grants.

- Leaky roofs repairs and replacement.
- Plumbing leaks and clogs.
- Unsafe stairs and handrails.
- Floor repair.
- Access and disability aids.
- Heating system repairs or replacement.
- and many other repairs.



GOVQA DATABASE

- In 2020 we started developing a new software program for tracking all program applications and documentation, HUD required documents, contractor bids, contracts, contractor payments, in-house workorders, inhouse time and materials.
- GovQA allows applicants to setup an account online and submit all required documents online.

IN HOUSE REPAIRS

- Housing repair technician will receive a GovQA Work Order.
- Technician will review job(s) and if it appears it has the potential to go over budget and may change scope of work if needed.
 - Formulate a materials list.
 - Estimate labor.
 - Find alternatives when the repairs exceed our budget.
- Prioritize the repairs and schedule the work with client.
 - Contractor when working in conjunction with a contractor.

CEILING WATER DAMAGE REPAIR

Before



After

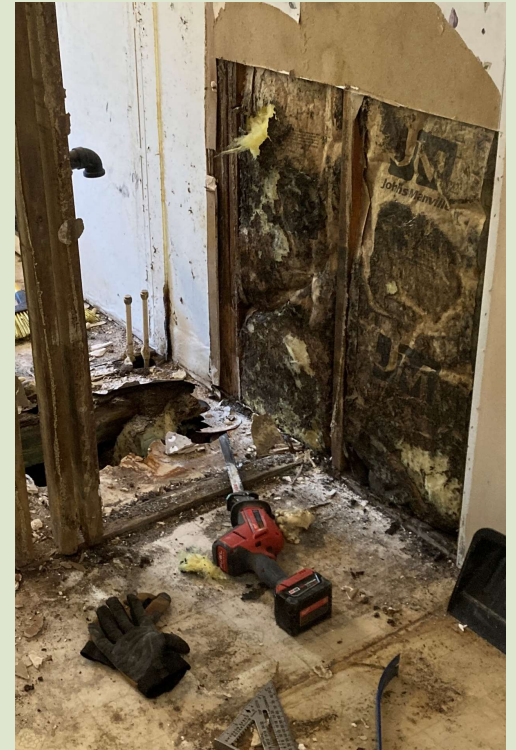


WATER DAMAGE REPAIR - BEFORE

Before



During Repairs



WATER DAMAGE REPAIR - DURING

During Repairs



After



ENTRY DOOR W/SIDE LITES

Before



After



SIDING REPLACEMENT

Before and During Repairs



After



TUB TO SHOWER CONVERSION

Before



After



BATHTUB TO WALK IN TUB CONVERSION

Before



After



PORCH REPAIRS

Before



After



TUB CONVERSION TO SHOWER

Before



After



BROKEN WATER MAIN REPLACEMENT



TRIP HAZARD REPAIR

Before



After



FURNACE REPLACEMENT

Before



After



WHEELCHAIR RAMP

Before



During



After



WHEELCHAIR RAMP

Before



After

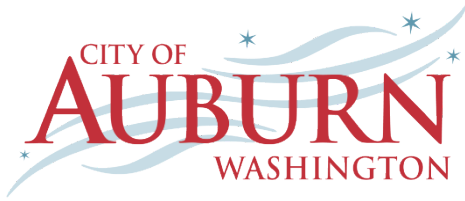


Thank You!

Department of Community Development
Planning • Building • Development Engineering • Permit Center
Economic Development • Code Enforcement

AUBURN
VALUES

S E R V I C E
E N V I R O N M E N T
E C O N O M Y
C H A R A C T E R
S U S T A I N A B I L I T Y
W E L L N E S S
C E L E B R A T I O N



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 7005 (Gaub) (10 Minutes)
An Ordinance granting to Soos Creek Water and Sewer District, a Washington Municipal Corporation, a Franchise for Sanitary Sewer Facilities

Meeting Date:

October 27, 2025

Department:

Public Works

Attachments:

Draft Ordinance No. 7005, Sewer
Service Area Map

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide service to persons or areas inside or outside of the City.

Soos Creek Water and Sewer District has applied for a new Franchise Agreement to continue to operate their existing sanitary sewer facilities in the public ways within the Auburn City limits. The facilities currently provide wastewater collection and conveyance for treatment and disposal within the portion of Soos Creek's sewer service boundary area that is within the Auburn City limits. The proposed agreement is consistent with the City's standard Franchise Agreement language.

A Public Hearing to consider this application and take public comment is scheduled before the City Council on November 3, 2025, in accordance with Auburn City Code 20.04.040.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 7005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO SOOS CREEK WATER AND SEWER DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, A FRANCHISE FOR SANITARY SEWER FACILITIES

WHEREAS, The Soos Creek Water and Sewer District ("Franchisee") has applied for a non-exclusive Franchise for the right of entry, use, and occupation of certain public ways within the City of Auburn ("City"), expressly to install, construct, operate, maintain, repair, relocate, and remove its facilities in, on, over, under along, and/or across those public ways; and

WHEREAS, following proper notice, the City Council held a public hearing on Franchisee's request for a Franchise; and

WHEREAS, based on the information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City to grant the Franchise to Franchisee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions

For the purpose of this Franchise and the interpretation and enforcement thereof, definitions of words and phrases shall be in accordance with the definitions set forth in this Franchise and in Auburn City Code 20.02.020. If there is a conflict between any of the definitions set forth in this Franchise and the definitions set forth in Auburn City Code 20.02.020, the definitions in this Franchise shall govern to the extent of such conflict.

A. "ACC" means the Auburn City Code.

B. "Force Majeure Event" means and shall include without limitation, war, civil disturbance; flood, earthquake or other Act of God; storm or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service; laws, regulations, rules or orders of any governmental agency; a public health emergency as declared by the State of Washington or local County governing the Franchise Area; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a third party;

or any failure or delay in the performance by the other party, or third party who is not an employee, agent or contractor of the party claiming a Force Majeure Event, in connection with this Franchise.

C. "Franchise" means this agreement approved by Ordinance No. 7005 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.

D. "Franchise Area" means all public ways within the current city limits and within any future adjusted boundaries of the city limits and which are also within the Franchisee's service area boundary per the Service Area Agreement between the City and the Franchisee authorized under Resolution No. 3391 as amended, and per applicable law. The effective date of any such changes in the city limits will be the effective date(s) of any future annexations.

E. "Franchisee Facilities" means pipes, including service laterals, manholes, cleanouts, pump stations, treatment facilities, and all other appurtenances necessary or convenient for the purposes of providing wastewater collection and conveyance, that are constructed, operated, owned, and maintained within the public ways that are located in the Franchise Area.

F. "Franchisee Services" means providing wastewater collection and conveyance for treatment and disposal. Sewer service extends from the sewer main, through a service lateral, to the cleanout or right-of-way line.

G. "Public Improvement" means any capital improvement, maintenance, or repair that is undertaken by or on behalf of the City and is funded by the City (either directly or indirectly with its own funds or with other public monies obtained by the City), including any capital improvement within the City's adopted Transportation Improvement Plan or Capital Facilities Plan.

Section 2. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated in this Franchise, the City grants to the Franchisee general permission to enter, use, and occupy the public ways within the Franchise Area, located within the incorporated area of the City. Franchisee may locate the Franchisee's Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

B. The Franchisee is authorized to install, remove, construct, operate, maintain, relocate, upgrade, replace, restore, and repair Franchisee's Facilities to provide Franchisee Services in the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Franchisee Facilities and Franchisee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Franchisee Facilities and Franchisee Services, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including other franchise agreements, impacting the Franchise Area, for any purpose that does not interfere with Franchisee's rights under this Franchise.

E. Except as explicitly set forth in this Franchise, this Franchise does not waive any rights the City has or may acquire with respect to the Franchise Area or any other City roads, public ways, or property. This Franchise will be subject to the power of eminent domain, and in any proceeding under eminent domain, the Franchisee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any public way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Franchisee Facilities, the City may reserve an easement for public utilities within that vacated portion, pursuant to Chapter 35.79.030 RCW, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

G. The Franchisee agrees that its use of Franchise Area shall, at all times, be subordinated to, and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 3. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses unless a different address is designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the City. Any communication made by e-mail or similar method will not constitute notice pursuant to this Franchise, except in case of emergency notification.

City: Right-of-Way Specialist
Public Works Department - Transportation
City of Auburn
25 West Main Street

Auburn, WA 98001-4998
Telephone: (253) 931-3010
Rowusepermit@auburnwa.gov

with a copy to: City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Franchisee: Soos Creek Water and Sewer District
Attn: General Manager
14616 SE 192nd Street
Renton, WA 98058
Telephone: 253-630-9900
Customer_Service@sooscreek.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this Franchise.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: (253) 630-9900.

Section 4. Term of Franchise

A. This Franchise shall run for a period of twenty (20) years, from the date of Franchise Acceptance as described in Section 5 of this Franchise.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise's term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) calendar days in advance of intent to cancel this Franchise. Franchisee shall be responsible for paying applicable fees for month-to-month Franchise status per the City of Auburn fee schedule in effect at the time the Agreement goes into month-to-month status.

Section 5. Acceptance of Franchise

A. This Franchise will not become effective until Franchisee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 15, and (3) payment of any outstanding application fees required in the City Fee Schedule. These three items will collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) calendar days after the effective date of the ordinance approving the Franchise as described in Section 26 of this Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits required under applicable law for any work done within the City. Franchisee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

B. Franchisee agrees to coordinate its activities with the City and all other utilities located within the public way within which Franchisee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Franchisee's Facilities will be installed within the public way and may require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Franchisee.

D. Franchisee's Facilities shall be constructed, installed, maintained, and repaired within the Franchise Area so as to provide safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City.

E. Before beginning any underground work within the public way, the Franchisee will comply with the One Number Locator provisions of Chapter 19.122 RCW to identify existing utility infrastructure.

F. Tree Trimming. Upon prior written approval of the City the Franchisee shall have the authority to trim trees upon and overhanging streets, public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities.

Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This Section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the City.

Section 7. Repair and Restorations

A. If the City Engineer determines that Franchisee's Facilities or Franchisee's construction, maintenance, repair, relocation, or replacement of facilities within the Franchise Area is the cause of damage, degradation, failure, or substandard condition of a Street, during the term of this Franchise, the City will notify Franchisee in writing and Franchisee will repair or replace the subject Street to like condition and in accordance with City Engineering Design Standards and subject to applicable permits, within ninety (90) calendar days of the City's notification, unless granted additional time by the City Engineer. If the City determines the subject Street condition poses an immediate threat to health, safety, vital traffic operations, property, or critical areas, Section 8 shall apply.

B. For purposes of this Section, "street" shall mean all City owned improvements within a public way, including, but not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, traffic control devices, landscape areas, and vegetation in unopened rights-of-way.

Section 8. Emergency Repair Work

A. In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee's emergency contact phone number for corresponding response activity.

B. The City may commence emergency response work at any time, without prior notice to the Franchisee, but will notify the Franchisee telephonically as promptly as possible under the circumstances and in writing soon thereafter. Franchisee will reimburse the City for the City's actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning the property to a safe condition, the property shall then be returned to the condition it was in, or better, immediately prior to being damaged (if the safe condition of the property is not the same as that which existed prior to damage). All repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 10. Location Preference

A. Any structure, equipment, appurtenance, or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed before another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference shall continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of Franchisee's Facilities. Such relocations will be governed by Section 11.

B. When constructing new Franchisee Facilities, or replacing or reconstructing Franchisee Facilities, Franchisee shall maintain minimum underground separation requirements from all City water, sanitary sewer, and storm water facilities in accordance with the City Engineering Design and Construction Standards; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the Franchise Area, will develop and follow the City's determination of guidelines and procedures for determining specific utility locations, subject additionally to this agreement.

Section 11. Relocation of Franchisee Facilities

A. Whenever the City causes a Public Improvement to be constructed within the Franchise Area, and such Public Improvement requires the relocation of

Franchisee Facilities within the Franchise Area (for purposes other than those described in Section 11.B below):

1. The City shall provide Franchisee with written notice requesting such relocation, along with review plans and/or other detailed document(s) for the Public Improvement that are sufficiently complete as determined by the City Engineer to allow for Franchisee's initial evaluation and coordination of the relocation. The City shall provide the Franchisee with the City's anticipated construction schedule and the date, either before or during the construction of the Public Improvement, the City requires the Franchisee to complete the relocation. If the Franchisee desires clarification, alternatives to relocation, or a relocation schedule that varies from that provided by the City, the Franchisee will provide written request to the City within fourteen (14) calendar days of receiving the relocation notice from the City and then Section 11.A.2 shall apply to the relocation, otherwise, the Franchisee agrees to conduct the relocation as required by the City and Section 11.A.2 shall not apply to the relocation.

2. Subject to the notice requirement of Section 11.A.1, the City and Franchisee shall discuss relocation requirements and schedule, and jointly identify and define the project requirements, schedule, and timeframe of relocation that the Parties agree shall govern the relocation. The Parties will document the mutual agreement of these terms in writing. Except as approved otherwise in writing by the City, in no case shall the Franchisee's relocation be completed more than 180 calendar days after initial notification by the City.

3. Franchisee shall relocate such Franchisee Facilities within the Franchise Area, at no charge to the City and in accordance with the relocation schedule required by the City or otherwise mutually agreed upon by the Parties per Section 11.A.2.

B. Whenever (i) any public or private development within the Franchise Area, other than a Public Improvement, requires the relocation of Franchisee Facilities within the Franchise Area to accommodate such development: or (ii) the City requires the relocation of Franchisee Facilities within the Franchise Area for the benefit of any person or entity other than the City (including, without limitation, any conditions or requirement imposed by the City on such person or entity pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development), then in such event, Franchisee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Franchisee, at a time and upon terms acceptable to Franchisee, for any and all costs and expenses incurred by Franchisee in connection with such relocation of Franchisee Facilities.

C. Subject to the terms of this Section 11 and consistent with Section 14 and to the maximum extent provided by applicable law, Franchisee shall reimburse the City for any costs, expenses, and/or damages incurred as a result of: 1) The Franchisee not providing the City accurate or sufficient location or other information regarding Franchise Facilities during design or construction of the Public Improvement, or 2) Franchisee's delay in meeting the mutually-established schedule for the relocation work required to accommodate a Public Improvement to the extent the delay is directly caused by Franchisee's breach of its obligations under this Section 11 with respect to the relocation of Franchise Facilities in accordance with the mutually established schedule for the relocation work.

D. Nothing in this Section 11 shall require Franchisee to bear any cost or expense in connection with the location or relocation of any Franchise Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

E. In the event that a conflict with Franchise Facilities is discovered during construction of a Public Improvement, Section 11.A.2 shall apply except that in no case shall the Franchisee's relocation be completed more than 7 calendar days after the conflict discovery and notification by the City, except as agreed upon otherwise by the City. Additionally, any and all costs associated with the conflict shall be subject to Section 11.C.

Section 12. Abandonment and or Removal of Franchisee Facilities

A. Within one hundred and eighty (180) calendar days of Franchisee's permanent cessation of use of any portion of the Franchise Facilities, the Franchisee will, at the City's discretion, either abandon in place or remove the affected facilities.

B. Franchisee may ask the City in writing to abandon, in whole or in part, all or any part of the Franchise Facilities. Any plan for abandonment of Franchise Facilities must be approved in writing by the City.

C. The parties expressly agree that this Section will survive the expiration, revocation or termination of this Franchise.

Section 13. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information requested by the City that the City determines is necessary to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the

location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's database system, including the City's Geographic Information System (GIS) database. Franchisee and the City will meet upon request from either Party, generally at 1-year intervals for the purpose of sharing known plans each Party may have that could affect the other Party's use and management of the Franchise Area.

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City.

Section 14. Indemnification and Hold Harmless

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Franchise.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Franchisee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or

confined space rescue. The Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14.A., the Franchisee will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

D. The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable law. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such job site within the public way. The Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable law and the Franchise.

E. Indemnification for Relocation. Franchisee will defend, indemnify, and hold the City harmless for any damages, claims, additional costs or reasonable expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City and arising out of or resulting from Franchisee's negligence or willful misconduct contributing to Franchisee's failure to remove, adjust, or relocate any of its facilities in the public way in accordance with any relocation required by the City, provided that Franchisee will not be liable under this Section if Franchisee's failure to remove, adjust, or relocate any of its facilities is the result of a Force Majeure Event.

Section 15. Insurance

A. The Franchisee shall procure and maintain for the duration of this Franchise and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with this franchise and use of the public way.

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

C. Minimum Scope of Insurance. The Franchisee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, pollution liability, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as ISO form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain insurance that meets or exceeds the following limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000.

5. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

F. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII. This requirement may be fulfilled by the Franchisee's membership and coverage in Enduris, a self-insured municipal risk pool.

G. Contractors and Subcontractors. The Franchisee shall cause each and every contractor and subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, except that the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by contractors and subcontractors. The Franchisee shall ensure that the City is an additional insured on each and every contractor's and subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Franchise. Upon request by the City, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements required in this Franchise and evidence of all contractors and subcontractors' coverage. In the alternative, either party to this agreement may fulfill the insurance obligations contained herein by maintaining membership in a

joint self-insurance program authorized by RCW 48.62. In this regard, the parties understand that the party to this agreement who is a member of such a program is not able to name the other party as an “additional insured” under the liability coverage provided by the joint self-insurance program.

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within five (5) calendar days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of this Franchise, upon which the City may, after giving five (5) calendar days’ written notice to the Franchisee to correct the breach, terminate the Franchise.

K. City Full Availability of Franchisee Limits. If the Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this Franchise or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (1) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (2) 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; (3) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (4) Franchisee assumes all defense and indemnity obligations as outlined in Section 14.

Section 16. Financial Security

Pursuant to the authority in ACC 20.02.280.A, the City’s Public Works Director has determined that the Franchisee shall not be required to provide the City with financial security for this Franchise.

Section 17. Successors and Assignees

A. All the provisions, conditions, regulations, and requirements contained in this Franchise are binding upon the successors, assigns of, and independent contractors of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

B. This Franchise will not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) calendar days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Before the City's consideration of a request by Franchisee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee will file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance before transfer does not waive any right to insist on full compliance thereafter.

Section 18. Dispute Resolution

A. In the event of a dispute between the City and the Franchisee arising by reason of this Franchise, the dispute will first be referred to the operational officers or representatives designated by City and Franchisee to have oversight over the administration of this Franchise. The officers or representatives will meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties will make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue

will be exclusively in King County, Washington. The prevailing party in any such action will be entitled to its attorneys' fees and costs.

Section 19. Enforcement and Remedies

A. If the Franchisee willfully violates or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or fails to comply with any notice given to Franchisee under the provisions of this Franchise, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) calendar days of notification. If the City determines the breach cannot be cured within thirty (30) calendar 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) calendar day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) impose liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day for every day after the expiration of the cure period that the breach is not cured. The parties agree that the actual damages to the City from Franchisee failing to cure are not easily calculated and agree that the liquidated damages amount are a reasonable forecast of just compensation.

B. If the City determines that Franchisee is acting beyond the scope of permission granted in this Franchise for Franchisee Facilities and Franchisee Services, the City reserves the right to cancel this Franchise and require the Franchisee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Franchisee's actions are not allowed under applicable federal and state or City laws, to compel Franchisee to cease those actions.

C. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, Franchisee agrees to be responsible for any damages the City suffers as a result of Franchisee's failure (including, but not limited to: City staff time, material and equipment costs; compensation or indemnification of third parties; and the cost of removal or abandonment of facilities). Franchisee also specifically agrees that its failure to comply with the terms of this Section 19 will constitute damage to the City in the monetary amount set forth in subsection A of this Section.

Section 20. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal, state, and City laws, regulations, and policies (including all

applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. The Franchisee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee with thirty (30) calendar days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) calendar days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Franchisee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) calendar days written notice to the Franchisee if the Franchisee fails to comply with such amendment or modification.

Section 21. License, Tax and Other Charges

A. The City reserves the right to impose, to the extent authorized by law, a utility tax on the Franchisee and/or to charge the Franchisee a reasonable fee for services provided or rights granted under this Franchise.

B. The Franchisee agrees that it shall be subject to all authority now or later possessed by the City or any other governing body having competent jurisdiction to fix just, reasonable, and compensatory rates for services under this Franchise.

C. This Franchise will not exempt the Franchisee from any future license, tax, or charge which the City may adopt if authority is granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 22. Consequential Damages Limitation

Notwithstanding any other provision of this Franchise, in no event will either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 23. Severability

If any portion of this Franchise is deemed invalid, the remainder portions will remain in effect, unless doing so will deny a party valuable consideration.

Section 24. Titles

The Section titles are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 25. Implementation

The Mayor is authorized to implement those administrative procedures necessary to carry out the directions of this legislation.

Section 26. Effective Date

This Ordinance will take effect and be in force five (5) calendar days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, Acting City Attorney

Published: _____

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

_____, 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.

Franchisee Name _____

Address _____

City, State, Zip _____

By: _____

Date: _____

Name:

Title:

STATE OF _____)

)ss.

COUNTY OF _____)

On this ____ day of _____, 20__, 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 they are authorized to execute said instrument.

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

Signature

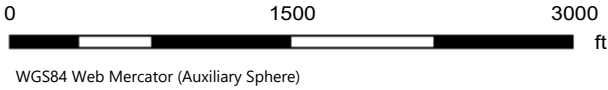
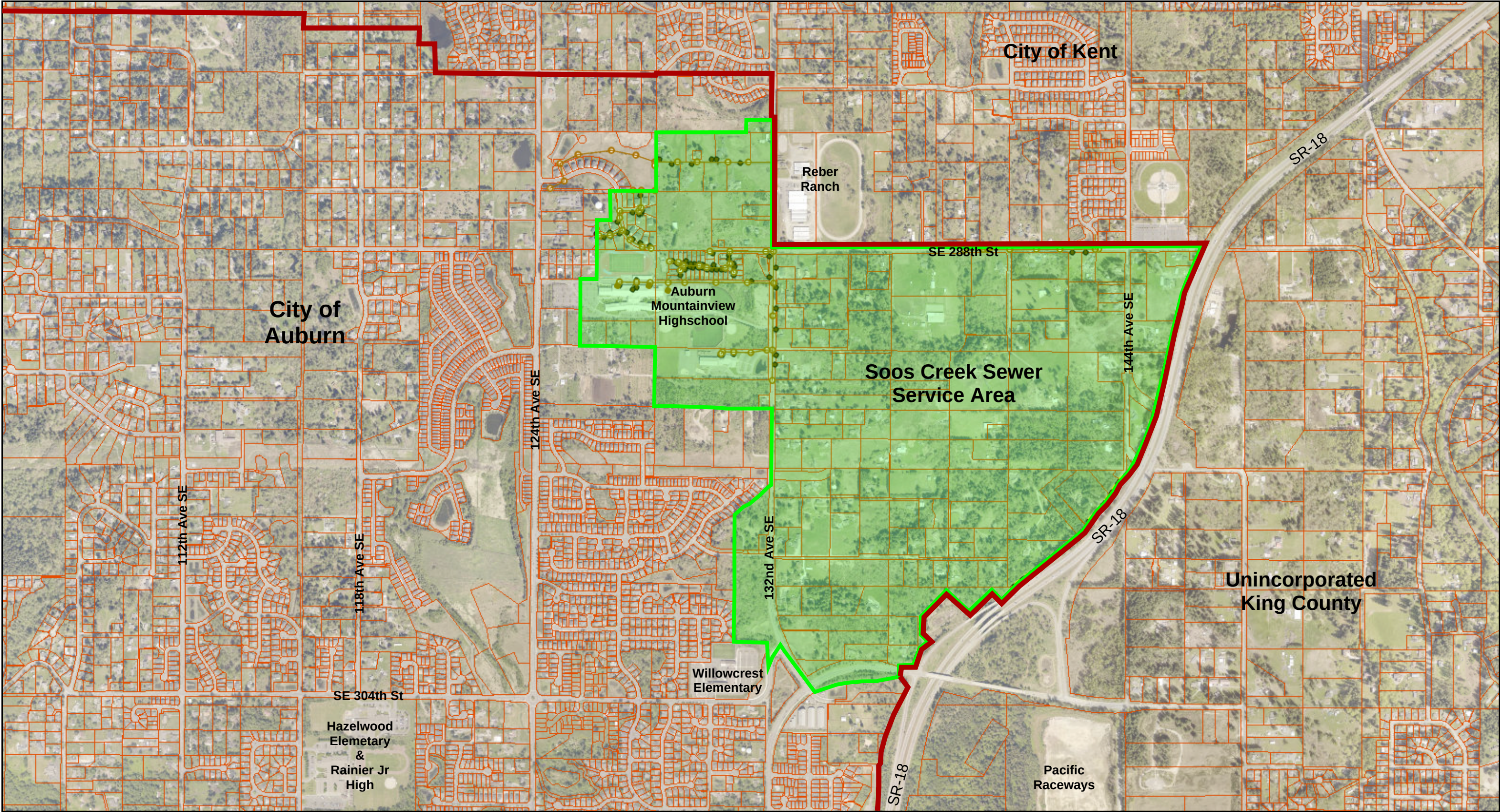
NOTARY PUBLIC in and for the State of _____, residing at _____

MY COMMISSION EXPIRES: _____

Soos Creek Water and Sewer District - Sewer Service Area

Auburn City Limits
Soos Creek Sewer Service Area

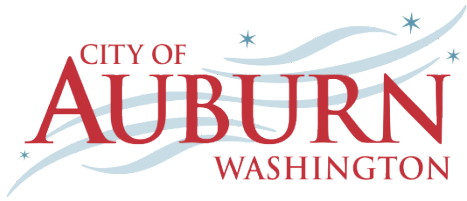
Printed On: 10/21/2025
Map created by City of Auburn eGIS



1: 18056



Information shown is for general reference purposes only and does not necessarily represent exact geographic or cartographic data as mapped. The City of Auburn makes no warranty as to its accuracy.



AGENDA BILL APPROVAL FORM

Agenda Subject:

Ordinance No. 7007 (Gaub) (10 Minutes)

An Ordinance granting to Hyperfiber of Washington, LLC dba Ripple Fiber, a Delaware Limited Liability Company, a Franchise for Wireline Telecommunications

Meeting Date:

October 27, 2025

Department:

Public Works

Attachments:

Draft Ordinance No. 7007

Budget Impact:**Administrative Recommendation:**

For discussion only.

Background for Motion:**Background Summary:**

Section 20.02.040 of the Auburn City Code requires a franchise for any utility or telecommunications carrier or operator to use public ways of the City and to provide services to persons or areas inside or outside of the City.

Hyperfiber of Washington, LLC dba Ripple Fiber has applied for a Franchise Agreement to install fiber optic cable and electronic infrastructure in the public ways within the City limits. Hyperfiber intends to provide business and residential data and telecommunications services to customers located inside the City Limits. The proposed agreement is consistent with the City's standard Franchise Agreement language.

A Public Hearing to consider this application and take public comment is scheduled before the City Council on November 3, 2025, in accordance with Auburn City Code 20.04.040.

Councilmember: Tracy Taylor

Staff: Ingrid Gaub

ORDINANCE NO. 7007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO HYPERFIBER OF WASHINGTON, LLC DBA RIPPLE FIBER, A DELAWARE LIMITED LIABILITY COMPANY, A FRANCHISE FOR WIRELINE TELECOMMUNICATIONS.

WHEREAS, Hyperfiber of Washington, LLC dba Ripple Fiber, a Delaware limited liability company ("Franchisee") has applied for a non-exclusive Franchise for the right of entry, use, and occupation of certain public ways within the City of Auburn ("City"), expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those public ways; and

WHEREAS, following proper notice, the City Council held a public hearing on Franchisee's request for a Franchise; and

WHEREAS, based on the information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City to grant the Franchise to Franchisee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions

For the purpose of this Franchise and the interpretation and enforcement thereof, definitions of words and phrases shall be in accordance with the definitions set forth in this Franchise and in Auburn City Code 20.02.020. If there is a conflict between any of the definitions set forth in this Franchise and the definitions set forth in Auburn City Code 20.02.020, the definitions in this Franchise shall govern to the extent of such conflict.

- A. "ACC" means the Auburn City Code.
- B. "Franchise" means this agreement approved by Ordinance No. 7007 of the City which authorizes Franchisee Facilities to provide Franchisee Services in the Franchise Area.
- C. "Franchisee's Facilities" means fiber optic and broad band communications services constructed and operated within the public ways

including all cables, wires, conduits, ducts, pedestals, and any associated converter equipment or other items necessary for Telecommunications Services as defined in RCW 35.99.010(7), that are located in the Franchise Area.

Franchisee's Facilities do not include facilities used to provide wireless services, including antennas or other equipment, appliances, attachments and appurtenances associated with wireless telecommunications facilities. Franchisee's facilities do not include small wireless facilities, microcell, minor facility, or small cell facilities, as defined in RCW 80.36.375. Franchisee's facilities do not include any facilities that are not located within the Franchise Area or that are covered under a separate franchise agreement or agreement.

D. "Franchisee's Services" means any telecommunications service, telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities, including, but not limited to, the transmission of voice, data or other electronic information, or other subsequently developed technology that carries a signal over fiber optic cable. Franchisee's Services will also include non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City and other lawful services not prohibited by this Ordinance. However, Franchisee's Services will not include the provision of "cable services", as defined by 47 U.S.C. §522, as amended, for which a separate franchise would be required.

Section 2. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated in this Franchise, the City grants to the Franchisee general permission to enter, use, and occupy the Franchise Area, located within the incorporated area of the City. Franchisee may locate the Franchisee's Facilities within the Franchise Area subject to all applicable laws, regulations, and permit conditions.

B. The Franchisee is authorized to install, remove, construct, erect, operate, maintain, relocate, upgrade, replace, restore, and repair Franchisee's Facilities to provide Franchisee's Services in the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Franchisee Facilities and Franchisee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Franchisee Facilities and Franchisee Services, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including franchise agreements, impacting the

Franchise Area, for any purpose that does not interfere with Franchisee's rights under this Franchise.

E. Except as explicitly set forth in this Franchise, this Franchise does not waive any rights that the City has or may acquire with respect to the Franchise Area or any other City roads, public ways, or property. This Franchise will be subject to the power of eminent domain, and in any proceeding under eminent domain, the Franchisee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any public way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Franchisee Facilities, the City may reserve an easement for public utilities within that vacated portion, pursuant to Chapter 35.79.030 RCW, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 4.

G. The Franchisee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

H. The Franchisee agrees to provide the City with complete contact information for any client, lessee, sub-lessee, customer, or other entity that Franchisee allows to utilize, control, access, or otherwise provides services to, who will also use the Franchisee Facilities to provide services to their clients and customers either inside or outside the City limits. Such contact information shall be provided to the City a minimum of sixty (60) days prior to the start of such anticipated use so that the City may determine if Franchisee's client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City prior to such use. If the client, lessee, sub-lessee, customer, or other entity is required to obtain a franchise agreement with the City, then the Franchisee shall not allow use, control, access, or otherwise provide services to such entity until the required franchise agreement has been obtained.

Section 3. Notice

A. Written notices to the parties shall be sent by a nationally recognized overnight courier or by certified mail to the following addresses, unless a different address is designated in writing and delivered to the other party. Any such notice shall become effective upon receipt by certified mail, confirmed delivery by overnight courier, or the date stamped received by the City. Any communication

made by e-mail or similar method will not constitute notice pursuant to this Franchise, except in case of emergency notification.

City: Right-of-Way Specialist,
Public Works Department - Transportation
City of Auburn
25 West Main Street
Auburn, WA 98001-4998
Telephone: (253) 931-3010

with a copy to: City Clerk
City of Auburn
25 West Main Street
Auburn, WA 98001-4998

Franchisee: Hyperfiber of Washington, LLC dba Ripple Fiber
Attn: Lance van der Spuy
6000 Fairview Rd., Suite 300
Charlotte, NC 28210
Telephone: (470) 807-0922
Email Address: Lance@ripplefiber.com

with a copy to: Ripple Fiber
Attn: Joshua Runyan, Esq.
Address: 6000 Fairview Rd., Suite 300
Charlotte, NC 28210
Telephone: 704-989-3217
Email Address: josh@ripplefiber.com

B. Any changes to the above-stated Franchisee information shall be sent to the City's Right-of-Way Specialist, Public Works Department – Transportation Division, with copies to the City Clerk, referencing the title of this Franchise.

C. The above-stated Franchisee voice telephone numbers shall be staffed at least during normal business hours, Pacific time zone. The City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisee: 800-359-5767.

Section 4. Term of Franchise

A. This Franchise shall run for a period of fifteen (15) years, from the date of Franchise Acceptance as described in Section 5 of this Franchise.

B. Automatic Extension. If the Franchisee fails to formally apply for a new franchise agreement prior to the expiration of this Franchise's term or any extension thereof, this Franchise automatically continues month to month until a new franchise agreement is applied for and approved under the then current process or until either party gives written notice at least one hundred and eighty (180) days in advance of intent to cancel this Franchise.

Section 5. Acceptance of Franchise

A. This Franchise will not become effective until Franchisee files with the City Clerk (1) the Statement of Acceptance (Exhibit "A"), (2) all verifications of insurance coverage specified under Section 16, (3) the financial security specified in Section 17, and (4) payment of any outstanding application fees required in the City Fee Schedule. These four items will collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk will be the effective date of this Franchise.

B. If the Franchisee fails to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise as described in Section 28 of this Franchise, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Franchisee shall apply for, obtain, and comply with the terms of all permits required under applicable law for any work done within the City. Franchisee will comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work.

B. Franchisee agrees to coordinate its activities with the City and all other utilities located within the public way within which Franchisee is undertaking its activity.

C. The City expressly reserves the right to prescribe how and where Franchisee's Facilities will be installed within the public way and may require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Franchisee as provided for in Chapter 35.99 RCW.

D. Before beginning any work within the public way, the Franchisee will comply with the One Number Locator provisions of Chapter 19.122 RCW to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the city the Franchisee shall have the authority to trim trees upon and overhanging streets,

public ways and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Franchisee's Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within 24 hours, the City may, at its sole discretion, remove such debris and charge the Franchisee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require other permits as necessary from the City.

Section 7. Trench Repair for Street Restorations

A. At any time during the term of this Franchise, if a Franchisee Facility or trench within the Franchise Area causes a street to crack, settle, or otherwise fail, the City will notify Franchisee of the deficiency and Franchisee agrees to restore the deficiency and repair the damage within thirty (30) days of written notice by the City.

B. For purposes of the Section, "street" shall mean all City owned improvements within a public way, including, but not limited to, the following: pavement, sidewalks, curbing, above and below-ground utility facilities, and traffic control devices.

Section 8. Repair and Emergency Work

In the event of an emergency, the Franchisee may commence repair and emergency response work as required under the circumstances. The Franchisee will notify the City telephonically during normal business hours (at 253-931-3010) and during non-business hours (at 253-876-1985) as promptly as possible, before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Franchisee's emergency contact phone number for corresponding response activity. The City may commence emergency response work, at any time, without prior written notice to the Franchisee, but will notify the Franchisee in writing as promptly as possible under the circumstances. Franchisee will reimburse the City for the City's actual cost of performing emergency response work.

Section 9. Damages to City and Third-Party Property

Franchisee agrees that if any of its actions, or the actions of any person, agent, or contractor acting on behalf of the Franchisee under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Franchisee will restore, at its own cost and expense, the property to a safe condition. Upon returning the property to a safe condition, the property shall then be returned to the condition it was in immediately prior to being damaged (if

the safe condition of the property is not the same as that which existed prior to damage). All repair work shall be performed and completed to the satisfaction of the City Engineer.

Section 10. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility or other franchisee, other than the Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee's Facilities under this Franchise shall have preference as to positioning and location with respect to the Franchisee's Facilities. However, to the extent that the Franchisee's Facilities are completed and installed before another utility or other franchisee's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Franchisee's Facilities will have priority. These rules governing preference shall continue when relocating or changing the grade of any City road or public way. A relocating utility or franchisee will not cause the relocation of another utility or franchisee that otherwise would not require relocation. This Section will not apply to any City facilities or utilities that may in the future require the relocation of Franchisee's Facilities. Such relocations will be governed by Section 11 and Chapter 35.99 RCW.

B. Franchisee will maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the public way, will develop guidelines and procedures for determining specific utility locations.

Section 11. Relocation of Franchisee Facilities

A. Except as otherwise so required by law, Franchisee agrees to relocate, remove, or reroute its facilities as ordered by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Pursuant to the provisions of Section 15, Franchisee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the public way.

B. If a readjustment or relocation of the Franchisee Facilities is necessitated by a request from a party other than the City, that party shall pay the Franchisee the actual costs associated with such relocation.

Section 12. Abandonment and or Removal of Franchisee Facilities

A. Within one hundred and eighty days (180) of Franchisee's permanent cessation of use of the Franchisee's Facilities, the Franchisee will, at the City's discretion, either abandon in place or remove the affected facilities.

B. Franchisee may ask the City in writing to abandon, in whole or in part, all or any part of the Franchisee's Facilities. Any plan for abandonment of Franchisee Facilities must be approved in writing by the City.

C. The parties expressly agree that this Section will survive the expiration, revocation or termination of this Franchise.

Section 13. Undergrounding

A. The parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.

B. Whenever the City requires the undergrounding of aerial utilities in the Franchise Area, the Franchisee will underground the Franchisee's Facilities in the manner specified by the City Engineer at no expense or liability to the City, except as may be required by Chapter 35.99 RCW. Where other utilities are present and involved in the undergrounding project, Franchisee will only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's Facilities. Common costs will include necessary costs for common trenching and utility vaults. Fair share will be determined in comparison to the total number and size of all other utility facilities being undergrounded.

Section 14. Franchisee Information

A. Franchisee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Said information will include, at a minimum, as-built drawings of Franchisee's Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, compatible with the City's database system, including the City's Geographic Information System (GIS) database. Franchisee will keep the City informed of its long-range plans for coordination with the City's long-range plans.

B. The parties understand that Chapter 42.56 RCW and other applicable law may require public disclosure of information given to the City.

Section 15. Indemnification and Hold Harmless

A. Franchisee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Franchisee's acts, errors or omissions, or from the conduct of Franchisee's business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with this Franchise, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

However, should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Franchise.

B. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee's Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, public way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Franchisee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Franchisee, and its agents, assigns, successors, or contractors, will make such arrangements as Franchisee deems fit for the provision of such services. The Franchisee will hold the City harmless from any liability arising out of or in connection with any damage or loss to the Franchisee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 15(A), the Franchisee will indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

Section 16. Insurance

A. The Franchisee shall procure and maintain for the duration of this Franchise and as long as Franchisee has Facilities in the public way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the public way.

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

C. Minimum Scope of Insurance. The Franchisee shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 if the Franchise is considered a master permit as defined by RCW 35.99.010, or CG 20 26 07 04 if it is not, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as ISO form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General

Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

D. Minimum Amounts of Insurance. The Franchisee shall maintain insurance that meets or exceeds the following limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability insurance with limits of not less than \$1,000,000.

5. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

E. Other Insurance Provisions. Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

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

G. Subcontractors. The Franchisee shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, including limits no less than what is required of Franchisee under this Franchise. The

Franchisee shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

H. Verification of Coverage. The Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of this Franchise. Upon request by the City, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all subcontractors' coverage.

I. Notice of Cancellation. Franchisee shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of the Franchise, upon which the City may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Franchise.

K. City Full Availability of Franchisee Limits. If the Franchisee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Franchisee, irrespective of whether such limits maintained by the Franchisee are greater than those required by this Franchise or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Franchisee.

L. Franchisee – Self-Insurance. Franchisee will have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, Franchisee or its affiliated parent entity shall comply with the following: (i) Franchisee shall submit a letter to the City stating which of the above required insurance provisions in this Section 15 Franchisee proposes to self-insure; (ii) 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; (iii) Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in Section 15.

Section 17. Financial Security

The Franchisee will provide the City with a financial security in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or renewable for, the term of this Franchise, in a form and substance acceptable to the City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, the City may recover jointly and severally from the principal and any surety of that financial security any damages suffered by the City as a result Franchisee's failure to comply, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities. Franchisee specifically agrees that its failure to comply with the terms of Section 20 will constitute damage to the City in the monetary amount set forth in that section. Any financial security will not be construed to limit the Franchisee's liability to the security amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Successors and Assignees

A. All the provisions, conditions, regulations and requirements contained in this Franchise are binding upon the successors, assigns of, and independent contractors of the Franchisee, and all rights and privileges, as well as all obligations and liabilities of the Franchisee will inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.

B. This Franchise will not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Franchisee and any proposed assignee or transferee will provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer: (1) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (2) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (3) An application fee in the amount established by the City's fee schedule, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Before the City's consideration of a request by Franchisee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee will file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance before transfer does not waive any right to insist on full compliance thereafter.

Section 19. Dispute Resolution

A. In the event of a dispute between the City and the Franchisee arising by reason of this Franchise, the dispute will first be referred to the operational officers or representatives designated by City and Franchisee to have oversight over the administration of this Franchise. The officers or representatives will meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties will make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise will be governed by and construed in accordance with the laws of the State of Washington. If any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the parties specifically understand and agree that venue will be exclusively in King County, Washington. The prevailing party in any such action will be entitled to its attorneys' fees and costs.

Section 20. Enforcement and Remedies

A. If the Franchisee willfully violates, or fails to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or fails to comply with any notice given to Franchisee under the provisions of this Franchise, the City may, at its discretion, provide Franchisee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within 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 day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Franchisee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the financial guarantee set forth in Section 17 for every day after the expiration of the cure period that the breach is not cured.

B. If the City determines that Franchisee is acting beyond the scope of permission granted in this Franchise for Franchisee Facilities and Franchisee Services, the City reserves the right to cancel this Franchise and require the Franchisee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Franchisee's actions are not allowed under applicable federal and state or City laws, to compel Franchisee to cease those actions.

Section 21. Compliance with Laws and Regulations

A. This Franchise is subject to, and the Franchisee will comply with all applicable federal and state or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise. The Franchisee will be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation enacted, amended, or adopted after the effective date of this Franchise if it provides Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. The amendment will become automatically effective on expiration of the notice period unless, before expiration of that period, the Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Franchisee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Franchisee, if the Franchisee fails to comply with such amendment or modification.

Section 22. License, Tax and Other Charges

This Franchise will not exempt the Franchisee from any future license, tax, or charge which the City may adopt under authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 23. Consequential Damages Limitation

Notwithstanding any other provision of this Franchise, in no event will either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 24. Severability

If any portion of this Franchise is deemed invalid, the remainder portions will remain in effect.

Section 25. Titles

The section titles used are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 26. Implementation

The Mayor is authorized to implement those administrative procedures necessary to carry out the directions of this legislation.

Section 27. Entire Franchise

This Franchise, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All previous franchises between the parties pertaining to Franchisee's operation of its Facilities are hereby superseded.

Section 28. Effective Date.

This Ordinance will take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____
PASSED: _____
APPROVED: _____

NANCY BACKUS, MAYOR

ATTEST:

APPROVED AS TO FORM:

Shawn Campbell, MMC, City Clerk

Jason Whalen, City Attorney

PUBLISHED: _____

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

Hyperfiber of Washington, LLC dba Ripple Fiber, 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.

Franchisee Name: Hyperfiber of Washington, LLC dba Ripple Fiber

Address: _____

City, State, Zip: _____

By: _____
Signature

Date: _____

Name: _____

Title: _____

STATE OF _____)
)ss.

COUNTY OF _____)

On this ____ day of _____, 20____, 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 they are authorized to execute said instrument.

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

Signature

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

MY COMMISSION EXPIRES: _____