



SPECIAL STUDY SESSION MINUTES
Sumner City Hall
1104 Maple Street
September 19, 2022 6:015PM

Mayor Hayden called to order the Sumner City Council Special Study Session of September 12, 2022, at 6:42pm.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community Development Director Ryan Windish, Communications Director Carmen Palmer, Public Works Director Mike Dahlem, Development Services Director Doug Beagle, Police Chief Moericke, Administrative Services Director Jeff Steffens, Chief Financial Officer Kassandra Raymond, and Deputy City Attorney Maili Barber

Council present: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

SPECIAL STUDY SESSION BUSINESS

1. BusUp Master Services Agreement – MIC Transit
Mr. Windish handed out the Master Services Agreement. (attached)
2. Department Budget Presentations
Councilmember Bitetto shared her suggestions on funding Community Partners. (attached)

ADJOURNMENT

With no further business before the Council, Mayor Hayden adjourned the meeting at 8:55pm. Councilmembers concurred.

DocuSigned by:

Kathy Hayden

3420AB72F52C4FD...

Kathy Hayden, Mayor

Attest:

DocuSigned by:

Michelle Converse

9BA22DE678404D1...

Michelle Converse, City Clerk

MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is entered into effective as of the last day of authorized signature below (the “**Effective Date**”), by and between BusUp USA Mobility Inc., Delaware Corporation (“**BusUp**”), and City of Sumner. (“**Customer**”). BusUp and Customer are hereinafter sometimes collectively referred to as the “**Parties**” and individually referred to as a “**Party**.”

WHEREAS, Customer has requested that BusUp provide certain transportation management services in accordance with the terms and conditions of this Agreement and BusUp has agreed to provide such services for Customer, and the City of Sumner public.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 SERVICES; OBLIGATIONS

Section 1.01 Services.

(a) *Services Generally.* On the terms and subject to the conditions set forth in this Agreement, BusUp shall provide the following services to Customer: development, management and administration of a shuttle program by, among other services, selecting and managing bus operators (“**Services**”) to operate a shuttle service for all Participating Employers’ riders on the routes and at the times agreed between BusUp and the Participating Employers, as set forth on any service order substantially in the form of Exhibit A attached hereto (“**Service Order**”). All Bus operators hired or contracted by BusUp shall be duly licensed by the State of Washington Utilities and Transportation Commission, and shall be required to carry comprehensive insurance coverage naming the City of Sumner as an additional insured. From time to time, Customer and BusUp may execute an additional Service Order for a new Customer Route. Each Service Order (i) shall be in writing, dated and executed by both Parties, (ii) shall set forth, among other things, a description of the Services to be provided, the time period during which the Services will be provided (the “**Service Term**”), Customer Routes in respect of which such Services are to be provided, the fees for such Services (the “**Service Fees**”), and any other terms applicable thereto and agreed to by the Parties, and (iii) shall be attached hereto, shall refer to this Agreement, will be subject to the terms and conditions contained herein and, unless specifically stated to the contrary, shall be incorporated herein by reference. In the event of a conflict between the terms of a Service Order and this Agreement, the terms of this Agreement shall prevail, unless it is expressly stated in the Service Order that a specific provision supersedes the relevant provision in the body of this Agreement. Upon execution thereof by the Parties, subject to Customer’s compliance with the terms of this Agreement, BusUp will perform the Services specified in each Service Order in accordance with the terms and conditions of this Agreement and of each Service Order.

(b) *Standard of Performance.* The Services shall be provided (i) in accordance with the terms and subject to the conditions set forth in the respective Service Order and this Agreement; (ii) using personnel of required skill, experience and qualifications; and (iii) in accordance with generally recognized industry standards in BusUp’s field of business.

(c) *Additional Services.* In the event that the Parties determine that additional transportation services should be included in the Services (such additional services, the “**Additional Services**”), the Parties shall negotiate in good faith to add such Additional Services as an additional Service Order (or to amend an existing Service Order); *provided, however*, nothing in this Section 1.01(c) shall create any obligation for BusUp to provide any such Additional Services unless the Parties mutually agree to execute a new Service Order (or amend an existing Service Order) for the provision of the Additional Services. Upon the Parties’ execution of a new Service Order (or of an amendment to an existing Service Order) for the provision of the Additional Services, such Additional Services shall become Services for all purposes under this Agreement.

(d) *BusUp Equipment.* Equipment, systems, assets and software owned and used by BusUp in connection with the provision of Services hereunder (collectively, the “**BusUp Equipment**”) will remain the property of BusUp and, except as otherwise provided in this Agreement, will at all times be under the sole direction and control of BusUp. Nothing in this agreement shall be construed as obligating BusUp to own or operate any motor vehicle equipment, it being understood that all such equipment shall be provided by passenger carriers engaged by BusUp.

(e) Each Customer Rider who desires to use Services must first register on the BusUp Platform and accept BusUp’s Terms of Service. The failure of the Customer Rider to use the Customer Rider’s email address, or otherwise to register as a Customer Rider in accordance with BusUp’s policies and procedures, may result in the Customer Rider not obtaining the full benefit of the Services.

In case the any Customer Rider is registered on the BusUp Platform by the BusUp’s team or the Customer’s team, the Customer shall accept the BusUp’s Terms of Service on behalf of their Customer Riders and ensure that it has sufficient powers to do so.

Section 1.02 BusUp Obligations. BusUp shall:

(a) Designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to all matters pertaining to this Agreement (the “**BusUp Contract Manager**”), with such designation to remain in force unless and until a successor BusUp Contract Manager is appointed, in BusUp’s reasonable discretion; *provided* that BusUp may appoint an authorized representative in any Service Order to serve as the primary point of contact for communication, issue escalation, and administration of the Services covered by such Service Order;

(b) Comply with Applicable Law in providing the Services, including compliance with all applicable permits, licenses, certifications, and other authorizations and approvals applicable to the Services rendered;

(c) Punctually and diligently comply with the Clauses set forth in this Agreement;

(d) Configure the Customer Routes in the BusUp Platform; provide reservation landing page to client.

(e) Provide technological and logistical support to the users of the corresponding transport services hired;

(f) Undertake reasonable efforts to solve any technological issues that may arise in respect of the BusUp Platform;

(g) Make available all the necessary content (images, texts, videos, etc.) for the correct promotion of the Services by the Customer; and

(h) Provide support to the management of the transport operation, including the creation of the Customer Routes, the hiring of duly qualified Operators and the coordination of such transport services.

Section 1.03 Customer Obligations. Customer shall:

(a) designate one of its employees to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**Customer Contract Manager**”), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed, in Customer’s reasonable discretion; *provided* that Customer may appoint an authorized representative in any Service Order to serve as the primary point of contact for communication, issue escalation, and administration of the Services covered by such Service Order; and

(b) punctually and diligently comply with the Clauses set forth in this Agreement;

(c) cooperate with BusUp in its performance of the Services and provide access to Customer’s premises and employees as reasonably required to enable BusUp to provide the Services to the City of

Sumner community;

- (d) Inform BusUp of any technical problem in respect of the Services as soon as it becomes aware of it.
- (e) Not attempt to modify or reverse engineer the Services, not use the Services to store any data or information that is unlawful nor access or use (or permit a third party to access or use) the Services for purposes of monitoring the availability, performance or functionality of the Services or for any other benchmarking or competitive purposes, nor interfere with or disrupt the Services or attempt to gain access to any related systems or networks to which access is restricted;
- (f) Make available Customer's graphic content and advertising platforms for the promotion of the Services by Customer, with prior written authorization and approval of any content by Customer.

ARTICLE 2 COMPENSATION AND PAYMENT

Section 2.01 Compensation. As consideration for the provision of the Services, Customer shall, pay BusUp the Service Fee and any other fees or expenses for such Services set forth in the applicable Service Order on a monthly basis.

Section 2.02 Invoicing and Payment. BusUp shall facilitate the submission of a consolidated invoice to Customer's email address as stated in the Service Order for all Services scheduled to be provided to Customer during any month during the term of this agreement by selected Operators and BusUp. Payment of all invoices shall be made by electronic funds transmission within 30 days of the date of the invoice (the "**Due Date**"). All payments shall be made in immediately available funds to an account designated by BusUp and the Operators in the invoice. Any billing discrepancies must be made in writing within 7 days of receipt of invoice. All fees are non-refundable, except as may be expressly stated in the **Service Order**. BusUp may combine amounts due from multiple **Service Orders**, any Customer Rider subsidies, if applicable and any Additional Services purchased by Customer on a single monthly invoice.

ARTICLE 3 LIMITATION OF LIABILITY

Section 3.01 Disclaimer. **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES ARE PROVIDED "AS IS" AND NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN CONNECTION WITH OR WITH RESPECT TO ANY OF THE SERVICES OR ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.**

Limitation of Remedies. LIABILITY FOR DAMAGES ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER FOR SERVICES OR DUE TO BUSUP FOR SERVICES PROVIDED. NEITHER PARTY SHALL HAVE ANY OTHER LIABILITY TO THE OTHER, OR ITS EMPLOYEES, WITH RESPECT TO THE MATTERS CONTEMPLATED BY THIS AGREEMENT, WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (WHETHER ACTIVE, PASSIVE OR IMPUTED NEGLIGENCE) OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS AND OPPORTUNITY COSTS, WHETHER FORESEEABLE OR NOT. THIS DISCLAIMER INCLUDES BUT IS NOT LIMITED TO ANY DAMAGES CAUSED BY ANY ALLEGED ACTS OR NEGLIGENCE OF ANY OPERATOR OR DAMAGES ALLEGED TO HAVE RESULTED FROM THE SELECTION OF ANY PARTICULAR BUS OPERATOR BY EITHER PARTY.

In the event that the use of the Services by a Customer Rider results in a claim covered by selected Operators' insurance, BusUp will make reasonable efforts to assist Customer in submitting such a claim. BusUp does not guarantee the results of any such claim submitted. Under no circumstances shall BusUp be liable for any conduct, acts or omissions of any Operator, Provider or Contractor or their agents, employees or subcontractors, but BusUp shall indemnify City from any and all claims, damages, and liabilities whatsoever arising out of any Operator, Provider or Contractor act or omission through the course of the services provided hereunder as provided in Section 7.17 below

ARTICLE 4 CONFIDENTIALITY; PRIVACY

Section 4.01 Confidentiality. From time to time during the Term of this Agreement, either Party (the "**Disclosing Party**") may disclose or make available to the other Party (the "**Receiving Party**") non-public proprietary and confidential information of Disclosing Party ("**Confidential Information**"). The term "Confidential Information" includes the specific terms and conditions of this Agreement and the Service Orders hereunder. The Receiving Party shall: (i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (iii) not disclose the Disclosing Party's Confidential Information to any Person, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement. As a Washington municipal corporation, Customer is subject to state laws and will be required to disclose public records, as defined by Washington law, received from BusUp if responsive to a request. If the Receiving Party is required by Applicable Law to disclose any of the Disclosing Party's Confidential Information, it shall, prior to making such disclosure, use commercially reasonable efforts to, to the extent legally permitted, notify the Disclosing Party of such requirements to afford the Disclosing Party the opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other remedy. The Receiving Party shall have no obligations under this Section 4.01 with respect to information that (a) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in breach of this Section 4.01, (b) is or becomes available to the Receiving Party on a non-confidential basis from a source who is not, to the knowledge of the Receiving Party, subject to a confidentiality or similar agreement prohibiting such disclosure, or (c) was independently developed without the use of the Disclosing Party's Confidential Information.

ARTICLE 5 INSURANCE

Section 5.01 Insurance. During the Term, BusUp and/or Operator shall, at its own expense, maintain and carry the following types of insurance and the following amounts:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01, with a minimum combined single limit for bodily injury and property damage of \$2,000,000 per accident.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an endorsement providing at least as broad coverage. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with

respect to the work performed for the Public Entity using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage. Insurance shall be written with limits no less than \$5,000,000 each occurrence, \$2,000,000 general aggregate and \$5,000,000 products-completed operations aggregate limit

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

Section 5.02 BusUp shall provide Customer with a certificate of insurance from BusUp's insurer evidencing the insurance coverage specified in this Agreement. BusUp shall also require any operator that it hires or contracts with to obtain no less than the above insurance limits, in addition to any and all other insurance coverages required by law, and shall require the operator to name the City of Sumner as an additional insured on all policies. BusUp shall provide Customer with 45 days' advance written notice in the event of a cancellation or material change in BusUp's insurance policy. Nothing contained in this Article 5 shall be construed as obligating BusUp to procure motor vehicle liability insurance, it being understood that Operators providing passenger transportation services shall be responsible for procuring and ensuring a motor vehicle public liability insurance in the amount of \$5,000,000 minimum, but BusUp shall coordinate with Operators to provide Customer with sufficient proof of automobile insurance coverage.

ARTICLE 6 TERM AND TERMINATION

Section 6.01 Term. Subject to the further provisions of this Article 6 and except as expressly provided with respect to a specific Service in a Service Order attached hereto, the term of this Agreement shall commence on the Effective Date and shall expire on the 180th day thereafter ("Initial Term"). Customer agrees not to terminate this agreement during the first two months of the Initial Term, but has the option to terminate thereafter upon the delivery of no less than 60 days' written notice to BusUp. Termination during the Initial Term shall constitute an Early Termination Notice pursuant to the attached Service Order. Customer shall have the right to terminate this agreement upon the completion of the Initial Term by delivering to BusUp its written notice to terminate no less than 60 days prior to the expiration of the Initial Term. Absent a written notice of termination during or at the completion of the Initial Term, this agreement shall automatically renew for a subsequent 180 day term (the "Second Term"). Customer has the option to terminate services during the Second Term upon the delivery of no less than 60 days' written notice to BusUp. Termination during the Second Term shall constitute an Early Termination Notice pursuant to the attached Service Order. Except as outlined in this section, the Initial Term and the Second Term shall be collectively referred to in this agreement as the ("Term"). Upon expiration of the Term, this agreement shall automatically renew for successive one (1) year terms on the same terms and rates as the Second Term, adjusted annually by the Seattle-Bellevue-Everett Consumer Price Index.

Section 6.02 Termination for Breach; Bankruptcy.

(a) Breach. If a Party materially breaches any of its material obligations under this Agreement and that Party does not cure such breach within 15 days after receiving written notice thereof from the non-breaching Party, or if such breach is not curable, the non-breaching Party may terminate this Agreement or an applicable Service Order immediately by providing written notice of termination to the breaching Party..

(b) Liquidation Proceedings. Either Party shall have the right to terminate this Agreement at any time without further notice and pursue remedies available to it at law or in equity if (i) the other Party becomes insolvent or is adjudicated bankrupt, (ii) any action is taken by the other Party or by others against the other Party under any insolvency, bankruptcy or reorganization act, or if a Party makes an assignment for the benefit of creditors or a receiver is appointed for a Party, or if the other Party is dissolved or liquidated or takes any corporate action for such purpose.

Section 6.03 Effect of Termination. In the event this Agreement or any Service Order is terminated for any reason, (a) upon request, each Party shall return to the other Party all tangible personal property owned by the other Party in its possession as of the termination date that was provided for the performance of the applicable Services and (b) Customer shall remain liable for payment to BusUp for all Service Fees for Services provided prior to the effective date of termination. Upon the expiration or termination of this Agreement, all rights and obligations of each of the Parties that by their nature continue and survive, shall survive the termination or expiration of this Agreement.

ARTICLE 7 MISCELLANEOUS

Section 7.01 Notices. All notices, requests and other communications to any Party hereunder shall be in writing (including email) and shall be provided:

if to BusUp:

BusUp USA Mobility Inc.
5020 Franklin Drive, Suite 100
Pleasanton, CA 94588
Attn: Nuno Sousa Pinto
Email: nuno@busup.com

if to Customer:

City of Sumner
1104 Maple Street, Sumner, WA 98390
Attn: Ryan Windish
Email: ryanw@sumnerwa.gov

or to such other address or email number and with such other copies, as such Party may hereafter specify for the purpose by notice to the other Party delivered in accordance with this Section 7.01. Each such notice, request or other communication shall be effective: (a) on the day delivered (or if that day is not a Business Day, or if delivered after 5:00 p.m. local time on a Business Day, on the first following day that is a Business Day) when (i) delivered in person or (ii) sent by overnight courier; (b) on the day when transmittal confirmation is received if sent by email (or if that day is not a Business Day, or if after 5:00 p.m. Pacific time on a Business Day, on the first following day that is a Business Day); or (c) if provided by any other means, upon delivery or refusal of delivery at the address specified in this Section 7.01.

Section 7.02 Amendments; Waivers. Any provision of this Agreement may be amended if, and only if, such amendment is in writing and signed by each Party; *provided, however*, any Service Order shall automatically be amended or added to this Agreement (and the applicable Services set forth in such Service Order shall be deemed incorporated into the Services provided under this Agreement) upon the execution of such Service Order by both Parties. No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as otherwise provided herein, no action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement. Any term, covenant or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but only by a written notice signed by such Party expressly waiving such term or condition. The waiver by any Party of a breach of any provision hereunder shall not operate or be construed as a waiver of any prior or subsequent breach of the same or any other provision hereunder.

Section 7.03 Assignment; Successors and Assigns. Except as set forth in this Agreement, this Agreement shall not be assignable without the prior written consent of the other Party (such

consent not to be unreasonably withheld). Any attempted transfer or assignment without consent shall be null and void. No transfer or assignment by any Party shall relieve such Party of any of its obligations hereunder. Subject to this Section 7.03, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

Section 7.04 Entire Agreement. This Agreement and the various Service Orders contemplated hereby constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter hereof.

Section 7.05 Force Majeure. Neither Party shall be liable for any loss or damage whatsoever arising out of any delay or failure in the performance of its obligations under this Agreement to the extent such delay or failure results from unpredictable and non-resistible events beyond the control of such Party, including acts of God, pandemics, acts or regulations of any governmental authority, war (declared or not), riots, accident, fire, flood, earthquakes, strikes, industrial disputes, shortages of fuel, communications and power cuts, denial-of-service attacks, traffic congestion imposed by governmental authorities or caused by bad weather, traffic accidents or other reasons not anticipated by the Parties, including the ones deriving from pandemics, epidemics or other legal restrictions resulting from state of siege, state of emergency and calamities, and excluding strikes limited to the Parties, to their suppliers or subcontractors, governmental or administrative rulings resulting from any non-compliance by the relevant Party, their suppliers or subcontractors, of any of their duties or obligations, nor any fires or floods which cause, propagation or proportion is due to the non-compliance by the relevant Party of any security measures.

Section 7.06 Disputes/Governing Law. In the event of any controversy, claim or dispute between the Parties, arising out of or relating to this Agreement or the breach thereof, the substantially prevailing Party shall be entitled to recover from the other Party its reasonable expenses, attorney's fees, and costs. In the event of breach by non-payment of Customer, BusUp shall be entitled to all costs of collection, including reasonable attorney's fees, court costs and expenses. This Agreement shall be governed by and construed in accordance with the state laws of Washington, excluding its conflicts of law provisions, and in the event of a dispute arising under this Agreement, the parties hereby submit to exclusive jurisdiction in the federal or state courts located in Pierce County, Washington, and agree that venue is proper and convenient in such forum.

Section 7.07 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Party.

Section 7.08 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. The application of such invalid or unenforceable provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by Applicable Law. To the extent any provision of this Agreement is determined to be prohibited or unenforceable in any jurisdiction, BusUp and Customer agree to use commercially reasonable efforts to substitute one or more valid, legal and enforceable provisions that, insofar as practicable, implement the purposes and intent of the prohibited or unenforceable provision.

Section 7.09 Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

Section 7.10 Third-Party Beneficiaries. Except as expressly provided herein, nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any Person other than the Parties, and their successors or permitted assigns, any rights, remedies,

obligations or liabilities under or by reason of this Agreement, or result in such Person being deemed a third-party beneficiary of this Agreement.

Section 7.11 Relationship of Parties; No Agency. It is understood and acknowledged that the Services which BusUp will provide to Customer hereunder shall be in the capacity of an independent contractor and not as an employee or agent of the Customer. BusUp has no authority to commit, act for or on behalf of the Customer or to bind the Customer to any obligation or liability. Nothing in this Agreement shall be deemed in any way or for any purpose to constitute either Party an agent of the other Party in the conduct of such Party's business or to create a partnership or joint venture between the Parties.

Section 7.12 Certain Definitions.

(a) **"Applicable Law"** means, with respect to any Person, any domestic or foreign, federal, state or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, decree or other requirement of any governmental entity applicable to such Person or any of its properties, assets, officers, directors, employees, consultants or agents (in connection with such officer's, director's, employee's, consultant's or agent's activities on behalf of such Person).

(b) **"Business Day"** means any day of the year, other than a Saturday, Sunday or any day on which major banks are closed for business in Sumner, Washington.

(c) **"Person"** shall mean any person or entity, or a group of related persons and/or entities.

(d) **Affiliate:** means, with respect to any party, an entity that directly or indirectly controls, is controlled by, or is under common control with a party. For purposes of this definition, **"control"** means having: (i) ownership of more than fifty percent (50%) of the equity securities entitled to vote for the election of directors (or, in the case of an entity that is not a corporation, for the election of the corresponding managing authority). An entity will be considered an Affiliate only for the time in which such control exists;

(e) **BusUp Platform:** means a technological platform owned by BusUp for the purposes of the Services.

(f) **Operator, Provider or Contractor:** mean a bus operator contracted by Customer or by BusUp on the Customer's behalf to provide transportation services contemplated by this Agreement;

(g) **Customer:** means the City of Sumner, and any employee, community member, tourist, visitor, or any other authorized client or authorized contractor of Customer who purchases Services;

(h) **Customer Route:** means a route from one locality (one or more pick-up locations) to one or more Customer drop-off locations and its corresponding return trip, as specified in each executed **Service Order**;

(i) **Participating Employer:** means any entity operating within the corporate limits of the City of Sumner that elects to participate in the shuttle program for the purpose and benefit of transporting its employees, contractors and/or volunteers to and from their work location and the Sumner Sounder station either as a cost share arrangement with the rider or by fully paying for the cost of the transportation.

Section 7.13 Representations and Warranties

BusUp represents and warrants solely to Customer that:

- (i) it is a corporation duly incorporated, validly existing and in good standing;
- (ii) it has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder;

- (iii) it has obtained all permits, licenses and approval from, and has made all material filings with, all governmental agencies and authorities that are necessary or legally required under any applicable law, statute, regulation, code or ruling for BusUp to provide the Services and to perform this Agreement in accordance with its terms;
- (iv) All users of the Services under this Agreement have consented and agreed to BusUp's Terms of Service as provided by BusUp.

Section 7.14 Ownership

Customer acknowledges that, as between BusUp and Customer, BusUp exclusively owns all rights, title and interests in and to the Services, including all worldwide patent rights (including patent applications and disclosures), copyrights, trade secrets, know-how and any other intellectual property or proprietary rights associated with the Services or embodied therein.

Section 7.15 Exclusivity

During the first six months of the Term of this Agreement, the Customer undertakes not to contract similar services to the Services to any third party, whether they have their head office or permanent establishment in Washington or in any other State or territory.

Section 7.16 Protection of personal data

Both Parties agree to comply with the current legislation on personal data protection matters (when applicable) (the "**Laws**"); therefore, they guarantee that they will treat as confidential any personal data they receive or transfer between them, including personal data of their employees and/or representatives ("**Personal Data**"). Likewise, they agree to disclose to the holders of personal data of relevant privacy notices and keep the necessary security, administrative, technical and physical measures that allow protecting personal data against any damage, loss, alteration, destruction, non-authorize use, access or processing. The above, in order to guarantee full compliance with Law, its regulations and the guidelines that are published for such purpose by the relevant authorities in the countries of origin.

BusUp shall make available its privacy notice which may be located at the following link <https://www.busup.com/usa/en/legal/privacidad>.

The databases generated by the BusUp's Platform, within the operation governed by this Agreement, derived from user data of the relevant route, shall be property and responsibility of BusUp.

The Parties hereby mutually authorize, in a conditional, temporary, non-exclusive, non-transferable and free basis, the use of the trademarks and logos defined at each moment for each Party, being the use in each specific situation subject to the previous written approval of the owner of the trademark or logo. The Parties hereby declare that this Agreement does not imply any transfer, concession or licensing, permanent or temporary, of the intellectual and/or industrial property rights that are the property of any of the Parties. The authorization of use provided for in this clause, to be granted in a specific case, is limited to the United States territory and to the Term of this Agreement. Notwithstanding, Customer agrees that BusUp may disclose that Customer is a customer of BusUp, and that BusUp may place Customer's logo on BusUp's corporate clients page (or other section as appropriate) of BusUp's website and in the buses used for the Services, in accordance with Customer's usage guidelines (to the extent provided in advance to BusUp).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

7.17. Indemnification.

BusUp shall defend, indemnify and hold the Customer City of Sumner, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses, loss of service or support or suits including attorney fees, arising out of or in connection with BusUp's Services or operations performed by the BusUp or on BusUp's behalf, in any way related to the hiring, contracting, scheduling or operation of the transportation system, except for injuries and damages caused by the gross negligence of the Customer City of Sumner. Additionally, BusUp waives its right to recover from and fully and irrevocably releases Customer and all of Customer's directors, officers, members, agents, employees, contractors, affiliates, successors and assigns, and all persons acting on Customer's behalf from any and all claims, responsibility or liability that the Customer may now have or hereafter acquire for any and all costs, losses, claims, liabilities, damages, expenses, demands, debts, controversies, claims or actions or causes of action arising from BusUp's Services hereunder. BusUp shall be subrogated to Customer's rights against any third party whose actions gave rise to the claim against Customer for bodily injury or death or damage to property.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties caused this Agreement to be duly executed by their respective authorized representatives on the day and year first above written.

BusUp USA Mobility, Inc.	City of Sumner, WA.
By: _____	By: _____
(Type or print name): _____	(Type or print name): _____
Title: _____	Title: _____

EXHIBIT A
FORM OF SERVICE ORDER
(see next page)

SERVICE ORDER (Number: ____)
TO
MASTER SERVICES AGREEMENT (the “Master Contract”)

Master Contract Identification Number:	TBD
Customer:	City of Sumner, WA.
Start Date:	October 1,2022
Services:	BusUp will operate a last-mile shuttle service that connects workers of Sumner based participating employers between their worksite and the Sumner Sounder Station, located at 810 Maple Street, Sumner, WA. The shared shuttle program will be utilized by participating employers and their employees who make reservations using BusUp’s web and mobile platform (physical badges can be provided, if needed). BusUp will manage the daily operations, including responsibility for acquiring a service provider fully licensed and insured to provide transportation services during the full term of this agreement, and ensure consistent operation of the shuttle service along the Customer Route(s). BusUp will develop and execute an outreach and employer resources plan in collaboration with the Customer, City of Sumner. BusUp will provide each participating employer with on-site and/or virtual training and orientation. BusUp will manage rider support via a designated support system. BusUp will collect fares via the web and mobile platform and will bill monthly participating employers to collect fares for the service. BusUp will work with City of Sumner to collect and analyze data that enables ongoing optimizations and improvements of the program. BusUp will support City of Sumner’s effort to build a case and proposal to Pierce Transit to reinstate public transportation in the region.
Monthly Service Fee:	\$10,000/month x initial 6 months of service. \$13,750/month x 6 remaining months of service.
One Time Payment (Setup Fee for Vehicles):	Waived.
Vehicle Custom Wrap:	The vehicle will be wrapped by BusUp in coordination with the City of Sumner. All costs of the wrapping shall be borne by the City of Sumner.
Wifi:	No Wifi has been requested.
Customer Accounts Payable Contact:	TBD
Approved Riders:	City of Sumner approved riders are only those employees (temporary or permanent) or paid workers of Participating Employers located within Sumner’s city limits.
Shuttle Route:	Sumner Station > Sekisui Aerospace (proposed/example) > REI Distribution Center (proposed/example) > Costco Distribution Center/Amazon Site DWA9/Maersk (proposed/example) > Lululemon (proposed/example) > Amazon Sites BF11, BF17, and DES7 (proposed/example).
Shuttle Schedule:	Monday-Friday (5 days a week) The vehicle will loop continuously from TBD to TBD in the morning (AM). The vehicle loop continuously from TBD to TBD in the afternoon (PM).

	Each loop (round trip) takes roughly 30 minutes which means each 3-hour shift can operate 6 loops.
Service Route Capacity:	72 total passengers per AM/PM shift (12 passengers x 6 loops).
Vehicles:	(1) 12-passenger vehicle.
Customer Need for Wheelchair Accessibility Vehicles:	WAV can be provided with a 2-week advanced notice.
Mobile App:	BusUp reservation platform and mobile app are included with this service.
Service Term and Termination:	6-month initial term + 6-month secondary term (1 year of service). The "initial term" will reflect a discounted price of service and the "secondary term" will reflect pricing that includes BusUp and the Shuttle Operator's fees for service. When the Secondary Term ends City of Sumner will have the option to renew. The Customer may terminate service prior to the conclusion of the 1-year term by providing 60-days prior written notice of termination to BusUp ("Early Termination Notice") and paying BusUp concurrently with the delivery of an amount in cash equal to 75% of the remaining monthly service fees as of the date of the Early Termination Notice. written notice as outlined in Article 6 of the Master Services Agreement.
Holidays:	BusUp will not provide service on the following dates in 2022: 1. New Year's Day 2. Memorial Day 3. Independence Day 4. Labor Day 5. Thanksgiving and Day After Thanksgiving 6. December 24-25 7. New Year's Eve
Service Order Modification:	Modifications to Routes, Vehicles, or Shuttle Schedules can be requested but take a minimum of two (2) weeks to process and are subject to approval by BusUp. Each participating employer that is onboarded and participates in the shared shuttle program will either be immediately or closely served by a shuttle stop along the Customer Route, but in no event more than ¼ mile from the participating employer.
Master Contract:	This Service Order is governed by the terms and conditions of the Master Services Agreement.

BusUp USA Mobility Inc. By: _____ Date: _____	City of Sumner, WA. By: _____ (Type or print name): _____ Title: _____ Date: _____
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COMMUNITY PARTNER BUDGET REQUEST

AGENCY	AMT. REQUESTED	NOTES
BUDGET	\$200,000	
Mi Casa Housing	\$20,000	Affordable housing – they own 15 units Rental rates \$490-\$550 Help to maintain units, cover costs of water, sewer, lawn, rental mgmt..
Mothers 2 Many	\$15,000	Serve around 200 individuals 2x /week at Sumner Skate park In two years fed 23.696 98% youth 2% adults Money help with food and gas. Spends \$500-800/month for food.
Sumner Community Food Bank	\$80,000	Add a logistics manager to help with scheduling 75-100 volunteers. From my research, Min wage is increasing from \$14.49 - \$16.50 January 1, 2023. Will impact what the costs will be for the new position in my opinion.
Sumner Main Street Assn.	\$50,000	Programs to create vibrant business community. Façade Improvement Program Volunteer Outreach Program – Growing volunteers base to assist with programs Business Attraction & Retention – attracting and retaining business Marketing & promotion – website, social media, market downtown businesses regionally
Sumner-Bonney Lake Family Center	\$70,000	Various programs to support students of the school district including around 50 homeless from Sumner. Programs to help get assistance from SNAP, the county housing program, partnerships with Sound Outreach for employment help, United Way Strong Families program. I have assisted paying for rental assistance from Rotary through the Bill Heath Fund. The main focus is for families in the school district but they try helping all that come in. There is an existing ILA that would need renegotiation or termination of existing agreement.
Vadis	\$40,000	Assist individuals with disabilities integrate into community through employment opportunities.
TOTAL	\$275,000	

I believe we need to invest in our local businesses and families.

If we fully fund the programs, we could use 10% or \$75,000 of the approximately \$750,000 Council Reserve.

Around **\$675,000** would still be left and if we budget the Council Reserve for 2023-24 at \$350,000/year, there would be around **\$1,375,000** available for future projects.

If the council isn't willing to fully fund the requests, we need to reduce the amount by **72.8%**. **These are the numbers if we reduced each request by 72.8%.**

Mi Casa	\$20,000	\$14,560
Mothers 2 Many	\$15,000	\$10,920
Sumner Community Food Bank	\$80,000	\$58,240
Sumner Main Street Assn.	\$50,000	\$36,400
Sumner Bonney Lake Family Center	\$70,000	\$50,960
Vadis	\$40,000	\$29,120
Total		\$200,200

Barbara Bitetto