CITY OF SUMNER WASHINGTON

FINANCE & PERSONNEL COMMITTEE AGENDA
CITY HALL – 1104 MAPLE STREET
AUGUST 15, 2023 6:00 PM

Members: Barbara Bitetto, Patricia Cole (Chair), Earle Stuard

Staff Liaison: Administrative Services Director Jeff Steffens, Chief Operating Officer Kassandra Raymond

The city is conducting this public meeting using a hybrid model. The public is welcome to attend tonight's meeting in-person at City Hall (First Floor Conference Room), or virtually by using the meeting access link below. -

Join on your computer, mobile app or room device
Click here to join the meeting
Meeting ID: 238 515 954 792
Passcode: jadjG4
Download Teams | Join on the web
Or call in (audio only)
+1 323-886-6453,,163835506# United States, Los Angeles
Phone Conference ID: 163 835 506#
Find a local number | Reset PIN

This meeting was originally scheduled for August 2nd and 9th.

CALL TO ORDER

Roll Call: Barbara Bitetto, Pat Cole, Earle Stuard

COMMITTEE BUSINESS

1. Motion to Approve Contract: Fiber Optic (Astound)
2. Discussion: Ryan House Condition Assessment
3. Ordinance No. XXXX Delegation Authority for Bond Anticipation Note (BAN) - Public Works Operations Facility
4. Motion to Approve Contact - Stafford Suites
5. Surplus Authorization

REPORTS

1. Monthly Sales Tax Report
2. Recruitment & Negotiation Update

ADJOURNMENT

FINANCE & PERSONNEL COMMITTEE MEETING
DATE: August 15, 2023
AGENDA BILL: 23-3551

SUBJECT: Motion to Approve Contract: Fiber Optic (Astound) **CATEGORY:** Motion

BUDGET IMPACT:
Expenditure Required: Per agreement Within Budget Allocation: N/A

ATTACHMENTS:
1. CSU--MSA (ABS draft, 19JUL2023) (CLEAN)
2. Revised SOA_City of Sumner - Dark Fiber Order (OP357079) - 07-26-2023

STAFF CONTACT: Brian Cunningham, IT Manager, Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Following Council's authorization, staff has moved forward with negotiating a Master Service Agreement with Atsound for fiber service to the City. Staff will review the attached draft documents as well as discuss final pricing and anticipated City funding.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Forward to City Council for action.

MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

This Master Services Agreement for Enterprise Services (this "**MSA**") is entered into as of this ______ day of __________, 2023 (the "**Effective Date**"), by and between ASTOUND BUSINESS SOLUTIONS, LLC, a Delaware limited liability company, acting on behalf of itself and as agent for its Affiliates (collectively, "**Provider**"), and CITY OF SUMNER, a Washington municipal corporation ("**Customer**"). For purposes of this MSA, the term "**Affiliate**" shall mean any other person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the first person or any of its subsidiaries. Affiliates of Astound Business Solutions, LLC include, but are not limited to (i) RCN Telecom Services, LLC, (ii) Grande Communications Networks, LLC, and (iii) Wave Business Solutions, LLC. Each of Provider and Customer may be referred to in this MSA as a "**Party**" and together as the "**Parties**."

ARTICLE 1 – STRUCTURE OF AGREEMENT

1.1 Purpose of MSA. Provider and its Affiliates provide various facilities-based telecommunications services, including Ethernet transport, dedicated internet access, phone over fiber, dark fiber, and related services (as applicable, the "**Services**"). This MSA is neither an agreement to purchase nor a commitment to provide Services. The purpose of this MSA is to provide the general terms, conditions and framework within which Customer and its Affiliates may from time to time purchase Services from Provider and its Affiliates, pursuant to one or more "**Service Orders**," as described in Section 1.2 below.

1.2 Service Orders. The purchase of Services shall be accomplished only through the negotiation and mutual execution and delivery of a Service Order memorializing the terms and conditions pursuant to which Provider shall provide the desired Services to Customer. Service Orders shall clearly specify the following: (i) the type of Service at issue (e.g., Internet access, data transport, VoIP, dark fiber, etc.); (ii) the location(s) at which the Service is to be provided (each, a "**Service Site**"); (iii) the initial term of the Service Order (the "**Initial Service Term**"); (iv) the pricing for the Service, including (a) the monthly recurring charges ("**MRC**") for the Service, and (b) any non-recurring charges ("**NRC**") associated with installation of the Service; and (v) any other terms or conditions specific to the particular Service Order. Each fully-executed Service Order shall be governed by and become part of this MSA, and this MSA together with all fully-executed Service Orders shall be collectively referred to as the "**Agreement**." Depending on the location of the Service Site, in some instances Services may be provided by an Affiliate of Provider.

1.3 Additional Documents Comprising Agreement; Order of Precedence. If one or more Service Level Agreements are attached to this MSA as Exhibits (the "**SLA**"), the SLA constitutes a part of this MSA. Customer's use of any Services purchased pursuant to the Agreement will also be governed by Provider's Acceptable Use Policy for Commercial Services (the "**AUP**") which is posted on Provider's website at http://www.astound.com/business/aup. Additional provisions that are applicable only to specific types of Services are contained in Provider's Service-Specific Terms and Conditions (the "**Service-Specific T&Cs**") which is posted on Provider's website at http://www.astound.com/business/service-terms. In the event of a conflict between the provisions of any of the foregoing documents, the documents shall have the following order of precedence unless expressly stated otherwise in a particular Service Order: (i) this MSA (including the SLA); (ii) the applicable Service Order; (iii) the AUP; and (iv) the Service-Specific T&Cs.

1.4 Franchise Agreement with Customer. The Parties acknowledge that (i) the execution of this MSA and any related Service Orders will not in any way affect the validity of the Franchise Agreement between Customer and Astound Broadband, LLC, as documented in City of Sumner Ordinance No. 2518, effective May 26, 2015 (the "**Franchise Agreement**"), and (ii) this Agreement and the Franchise Agreement cover different subject matter and are independent of each other.

ARTICLE 2 – TERM AND RENEWAL

2.1 Term of MSA. The term of this MSA (the "**MSA Term**") shall be for thirty (30) years, commencing on the Effective Date and expiring on the date that is one day prior to the thirtieth (30^{th}) anniversary of the Effective Date. Notwithstanding the foregoing, so long as any one or more Service Orders entered into pursuant to this MSA remain in effect, this MSA shall not terminate with respect to said Service Orders but shall continue to govern same until the expiration or termination of said Service Orders.

2.2 Term of Service Orders. The Initial Service Term of each Service Order shall be as specified in the Service Order. Upon expiration of the Initial Service Term, unless either Party terminates the Service Order by giving written notice of termination to the other Party not less than thirty (30) days prior to the end of the Initial Service Term, this Service Order will begin to automatically renew on a month-to-month basis (the "**Renewal Term**"). During the Renewal Term, either Party may terminate this Service Order by giving no less than thirty (30) days' advance written notice of termination to the other Party. Written notice of termination by Customer must be given to Provider by completing and submitting the online "Change of Service" form on the Astound Business Solutions website located at http://www.astound.com/business/support/macd. The total period of time a Service Order is in effect is referred to as the "**Service Term**" for the Service Order at issue. The total period of time a Service Order is in effect is referred to as the "**Service Term**" for the Service Order at issue.

ARTICLE 3 – INSTALLATION, TESTING, ACCEPTANCE AND USE

3.1 Service Site; Demarcation Points; Equipment. Unless a Service Site is within Provider's control, Customer shall provide Provider with access to the Service Site as and to the extent reasonably necessary for Provider to install, test, inspect and maintain the Service(s) ordered during the Service Term. Unless otherwise stated in a Service Order: (i) Provider shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Provider Equipment**") necessary to connect Provider's network facilities to the Customer demarcation point(s) at the Service Site (the "**Demarcation Point(s)**"); and (ii) Customer shall be solely responsible for the provision, operation and maintenance of all equipment and facilities (the "**Customer Equipment**") from the Demarcation Point(s) to Customer's internal network. Unless a Service Site is within Provider's control, Customer shall be responsible for maintaining appropriate conditions at the Service Site, including HVAC, electrical power, and security. Title to the Provider Equipment shall at all times remain vested in Provider. Customer shall not re-arrange, disconnect, tamper with, attempt to repair, or otherwise interfere with the Provider Equipment, nor shall Customer permit any third party to do so.

3.2 Testing, Acceptance and Service Commencement Date. Provider shall use commercially reasonable efforts to install the Services consistent with Provider's usual and customary installation timeline, and shall endeavor to keep Customer regularly informed regarding installation progress. Provider shall notify Customer when a Service has been installed and is ready for testing and use. Customer may, at Customer's option, participate in Provider's final testing of the Service. For Services having a committed bandwidth, the committed information rate shall be measured at the Ethernet layer and includes the Ethernet frame itself. The Initial Service Term for the Service at issue shall commence on the date on which the Service has been installed, tested and is active and available for use by Customer (the "**Service Commencement Date**"). Customer shall have a period of five (5) business days after the Service Commencement Date in which Customer may notify Provider that the Service at issue is not functioning properly. If Customer notifies Provider of problems with a Service pursuant to this Section 3.2, Provider shall investigate and correct same and the Service Commencement Date shall be revised to be the first calendar day after the date on which Provider has corrected the problems. Unless Customer delivers notification of problems to Provider within the time period set forth above, Customer shall be deemed to have accepted the Service at issue and to have confirmed that the Service has been installed and is functioning properly as of the Service Commencement Date.

3.3 No Sub-Licensing; Non-Compete. Any Services provided to Customer pursuant to the Agreement are for the sole benefit of Customer. Customer shall not grant to any third party the right to use any of the Services, regardless of whether such grant were to take the form of a license, sublicense, lease, sublease, or any other form. Nor shall Customer use the Services for commercial purposes that are competitive with Provider's business (e.g., use the Services to sell Internet access services, point-to-point data transport services, VoIP services, etc., to third parties within Provider's service area).

ARTICLE 4 – PAYMENT AND BILLING

4.1 Invoicing. All amounts owed by Customer to Provider under the Agreement shall be collectively referred to as "**Fees**". Provider shall begin billing Customer for the MRC applicable to a Service as of the Service Commencement Date. Invoices shall be delivered monthly, and shall be paid by Customer within thirty (30) days of receipt. Fixed Fees shall be billed in advance and usage-based Fees shall be billed in arrears. Fixed fees for any partial month shall be pro-rated. For Services having an NRC, unless otherwise stated in the Service Order, Provider shall invoice Customer for the NRC upon full-execution of the Service Order. Except for amounts disputed in good faith by Customer pursuant to Section 4.2 below, past due amounts shall bear interest in the amount of 1.5% per month, or the highest amount allowed by law, whichever is lower.

4.2 Disputed Invoices. If Customer in good faith disputes any portion of a Provider invoice, Customer shall pay the undisputed portion of the invoice and submit written notice to Provider regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a "**Fee Dispute Notice**"). A Fee Dispute Notice must be submitted to Provider within thirty (30) days from the date the invoice at issue is received by Customer. Customer waives the right to dispute any Fees not disputed within such thirty (30) day period. The Parties shall negotiate in good faith to attempt to resolve any such disputes within sixty (60) days after Customer's delivery of the applicable Fee Dispute Notice.

4.3 Applicable Taxes. All charges for Services set forth in Service Orders are exclusive of Applicable Taxes (as defined below). Except for taxes based on Provider's net income or taxes for which Customer possesses a valid exemption certificate, Customer shall be responsible for payment of all applicable taxes and regulatory fees, however designated, that arise in any jurisdiction, including, without limitation, value added, consumption, sales, use, gross receipts, excise, access, bypass, or other taxes, fees, assessments, duties, charges or surcharges, that are imposed on, incident to, or based upon the provision, sale, or use of the Service(s) (collectively "**Applicable Taxes**"). The Applicable Taxes will be individually identified on invoices. If Customer is entitled to an exemption from any Applicable Taxes, Customer is responsible for presenting Provider with a valid exemption certificate (in a form reasonably acceptable to Provider). Provider will give prospective effect to any valid exemption certificate provided in accordance with the preceding sentence.

ARTICLE 5 – DEFAULT AND REMEDIES

5.1 Customer Default. Each of the following shall constitute a default by Customer under the Agreement (each a separate event of "**Default**"): (i) if Customer fails to pay any undisputed Fees when due, the failure of Customer to cure same within ten (10) days after receiving written notice from Provider regarding such failure to pay; (ii) if Customer fails to comply with any other material provision of the Agreement, the failure of Customer to cure same within thirty (30) days of receiving written notice from Provider regarding such non-compliance; or (iii) if Customer files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.2 Remedies for Customer Default. In the event of a Default by Customer under the Agreement, Provider may, at its option: (i) suspend any applicable Services until such time as the Customer Default has been corrected (provided, however, that any suspension shall not relieve Customer's on-going obligation to pay Provider all Fees and other amounts due under the Agreement as if such suspension of Services had not taken place); (ii) terminate the applicable Service(s) and/or the applicable Service Order(s); (iii) after the occurrence of any two Customer Defaults in any twelve (12) month period, terminate all Service Orders entered into with Customer; and/or (iv) pursue any other remedy available to Provider under the Agreement or applicable law. In the event of early termination for Customer Default pursuant to this Section 5.2, Customer shall pay to Provider the Termination Charge described in Section 6.3 below.

5.3 Provider Default. Each of the following shall constitute a Default by Provider under the Agreement: (i) if Provider fails to comply with any material provision of the Agreement other than provisions of the SLA, the failure by Provider to cure same within thirty (30) days of receiving written notice from Customer regarding such non-compliance; or (ii) Provider files or initiates proceedings, or has proceedings initiated against it, seeking liquidation, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other such official) under any bankruptcy, insolvency or other similar law, and the same is not dismissed within sixty (60) days.

5.4 Remedies for Provider Default. In the event of a Default by Provider under the Agreement Customer may, at its option: (i) terminate the applicable Service(s) and/or the applicable Service Order(s); and/or (ii) pursue any other remedy available to Customer under the Agreement or applicable law. Early termination by Customer shall be accomplished by providing termination notice to Customer's account manager and to the notice address specified in Article 13 below. In the event of early termination for Provider Default pursuant to this Section 5.4, Provider shall reimburse Customer for any pre-paid, unused monthly service Fees attributable to the terminated Service(s) and/or Service Order(s), and Customer shall have no further liability to Provider for the terminated Service(s) and/or Service Order(s). Early termination by Customer pursuant to this Section 5.4 shall not relieve

Customer of its obligations to pay all Fees incurred prior to the early termination date.

ARTICLE 6 – EARLY TERMINATION & PORTABILITY

6.1 Early Termination for Non-Appropriation. Customer is a public entity subject to legislative appropriation requirements. As a general matter, Customer cannot legally be obligated to make payments for Services that are provided after the end of the fiscal period in which Customer executes a particular Service Order. In the event that, for any future fiscal period, sufficient funds are not appropriated or allocated for payment of any one or more Service Orders, Customer may terminate the Service Order at issue as a matter of public convenience as provided herein without incurring a Termination Charge or any other early termination fee. If and when Customer becomes aware that non-allocation of funds for the coming fiscal period appears likely, Customer shall use reasonable efforts to notify Provider of that possibility prior to the end of the then-current fiscal period. Once the non-appropriation decision has been made, Customer shall, as soon as reasonably practicable, deliver written notice of termination for non-appropriation to Provider specifying which Service or Services and/or which Service Order or Service Orders are being terminated for non-appropriation and the date on which such early termination shall occur. Customer shall remain obligated to pay for all Services delivered through the date of termination.

6.2 Early Termination for Customer Convenience. Customer may, at any time after executing a Service Order, discontinue one or more of the Services ordered and/or terminate the Service Order by giving at least thirty (30) days' advance written notice to Provider by completing and submitting the online "Change of Service" form on the Astound Business Solutions website located at http://www.astound.com/business/support/macd. Any early termination of a Service pursuant to this Section 6.2 shall be referred to as "**Termination for Customer Convenience**." In the event of Termination for Customer Convenience, Customer shall pay to Provider the Termination Charge described in Section 6.4 below.

6.3 Early Termination for Default. In accordance with Article 5 above, either Party may elect to terminate one or more Service Orders prior to the scheduled expiration date in the event of an uncured Default by the other Party.

6.4 Termination Charge. In the event of Termination for Customer Convenience pursuant to Section 6.2 above, or termination for Customer Default pursuant to Section 5.2 above, Customer shall pay a Termination Charge to Provider. The "**Termination Charge**" shall equal the sum of the following: (i) all unpaid amounts for Services actually provided prior to the termination date; (ii) any portion of the NRC for the terminated Service(s) that has not yet been paid to Provider; (iii) with respect to off-net Services only, any documented cancellation or termination charges or fees imposed on Provider by any third party in connection with the early termination of the Services; and (iv) one hundred percent (100%) of all remaining MRCs Customer was to pay Provider for the Service during the remainder of the applicable Service Term. If incurred, the Termination Charge will be due and payable by Customer within thirty (30) days after the termination date of the Service at issue. Customer acknowledges that the calculation of the Termination Charge is a genuine estimate of Provider's actual damages and is not a penalty.

6.5 Portability; Substitution of Services. At any time during the Service Term of a Service Order, Customer may elect to substitute new Services for then-existing Services. In such event, Provider will waive the Termination Charge associated with the termination of the then-existing Services as long as: (i) the Fees payable to Provider in connection with the substitute Services are equal to or greater than the Fees of the discontinued Services; (ii) Customer commits to retain the substitute Services for a period equal to or greater than the remainder of the Service Term for the discontinued Services; (iii) Customer pays all applicable installation and other NRCs, if any, for provision of the substitute Services; and (iv) Customer reimburses Provider for all reasonable and documented engineering, installation and construction costs associated with the discontinued Services, calculated on a time and materials basis, that have not already been recovered by Provider by the time of the substitution.

ARTICLE 7 – CONFIDENTIAL INFORMATION

7.1 Definition of Confidential Information. "**Confidential Information**" shall mean all information, including the Agreement, regarding the telecommunications needs of Customer and the Services that Provider offers under the Agreement which is disclosed by one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), to the extent that such information is marked or identified as confidential or proprietary or would be reasonably deemed confidential or proprietary given the circumstances surrounding its disclosure. All written or oral pricing and contract proposals, as well as network maps or diagrams exchanged between the Parties shall be deemed Confidential Information, whether or not so designated. The fact that Customer is a customer of Provider shall not be deemed Confidential Information and may be freely disclosed by either Party. Information shall not be deemed Confidential Information if (i) it is independently developed by or for the Receiving Party, (ii) it is lawfully received by the Receiving Party free of any obligation to keep it confidential, (iii) it becomes generally available to the public other than by breach of the Agreement, or (iv) it was known to the Receiving Party prior to the Disclosing Party's disclosure of same.

7.2 Obligations Regarding Confidential Information. Confidential Information is the property of the Disclosing Party and shall be returned to the Disclosing Party upon request. The Receiving Party shall hold all Confidential Information in confidence. The Receiving Party: (i) shall use such Confidential Information only for the purposes of performing its obligations and/or enforcing its rights under the Agreement; (ii) shall reproduce such Confidential Information only to the extent necessary for such purposes; (iii) shall restrict disclosure of such Confidential Information to employees, contractors, advisors or consultants that have a need to know for such purposes (with disclosure to contractors, advisors and consultants being limited to contractors, advisors and consultants that have signed a non-disclosure agreement to protect the Confidential Information of third parties); (iv) shall not disclose Confidential Information to any third party without prior written approval of the Disclosing Party except as expressly provided in the Agreement or as required by law, by court order, by administrative order of an agency having jurisdiction, or in the enforcement of its rights under the Agreement; and (v) shall use at least the same degree of care (in no event less than reasonable care) as it uses with regard to its own proprietary or confidential information to prevent the disclosure, unauthorized use or publication of Confidential Information. In the event a Receiving Party is required to disclose Confidential Information of the Disclosing Party pursuant to law, court order or administrative order of an agency having jurisdiction, the Receiving Party will, if such notice is permitted by law, notify the Disclosing Party of the required disclosure with sufficient time for the Disclosing Party to seek judicial relief from the required disclosure, and reasonably cooperate with the Disclosing Party in any efforts the Disclosing Party may take to obtain protective measures in respect to the required disclosure. The Parties agree that breach of this Article 7 may cause irreparable injury for which monetary damages are not an adequate remedy; accordingly, each Party may seek injunctive relief and any other available equitable remedies to enforce the provisions of this Article 7.

7.3 Public Records Act. Notwithstanding anything to the contrary contained elsewhere in this Article 7, the Parties understand and acknowledge that Customer is a governmental entity, and that Washington law limits the ability of Customer to shield from public disclosure any information given to Customer. Accordingly, the Parties agree to work together to avoid disclosures to Customer by Provider of confidential information which would result in economic loss or damage to Provider if such information were to be disclosed to third persons by Customer pursuant to a request submitted under the Public Records Act, chapter 42.56 RCW, or other similar public disclosure law. In the event that Customer receives a request pursuant to the Public Records Act (or other similar law) to disclose information identified by Provider in writing as confidential, Customer's sole obligations to Provider shall be: (i) to promptly notify Provider; and (ii) to refrain from disclosing such records for a period of up to ten (10) business days to allow Provider an opportunity to seek legal protection against disclosure from a court of competent jurisdiction. Customer will not be required to withhold requested records beyond the ten (10) business days unless it may do so based on good faith reliance upon an exception to disclosure under the Public Records Act, or unless Customer is ordered to withhold disclosure by the order of a court having competent jurisdiction. Customer may, but shall not be required, to join in any legal proceedings relating to the requested disclosure unless required to do so by the court. In the event that Provider initiates legal proceedings, or Customer initiates legal proceedings or withholds requested records at Provider's request, Provider shall indemnify and hold Customer harmless from and against all costs, attorneys' fees, expenses, liabilities, damages or other liabilities Customer may incur due to the legal proceedings initiated at and/or Customer's withholding of records at Provider's request. Customer shall not be liable to Provider for any loss, cost or expense relating to the disclosure of requested records if Provider fails to obtain legal protection against disclosure and Customer releases the records in good faith.

ARTICLE 8 – LIMITATION OF LIABILITY

8.1 General Limitations. Provider shall not be liable for any loss or damage occasioned by a Force Majeure Event. Except as expressly provided to the contrary elsewhere in the Agreement, Provider's aggregate liability for any and all causes and claims arising under the Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by Customer; or (ii) an amount equivalent to the total MRC received by Provider from Customer for the Service(s) at issue during the preceding twelve (12) month period.

8.2 Service Level Agreement. Should Provider fail, on any one or more occasions, to deliver any one or more Services to

Customer in accordance with all of the terms and conditions contained in the applicable SLA, Customer's sole and exclusive remedy for such failure shall be as set forth in the SLA. No such failure shall be considered a Default by Provider under the Agreement.

8.3 No Special Damages. EXCEPT FOR (i) EACH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER ARTICLE 7 ABOVE, (ii) EACH PARTY'S THIRD-PARTY INDEMNIFICATION OBLIGATIONS UNDER ARTICLE 9 BELOW, AND (iii) CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PROVIDER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.

8.5 Assumption of Risk. PROVIDER HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED BY CUSTOMER THROUGH THE SERVICES, SERVICE INTERRUPTIONS ATTRIBUTABLE TO CUSTOMER'S NETWORK, ANY CUSTOMER EQUIPMENT FAILURES, OR ANY OTHER SUCH CAUSES, AND CUSTOMER USES THE SERVICES AT CUSTOMER'S OWN RISK. CUSTOMER SHALL BE RESPONSIBLE FOR THE SECURITY, CONFIDENTIALITY AND INTEGRITY OF INFORMATION CUSTOMER TRANSMITS OR RECEIVES USING ANY SERVICES.

8.6 Disclaimer Regarding HIPAA Compliance. If and to the extent Customer is a covered entity under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and needs its business associates to comply with HIPAA, Provider hereby notifies Customer that Provider's operations are not compliant with HIPAA. Provider's operations are generally exempt from HIPAA pursuant to the conduit exception. However, if and to the extent the Services provided pursuant to any Service Order would not qualify for the conduit exception, Provider's operations with respect to the Services are not HIPAA complaint. Provider will not execute a business associate agreement under HIPAA.

ARTICLE 9 –INDEMNIFICATION FOR THIRD PARTY CLAIMS

9.1 Indemnification by Customer. Customer shall indemnify, defend and hold Provider and its members, managers, officers, agents and employees (collectively, the "**Provider Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Provider Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Customer's negligence or willful misconduct in exercising its rights or performing its obligations under the Agreement; (ii) Customer's noncompliance with or Default under the Agreement; and/or (iii) Customer's failure to comply with applicable law in connection with its performance under the Agreement.

9.2 Indemnification by Provider. Provider shall indemnify, defend and hold Customer and its members, managers, officers, agents and employees (collectively, the "**Customer Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the Customer Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) Provider's negligence or willful misconduct in exercising its rights and performing its obligations under the Agreement; (ii) Provider's noncompliance with or Default under the Agreement; and/or (iii) Provider's failure to comply with applicable law in connection with its performance under the Agreement.

9.3 Indemnification Procedures for Third-Party Claims. Should any third-party claim arise under this Article 9, the indemnified Party shall promptly notify the indemnifying Party of same in writing, and shall take such action as may be necessary to avoid default or other adverse consequences in connection with such claim. The indemnifying Party shall have the right to select counsel and to control the defense and settlement of such claim; provided, however, that the indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in handling the claim, and provided further, that the indemnifying party shall not take any action in defense or settlement of the claim that would negatively impact the indemnified Party without the consent of the indemnified Party. The indemnified Party shall reasonably cooperate with the indemnifying Party in the defense of the third-party claim, including making its files and personnel reasonably available to the indemnifying Party, all at the cost and expense of the indemnifying Party.

ARTICLE 10 – FORCE MAJEURE EVENTS

Neither Party shall be liable for any delay in or failure of performance hereunder (other than Customer's payment obligations under Article 4) due to causes beyond such Party's reasonable control including, but not limited to, acts of God, fire, flood, earthquake, ice storms, wind storms, or other sever weather events, explosion, vandalism, cable cut, terrorist acts, insurrection, riots or other civil unrest, national or regional emergency, unavailability of rights-of-way, a governmental authority's failure to timely act, inability to obtain equipment, material or other supplies due to strike, lockout or work stoppage, or any law, order, regulation, direction, action or request of any civil or military governmental authority (each, a "**Force Majeure Event**"). If any Force Majeure Event causes an increase in the time required for performance of any of its duties or obligations, the affected Party shall be entitled to an equitable extension of time for completion. If the delay in performance caused by the Force Majeure Event exceeds thirty (30) days, either Party may terminate the Agreement or the applicable Service Order(s) immediately on written notice to the other Party, without incurring any liability in connection with such termination.

ARTICLE 11 – DISPUTE RESOLUTION

11.1 Good Faith Negotiations. Except for actions seeking a temporary restraining order or injunction, in the event any controversy, disagreement or dispute (each, a "**Dispute**") arises between the Parties in connection with this Agreement, the Parties shall use good faith efforts to resolve the Dispute through negotiation. In the event of a Dispute, either Party may give the other Party written notice of the Dispute (each, a "**Dispute Notice**"). The parties will meet and attempt to resolve the Dispute within sixty (60) days of the date on which the Dispute Notice is delivered. All discussions occurring and documents exchanged during negotiations under this Section are confidential and inadmissible for any purpose in any legal proceeding involving the Parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation process. If the Parties do not resolve the Dispute within the sixty (60) day period, either of the Parties may pursue any remedy available to it under this Agreement, at law or in equity.

11.2 Governing Law. This Agreement and all matters arising out of this Agreement shall be governed by the laws of the State of Washington. Any judicial action arising in connection with this Agreement shall be in the Superior Court of the State of Washington in and for King County, or in the Federal District Court for the Western District of Washington, as applicable.

ARTICLE 12 – ASSIGNMENT AND ASSUMPTION

Except as otherwise provided in this Article 12, neither Party shall assign, delegate or otherwise transfer the Agreement or its obligations under the Agreement, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the necessity of obtaining the other Party's consent, assign its interest in and to the Agreement to: (i) any entity acquiring such Party, whether by merger or through purchase of substantially all the assets of such Party; (ii) a lender as an asset securing indebtedness; or (iii) an Affiliate of such party; provided, that in the event of a transfer to an Affiliate, the transferring Party shall continue to remain liable for the obligations under the Agreement.

ARTICLE 13 – NOTICES

Unless otherwise provided elsewhere in the Agreement, any notice to be given to either Party under the Agreement will be in writing and directed to the addresses set forth below. Notices will be deemed received (i) the next business day, when sent by reliable, commercial overnight courier; (ii) three (3) business days after being sent by certified mail, postage prepaid and return receipt requested; (iii) when actually received, if sent by email during the business hours of 9:00 a.m. to 5:00 p.m. (recipient's time). Notices received after 5:00 p.m. (recipient's time) will be effective the next business day.

If to Provider:
Astound Business Solutions, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540

If to Customer:
City of Sumner
1104 Maple Street, Suite 200
Sumner, WA 98390

ATTN: Business Solutions

With a Copy to:
Astound Business Solutions, LLC
650 College Road East, Suite 3100
Princeton, NJ 08540
ATTN: Legal Department

ATTN: City Attorney

With a Copy to:

Either Party may change its notice address by giving notice to the other Party in accordance with this Article.

ARTICLE 14 – REPRESENTATIONS AND COVENANTS

Each Party represents and covenants to the other as follows: (i) the execution and delivery of the Agreement and the performance of its obligations hereunder have been duly authorized; (ii) the Agreement is a valid and legal agreement binding on such parties and enforceable in accordance with its terms; (iii) to the best of its knowledge and belief, it is in material compliance with all laws, rules and regulations and court and governmental orders related to the operation of its business; and (iv) it shall comply with all applicable laws and regulations when exercising its rights and performing its obligations under the Agreement.

ARTICLE 15 – MISCELLANEOUS

15.1 Entire Agreement; Interpretation. The Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. The Agreement may only be modified or supplemented by an instrument executed by an authorized representative of each Party. The Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of the Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties. If any provision of the Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of the Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect.

15.2 No Waiver. No failure by either Party to enforce any rights hereunder will constitute a waiver of such rights. Nor shall a waiver by either Party of any particular breach or default constitute a waiver of any other breach or default or any similar future breach or default. Provider's acceptance of any payment under the Agreement will not constitute an accord or any other form of acknowledgement or satisfaction that the amount paid is in fact the correct amount, and acceptance of a payment will not release any claim by Provider for additional amounts due from Customer.

15.3 Relationship; No Third Party Beneficiaries. The Agreement is a commercial contract between Provider and Customer and the relationship between the Parties is that of independent contractors. Nothing in the Agreement creates any partnership, principal- agent, employer-employee or joint venture relationship between the Parties or any of their Affiliates, agents or employees for any purpose. The Agreement is for the sole benefit of Provider and Customer and is not intended to confer any rights on any other person; there are no third party beneficiaries of the Agreement.

15.4 Exhibits. The following Exhibits, which are attached to this MSA, are incorporated herein and by this reference made a part of this MSA:

EXHIBIT A - Service Level Agreement for Lit Fiber Services
EXHIBIT B - Service Level Agreement for Dark Fiber & Wavelength Services

15.5 Computation of Time. Except where expressly provided to the contrary, as used in the Agreement, the word "day" shall mean "calendar day," and the computation of time shall include all Saturdays, Sundays and holidays for purposes of determining time periods specified in the Agreement. If the final date of any period of time set out in any provision of the Agreement falls upon a Saturday or a Sunday or a legal holiday, then in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday or legal holiday. As used in the Agreement, the term "business day" shall mean a day that is not a Saturday, Sunday or a legal holiday.

15.6 Counterparts; Electronic Signatures. This MSA and any Service Order entered into by the Parties pursuant to this MSA may be executed in multiple counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. Any executed documents sent to the other Party in portable document format (pdf) images via email will be considered the same as an original document. The Parties consent to the use of electronic signatures.

[Signatures on following page.]

The Parties are signing this MSA as of the Effective Date set forth in the preamble above.

CUSTOMER:	**PROVIDER:**
City of Sumner, a Washington municipal corporation	Astound Business Solutions, LLC, a Delaware limited liability company
By____________________________________	By____________________________________
Name: ______________________________	Name: ______________________________
Title: ________________________________	Title: ________________________________

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EXHIBIT A to Master Services Agreement for Enterprise Services
Service Level Agreement for Lit Fiber Services

This Service Level Agreement for Lit Fiber Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services – Governmental Customer ("MSA") between Astound Business Solutions, LLC ("Astound") and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of lit fiber Services provided by Astound pursuant to the MSA: (a) IP transit /dedicated Internet access services, (b) Ethernet transport services, and (c) VoIP services, including hosted voice. This SLA does not apply to coax-based Services.

1. AVAILABILITY SLA

Astound's Network is designed to provide a target **Availability of at least 99.999%** per month. If the Availability target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Availability	Duration of Service Outage	Customer Credit as % of MRC for the applicable Circuit*
99.999% Availability	Less than 26 seconds	Target Met
	> 26 seconds up to 1 hour	5%
	> 1 hours up to 3 hours	10%
	> 3 hours up to 5 hours	15%
	> 5 hours	an additional 5% for each additional hour of Service Outage

*Customer credits for Unavailability are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in Services due to failure or malfunction of the Astound Network or Astound Equipment, Astound's NOC is designed to provide a **MTTR of 4 hours or less**. If the target MTTR is not met for a particular circuit in a given calendar month, and Customer receives a Service from Astound on the circuit at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Circuit
4 hr MTTR	≤ 4 Hrs.	Target Met
	> 4 Hrs. to 6 Hrs.	5%
	> 6 Hrs. to 8 Hrs.	10%
	> 8 Hrs.	25%

3. PACKET DELIVERY / PACKET LOSS SLA

The Astound Network is designed to provide **no greater than 0.05% Packet Loss**. If the Packet Loss target is not achieved in a given calendar month, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA. Customer credits for average monthly Packet Loss are calculated on an individual circuit basis, and the amount of any credit is based on the portion of MRC allocable to the affected circuit.

Target Maximum Packet Loss	Actual Packet Loss (lower end – upper end)	Customer Credit as % of MRC for the applicable Circuit
≤ 0.05% Packet Loss	0% - 0.05%	Target Met
	> 0.05% - 0.08%	5%
	> 0.08% - 0.1%	10%
	> 0.1% - 0.7%	25%
	> 0.7% - 1.0%	50%
	> 1.0%	100%

4. LATENCY SLA

The Astound Network is designed to provide a monthly average one-way Latency not to exceed the following:

- **For "Local Market" distances of ≤ 75 miles = 10 ms**
- **For "Inter-Market" distances of between 76 – 750 miles = 20 ms**
- **For "Long-Haul" distances of > 750 miles = 50 ms**

If the applicable Latency target is not achieved in a given month and Astound does not remedy the problem within fifteen (15) calendar days from the date on which Customer opens a Trouble Ticket with the Astound NOC regarding excessive Latency, Customer shall be entitled to the remedies set forth in the table below, which must be claimed as described in this SLA.

Target Local Market Latency	**Target Inter-Market Latency**	**Target Long-Haul Latency**	Actual One-Way Latency (lower end - upper end)	Customer Credit as % of MRC for the applicable Circuit
10 ms or less	**20 ms or less**	**50 ms or less**	≤ Target Latency	Target Met
			> Target up to 8 ms over Target	5%
			> 8 ms up to 15 ms over Target	10%
			> 15 ms up to 20 ms over Target	25%
			> 20 ms over Target	50%

5. NETWORK JITTER SLA

The Astound Backbone Network is designed to have a monthly average one-way Network Jitter not to exceed the following:

- **For Local Market distances of ≤ 75 miles = 2 ms**
- **For Inter-Market distances of between 76 – 750 miles = 5 ms**
- **For Long-Haul distances of > 750 miles = 15 ms**

If the applicable Network Jitter target is exceeded in a given calendar month, Customer will be entitled to a credit of 1/30th of the MRC of the affected circuit for that month for each full 1ms of Network Jitter above the Network Jitter target set forth above. Any such credit must be claimed as described in this SLA.

6. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different circuit/path for the Service and circuit/path that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the circuit/path that experienced the Chronic Outage without incurring any Termination Charge.

7. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

"Astound Backbone Network" means Astound's core fiber backbone that connects Astound's POPs and regional hubs.

"Astound's Network Operations Center" or "Astound's NOC" means Astound's network operations center which is staffed 24x7x365.

"Astound Network" means all equipment, facilities and infrastructure that Astound uses to provide Services to Customer, and includes Customer's access port. The "Astound Network" does not include Customer owned or leased equipment (unless leased from Astound), or any portion of Customer's local area network after the demarcation point for the Services provided by Astound.

"Availability" means the ability of Customer to exchange Ethernet packets with the Astound Network via Customer's router port. Availability is measured in minutes of uptime over the calendar month during which the Services are Available:

$$\underset{\text{(per calendar month)}}{\%\ \text{Availability}} = \frac{\text{(Total Minutes in Month – Total Minutes of Unavailability in Month)}}{\text{Total Minutes in Month}}$$

For Ethernet Transport Services and VoIP Services, Availability is calculated at the individual circuit level, between Astound's Backbone Network and the Customer's router port. For dedicated Internet access and IP transit Services, Availability is calculated from the Customer's router port through the Astound Network to the handoff point for the Internet. Dedicated Internet access Service and IP transit Availability does not include the availability of the Internet itself or any particular Internet resource. Periods of Excused Outage are not included in Availability metrics.

"Chronic Outage" means a series of three (3) or more Service Outages affecting the same Service on the same circuit during a given calendar month, each of which has an actual time to restore "TTR" in excess of Astound's targeted MTTR.

"Emergency Maintenance" means Astound's efforts to correct conditions on the Astound Network that are likely to cause a material disruption to or outage in services provided by Astound and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. Astound may undertake Emergency Maintenance at any time Astound deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

"Excused Outage" means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond Astound's reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer's agents, licensees or end users, and/or electrical outages not caused by Astound.

"Jitter" or "Network Jitter" refers to an undesirable variation in the interval at which packets are received, also described as the variability in Latency as measured in the variability over time of the packet Latency across a network. Jitter is calculated as aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Jitter metrics.

"Latency" means how much time it takes, measured in milliseconds, for a packet of data to get from one designated point on Astound's Network to another designated point on Astound's Network. Latency is calculated as an aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Latency metrics.

"Mean Time to Restore" or "MTTR" means the average time required to restore the Astound Network to a normally operating state in the event of an Outage. MTTR is calculated on a circuit basis, as a monthly average of the time it takes Astound to repair all Service Outages on the specific circuit. MTTR is measured from the time an Outage related Trouble Ticket is generated by the Astound NOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\underset{\text{(per calendar month)}}{\text{MTTR in Hrs}} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

"Outage" means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Astound. Unavailability does not include periods of Service degradation, such as slow data transmission.

"Packet Loss" means the unintentional discarding of data packets in a network when a device (e.g., switch, router, etc.) is overloaded and cannot accept any incoming data. Packet Loss is calculated as aggregate average monthly metric measured by Astound across the Astound Backbone Network between a sample of Astound POPs. Local access loops are not included. Periods of Excused Outage are not included in Packet Loss metrics.

"Scheduled Maintenance" means any maintenance of the portion of the Astound Network to which Customer's router is connected that is performed during a standard maintenance window (1:00AM – 5:00AM Local Time). Customer will be notified via email at least seven (7) days in advance of any scheduled maintenance that is likely to affect Customer's Service.

"Trouble Ticket" means a trouble ticket generated through the Astound NOC upon notification of a Service-related problem. Trouble Tickets may be generated by Astound pursuant to its internal network monitoring process, or by Customer's reporting of a problem to the Astound NOC. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the Astound NOC and open a Trouble Ticket regarding the problem; Trouble Tickets generated internally by Astound will not provide a basis for Customer credits or Chronic Outage remedies.

8. CLAIMING CREDITS AND REMEDIES

8.1 Requesting SLA Related Credits and Chronic Outage Remedies. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to Astound. Credits are exclusive of any applicable taxes charged to Customer or collected by Astound.

(i) To claim SLA-related Service credits, Customer must do the following:

(a) Open a Trouble Ticket with the Astound NOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);

(b) Submit a written request for the credit(s) to Customer's account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and

(c) Provide the following documentation when requesting the credit(s):
- Customer name and contact information;
- Trouble Ticket number(s);
- Date and beginning/end time of the claimed Outage or failed SLA metric;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Outage or failed SLA metric.

(ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:

(a) Open a Trouble Ticket regarding the Chronic Outage with the Astound NOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;

(b) Submit a written request for a remedy regarding the Chronic Outage to Customer's account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and

(c) Provide the following documentation when requesting the remedy:
- Customer name and contact information;
- Type of remedy requested (e.g., substitution or termination);
- Trouble Ticket numbers for each individual Outage event;
- Date and beginning/end time of each of the claimed Outages;
- Trouble Ticket number for the Chronic Outage at issue;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

8.2 Astound's Evaluation of Claims. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by Astound. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, Astound will evaluate the claim and respond to Customer within thirty (30) days. If Astound requires additional information in order to evaluate Customer's claim, Astound will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Astound's request for additional information in which to provide the requested information to Astound. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Astound will promptly notify Customer of Astound's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, Astound will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, Astound will notify Customer of the date on which the requested substitution or termination will occur. Astound's determination regarding whether or not an SLA has been violated shall be final.

8.3 Limitations and Exclusions. Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with Astound in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by Astound or Astound's Affiliates; or (v) Force Majeure Events.

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EXHIBIT B to Master Services Agreement for Enterprise Services

Service Level Agreement for Dark Fiber & Wavelength Services

This Service Level Agreement for Dark Fiber & Wavelength Services (this "SLA") is a part of the Master Services Agreement for Enterprise Services – Governmental Customer ("MSA") between Astound Business Solutions, LLC ("Astound") and Customer. Unless otherwise provided in the applicable Service Order, this SLA applies to the following types of Services provided by Astound pursuant to the MSA: (i) dark fiber services, and (ii) wavelength services.

1. AVAILABILITY SLA

Astound's dark fiber paths and wavelengths are designed to provide a target Availability of **at least 99.9%** per calendar month. If the Availability target is not met with respect to a given dark fiber path or wavelength in a given calendar month, Customer will be entitled to a credit in the amount set forth below, which must be claimed as described in this SLA. Customer credits for Outages of dark fiber or wavelength Services are calculated on an individual path basis, and the amount of any credit is based on the portion of MRC allocable to the affected Service.

Duration of Unavailability	Customer Credit as % of MRC for the applicable Service
Less than 45 minutes	Target Met
45 Min. up to 8 hours	5%
> 8 hours up to 16 hours	10%
> 16 hours up to 24 hours	20%
> 24 hours	35%

2. MEAN TIME TO RESTORE ("MTTR") SLA

In the event of Outages in the Services, Astound's CNOC is designed to provide a MTTR of **no greater than 6 hours**. If the target MTTR is not met for a particular dark fiber path or wavelength in a given calendar month, and Customer receives a Service from Astound on the path at issue, then Customer shall be entitled to remedies set forth in the table below, which must be claimed as described in this SLA.

Target MTTR	Actual MTTR	Customer Credit as % of MRC for the applicable Service
6 hr MTTR	≤ 6 Hrs.	Target Met
	> 6 Hrs. to 10 Hrs.	5%
	> 10 Hrs. to 18 Hrs.	10%
	> 18 Hrs.	20%

3. CHRONIC OUTAGE

If Customer experiences a Chronic Outage with respect to a Service, Customer shall have the right to elect either of the following remedies, which must be claimed as described in this SLA: (i) substitute a different Service or a different path for the Service that experienced the Chronic Outage without incurring any Termination Charge or installation fees; or (ii) terminate the affected Service for the path that experienced the Chronic Outage without incurring any Termination Charge.

4. DEFINITIONS

For purposes of this SLA the following terms shall have the meanings set forth below.

"Astound's Commercial Network Operations Center" or "Astound's CNOC" means Astound's commercial network operations center, which is staffed 24x7x365.

"Astound Network" means all equipment, facilities and infrastructure that Astound uses to provide Services to Customer, and includes Customer's access port. The "Astound Network" does not include Customer owned or leased equipment (unless leased from Astound), or any portion of Customer's local area network after the demarcation point for the Services provided by Astound.

"Availability" means the dark fibers or the wavelength at issue is available to and accessible by Customer at the specified locations, is capable of transmitting signals and can otherwise be used by Customer. Availability does not involve the quality of data transmission. Periods of Excused Outage are not included in the Availability metric. Astound does not monitor the use or availability of dark fiber or wavelength Services, thus any Outage must be reported to Astound by Customer.

"Chronic Outage" means a series of three (3) or more Service Outages affecting the same Service on the path during a given calendar month, each of which has an actual time to restore "TTR" in excess of Astound's targeted MTTR.

"Emergency Maintenance" means Astound's efforts to correct conditions on the Astound Network that are likely to cause a material disruption to or outage in Services provided by Astound and which require immediate action. Emergency Maintenance may degrade the quality of the Services provided to Customer, including possible outages. Any such outages are Excused Outages that will not entitle Customer to credits under this SLA. Astound may undertake Emergency Maintenance at any time Astound deems necessary and will provide Customer with notice of such Emergency Maintenance as soon as commercially practicable under the circumstances.

"Excused Outage" means any disruption to or unavailability of Services caused by or due to (i) Scheduled Maintenance, (ii) Emergency Maintenance, or (iii) circumstances beyond Astound's reasonable control, such as, by way of example only, Force Majeure Events, acts or omissions of Customer or Customer's agents, licensees or end users, electrical outages not caused by Astound, or any failure, unavailability, interruption or delay of third-party telecommunications network components the use of which are reasonably necessary for Astound's delivery of the Services to Customer.

"Mean Time to Restore" or "MTTR" means the average time required to restore the Service(s) to a normally operating state in the event of an Outage. MTTR is calculated on a path/route basis, as a monthly average of the time it takes Astound to repair all Service Outages on the specific path/route. MTTR is measured from the time Customer opens an Outage related Trouble Ticket is with the Astound CNOC until the time the Service is again Available. The cumulative length of Service Outages per circuit is divided by the number of Trouble Tickets in the billing month to derive the monthly MTTR per circuit:

$$\text{MTTR in Hrs (per calendar month)} = \frac{\text{Cumulative Length of Service Outages Per Month Per Circuit}}{\text{Total Number of Trouble Tickets for Service Outages Per Month Per Circuit}}$$

Periods of Excused Outage are not included in MTTR metrics.

"Outage" means a disruption in the Service making the Service completely unavailable to Customer that is not an Excused Outage. For purposes of SLA-related credits and remedies, the period of unavailability begins when an Outage-related Trouble Ticket is opened by the Customer and ends when the connection is restored, as measured by Astound. Unavailability does not include periods of Service degradation, such as slow data transmission.

"Scheduled Maintenance" means any maintenance of the portion of the Astound Network to which Customer's demarc is connected that is performed during a standard maintenance window (1:00AM – 6:00AM Local Time). Customer will be notified via email at least forty-eight (48) hours in advance of any scheduled maintenance that is likely to affect Customer's Service.

"Trouble Ticket" means a trouble ticket generated through the Astound CNOC upon notification of a Service-related problem. In order for Customer to be eligible for credits or remedies under this SLA, Customer must contact the Astound CNOC and open a Trouble Ticket regarding the problem.

5. CLAIMING CREDITS AND REMEDIES

5.1 <u>Requesting SLA Related Credits and Chronic Outage Remedies</u>. To be eligible for any SLA-related Service credit or Chronic Outage remedy, Customer must be current in its financial obligations to Astound. Credits are exclusive of any applicable taxes charged to Customer or collected by Astound.

(i) To claim SLA-related Service credits, Customer must do the following:

(a) Open a Trouble Ticket with the Astound CNOC within twenty-four (24) hours of the occurrence giving rise to the claimed credit(s);

(b) Submit a written request for the credit(s) to Customer's account manager within fifteen (15) days after the end of the calendar month in which the incident giving rise to the credit(s) occurred; and

(c) Provide the following documentation when requesting the credit(s):

- Customer name and contact information;
- Trouble Ticket number(s);
- Date and beginning/end time of the claimed Outage or failed SLA metric;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Outage or failed SLA metric.

(ii) To claim remedies for a Chronic Outage under this SLA, Customer must do the following:

(a) Open a Trouble Ticket regarding the Chronic Outage with the Astound CNOC within seventy-two (72) hours of the last Outage giving rise to the claimed remedy;

(b) Submit a written request for a remedy regarding the Chronic Outage to Customer's account manager within thirty (30) days of the end of the calendar month in which the Chronic Outage occurred; and

(c) Provide the following documentation when requesting the remedy:

- Customer name and contact information;
- Type of remedy requested (e.g., substitution or termination);
- Trouble Ticket numbers for each individual Outage event;
- Date and beginning/end time of each of the claimed Outages;
- Trouble Ticket number for the Chronic Outage at issue;
- Circuit IDs for each pertinent circuit/path; and
- Brief description of the characteristics of the claimed Chronic Outage.

If Customer fails to timely submit, pursuant to the procedure described in this Section, a request for any SLA-related credit or Service Outage remedy for which Customer might otherwise be eligible under this SLA, Customer shall be deemed to have waived its right to receive such credit or remedy. The credits and remedies provided by this SLA are Customer's sole and exclusive remedies for any and all claims or complaints regarding the quality and/or availability of any of the Services to which this SLA applies.

5.2 <u>Astound's Evaluation of Claims</u>. All claims for SLA-related credits and remedies for Chronic Outages are subject to evaluation and verification by Astound. Upon receiving a claim for SLA-related credit and/or remedies for Chronic Outage, Astound will evaluate the claim and respond to Customer within thirty (30) days. If Astound requires additional information in order to evaluate Customer's claim, Astound will notify Customer by email specifying what additional information is required. Customer will have fifteen (15) days from the date on which it receives Astound's request for additional information in which to provide the requested information to Astound. If Customer fails to provide the additional information within that time period, Customer will be deemed to have abandoned its claim. Astound will promptly notify Customer of Astound's resolution of each Customer claim. If Customer's claim for an SLA-related credit or Chronic Outage remedy is rejected, the notification will specify the basis for the rejection. If Customer's claim for a credit is approved, Astound will issue the credit to Customer's account, to appear on the next monthly invoice. If Customer's claim for a Chronic Outage remedy is approved, Astound will notify Customer of the date on which the requested substitution or termination will occur. Astound's determination regarding whether or not an SLA has been violated shall be final.

5.3 **Limitations and Exclusions.** Total credits for any given calendar month shall not exceed 100% of the MRC for the affected Service. Credits shall not be cumulative with respect to any given incident; instead, if multiple SLAs are violated during a single incident, Customer shall be entitled only to the largest applicable credit amount. This SLA will not apply and Customer will not be entitled to any credit under this SLA for any impairment of Services that is caused by or due to any of the following: (i) the acts or omissions of Customer, its agents, employees, contractors, or Customer's end users, or other persons authorized by Customer to access, use or modify the Services or the equipment used to provide the Services, including Customer's use of the Service in an unauthorized or unlawful manner; (ii) the failure of or refusal by Customer to reasonably cooperate with Astound in diagnosing and troubleshooting problems with the Services; (iii) scheduled Service alteration, maintenance or implementation; (iv) the failure or malfunction of network equipment or facilities not owned or controlled by Astound or Astound's Affiliates; (v) Force Majeure Events; (vi) Astound's inability (due to no fault of Astound) to access facilities or equipment as reasonably required to troubleshoot, repair, restore or prevent degradation of the Service; (vii) Astound's termination of the Service for cause, or as otherwise authorized by the Agreement; or (viii) Astound's inability to deliver Service by Customer's desired due date.

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ORDER FOR DARK FIBER SERVICES
OP357079

This Order for Dark Fiber Services: OP357079 (this "Service Order") is entered into as of the date of last signature below (the "Effective Date"), by and between ASTOUND BUSINESS SOLUTIONS, LLC, a Delaware limited liability company, acting on behalf of itself and as agent for its Affiliates (collectively, "Provider"), and CITY OF SUMNER, a Washington municipal corporation ("Customer"). This Service Order is made pursuant to and will be governed by that certain Master Services Agreement for Enterprise Services--Governmental Customer between Provider and Customer dated ___________, 2023 (the "MSA"). All capitalized terms used but not defined in this Service Order shall have the meanings given to them in the MSA. Affiliates of Astound Business Solutions, LLC include, but are not limited to (i) Wave Business Solutions, LLC, (ii) WaveDivision Holdings, LLC, (iii) Astound Broadband, LLC, (iv) RCN Telecom Services, LLC, and (v) Grande Communications Networks, LLC.

Section 1: Dark Fiber Services. Provider shall provide to Customer the dark fiber services set forth in the following table (each, a "Service"). The Services shall connect the end points set forth below (each such location, a "Service Site"), using the number of dark fiber strands described below, in exchange for the one-time, non-recurring installation charges ("NRC") set forth below, and the monthly recurring charges ("MRC") set forth below:

<table>
<tr><th>Fiber Route Identifier</th><th>A Location End Point</th><th>Z Location End Point</th><th>Description of Fiber</th><th>NRC</th><th>MRC</th></tr>
<tr><td>City Hall North End Route</td><td>Fiber Vault
Lat: 47.252083°
Long: -122.228771°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td rowspan="7">$49,995</td><td>$555.28</td></tr>
<tr><td>City Hall South End Route</td><td>Fiber Vault
Lat: 47.185094°
Long: -122.256666°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
<tr><td>Traffic Signal Cabinet Route 1</td><td>Traffic Signal Cabinet
Stewart Road & 8th St. NE
Lat: 47.249971563993014°
Long: - 122.23840964027181°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
<tr><td>Traffic Signal Cabinet Route 2</td><td>Traffic Signal Cabinet
140th Ave. E. & 24th Street E.
Lat: 47.23562564085955°
Long: - 122.24219192061476°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
<tr><td>Traffic Signal Cabinet Route 3</td><td>Traffic Signal Cabinet
142nd Ave. E. & Costco Distribution Center
Lat: 47.22087145831965°
Long: - 122.2403168382671°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
<tr><td>Traffic Signal Cabinet Route 4</td><td>Traffic Signal Cabinet
Main Street & Fryar Ave.
Lat: 47.203208242091414°
Long: - 122.24396670907254°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
<tr><td>Traffic Signal Cabinet Route 5</td><td>Traffic Signal Cabinet
Cannery Way & Sumner Heights Drive E.
Lat: 47.20393686755878°
Long: - 122.24853774475967°</td><td>City Hall
1104 Maple Street
Sumner, WA 98390</td><td>2 strands single mode dark fiber (@ $277.64 each)</td><td>$555.28</td></tr>
</table>

Traffic Signal Cabinet Route 6	Traffic Signal Cabinet Main Street & Wood Ave. Lat: 47.2032184497221° Long: - 122.23719181289171°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Traffic Signal Cabinet Route 7	Traffic Signal Cabinet Valley Ave. & Main Street Lat: 47.202560158105385° Long: - 122.22938034108847°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Ryan House Route	Ryan House 1228 Main Street Sumner, WA 98390 Lat: 47.569689° Long: -122.630545°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Cemetery Shop Building Route	Cemetery Shop Building 12320 Valley Avenue E. Sumner, WA 98372 Lat: 47.567137° Long: -122.629945°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Cemetery Office Route	Cemetery Office 12324 Valley Avenue E. Sumner, WA 98372 Lat: 47.591480° Long: -122.619215°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
WWTF Route	Waste Water Treatment Facility 13114 63rd Street E. Sumner, WA 98390 Lat: 47.569117° Long: -122.682580°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Future City Shops Route	Future City Shops 14228 29th Street E. Sumner, WA 98390 Lat: 47.571512° Long: -122.610839°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
Senior Center Route	Senior Center 15506 62nd Street Court E. Sumner, WA 98390 Lat: 47.582228° Long: -122.629677°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
City Well Route	City Well 1700 Steele Avenue Sumner, WA 98390 Lat: 47.629218° Long: -122.665824°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
City Shops Route	City Shops 4711 142nd Avenue E. Sumner, WA 98390 Lat: 47.565016° Long: -122.630392°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28

Sports Complex Route	Sports Complex 5604 Graham Avenue Sumner, WA 98390 Lat: 47.563135° Long: -122.625526°	City Hall 1104 Maple Street Sumner, WA 98390	2 strands single mode dark fiber (@ $277.64 each)		$555.28
			TOTAL COST:	**$49,995.00**	**$9,995.04**

Attached to this Service Order as Schedule 1 is a map depicting the approximate locations of the fiber routes listed in the table above.

Section 2: Initial Service Term. The Initial Service Term for all of the Services is three hundred sixty (360) months.

Section 3: One-Time, Non-Recurring Installation Charge. Customer shall pay to Provider a one-time, non-recurring installation charge in the amount of Forty-Nine Thousand Nine Hundred Ninety-Five and No/100 Dollars ($49,995.00) for the installation of all the dark fiber Services listed above. Provider shall invoice Customer for the NRC after final permits have been approved and returned and construction of the dark fiber segments detailed above is authorized to begin at the Service Sites.

Section 4: Decrease of MRC. Effective on the date after the first one hundred eighty (180) months from the commencement of all of the Services, Customer's Total MRC for the Services shall decrease to an amount equal to Nine Hundred Fifty and 00/100 Dollars ($950.00).

Section 5: Permitted Use of the Services. Provider agrees that Customer's use of the Services to provide communications services to other governmental bodies on a shared-services, not-for-profit basis will not be prohibited by Section 3.3 of the MSA.

Section 6: Progress Reports. Beginning with the full execution of this Service Order and throughout the construction process (and until completion of the dark fiber segments detailed above), Provider will provide proactive updates to Customer on at least a monthly basis and at any time in response to Customer's request. After final permits have been approved and returned to Provider and construction of the dark fiber segments detailed above is authorized, Provider will notify Customer of the planned commencement date for construction. If Provider becomes aware of what it considers to be a material delay in the construction schedule, Provider will promptly so inform Customer, and will use commercially reasonable measures to mitigate the impact of any relevant events on the construction schedule.

Section 7: Contact Information.

Account Name:	City of Sumner	*Invoicing Address:*	1104 Maple Street, Suite 200 Sumner, WA 98390 ATTN: Accounts Payable
Account Executive to Customer:	Jason Doudt		

To facilitate communication the following information is provided as a convenience and may be updated at any time without affecting the enforceability of the terms and conditions herein:

Customer Site Contact:	*Customer Billing Contact:*	*Customer Technical Contact:*
Brian Cunningham Bcunningham4@bloomberg.net Office: (212) 318-2000	Accounts Payable	Brian Cunningham Bcunningham4@bloomberg.net Office: (212) 318-2000

[The remainder of this page is intentionally left blank.]

The submission of this Service Order to Customer by Provider does not constitute an offer. Instead, this Service Order will become effective only when both parties have signed it. The date this Service Order is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the Effective Date of this Service Order.

CUSTOMER:	**PROVIDER:**
CITY OF SUMNER	ASTOUND BUSINESS SOLUTIONS, LLC
By ____________________	By ____________________
Name: ____________________	Name: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

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SCHEDULE 1
to
Dark Fiber Service Order OP357079

Map Depicting Approximate Locations of the Fiber Routes

[TO BE INSERTED.]

CITY OF SUMNER WASHINGTON

FINANCE & PERSONNEL COMMITTEE MEETING
DATE: August 15, 2023
AGENDA BILL: 23-3418

SUBJECT: Discussion: Ryan House Condition Assessment **CATEGORY:** Information Only

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
STAFF CONTACT: Jason Wilson, City Administrator

SUMMARY BACKGROUND:
In 2019 with the assistance of ARG, the City conducted a feasibility study and planning effort to restore the Ryan House. In 2022 the Sumner Historical Society vacated the house so that restoration work could begin. In late 2022 the city selected WJE to complete the final design documents necessary for construction of the vision established in the 2019 plan. Now that the house is vacant, WJE has been able to complete a more thorough structural assessment. Staff will be discussing the results with the committee and proposing a decision path forward.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee 05/03/2023**
Finance & Personnel Committee 05/31/2023
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Information Only

CITY OF SUMNER WASHINGTON

FINANCE & PERSONNEL COMMITTEE MEETING
DATE: August 15, 2023
AGENDA BILL: 23-3419

SUBJECT: Ordinance No. XXXX Delegation Authority for Bond Anticipation Note (BAN) - Public Works Operations Facility

CATEGORY: Ordinance

BUDGET IMPACT:

Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:

1. Bond Ordinance--City of Sumner--LTGO BAN, 2023 (Delegation)_USW_Active01_506919865_1

STAFF CONTACT: Kassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:

In 2019, the City began the work of designing and acquiring land for a new, expanded Public Works Operations Facility. Design and land acquisition are substantially complete, and staff is planning the construction phasing. At its 07/10/2023 City Council meeting, City Council authorized the application to the Public Works Board for a Public Works Trust Fund loan to construct the decant facility on the north parcel. Concurrently, staff has been working to develop a funding plan for the demolition and pre-load of the main facility site. Staff recommends proceeding with a bond anticipation note (BAN) to provide interim financing for the demo/pre-load of the main site, with the option to also include financing for the decant facility if the PWTF loan application is unsuccessful. Ordinance No. XXXX delegates authority to staff to coordinate and complete the issuance of a bond anticipation note not to exceed $8.1M ($3.0M decant facility, $5.0M operations site, and $100K issuance costs), with an interest rate not to exceed 5.5% and a term not to exceed 10/01/2026. The bond anticipation note is intended to be paid with proceeds of the final long-term debt financing.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:

Forward to City Council for action after Public Works Board decision (September).

CITY OF SUMNER, WASHINGTON

LIMITED TAX GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2023

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF SUMNER, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A LIMITED TAX GENERAL OBLIGATION BOND ANTICIPATION NOTE IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $[8,100,000] TO PROVIDE INTERIM FINANCING FOR DEMOLITION AND SITE PREPARATION/PRE-LOAD FOR THE PROPOSED PUBLIC WORKS OPERATIONS FACILITY, AND TO PAY COSTS OF ISSUANCE; AND DELEGATING CERTAIN AUTHORITY TO APPROVE THE FINAL TERMS OF THE NOTE TO THE DESIGNATED REPRESENTATIVE IN CONNECTION WITH THE SALE.

APPROVED ON AUGUST 21, 2023

PREPARED BY:

K&L GATES LLP

CITY OF SUMNER, WASHINGTON
ORDINANCE NO. ____

TABLE OF CONTENTS*

		Page
Section 1.	Definitions	1
Section 2.	Project; Authorization of the Bonds; Authorization of Note and Note Details	3
Section 3.	Registration, Exchange and Payments	4
Section 4.	Prepayment	4
Section 5.	Form of Note	5
Section 6.	Execution of Note	7
Section 7.	Disposition of Note Proceeds	7
Section 8.	Tax Covenants; Special Designation	8
Section 9.	Note Fund and Provision for Tax Levy Payments	8
Section 10.	Sale of the Note	9
Section 11.	Undertaking to Provide Ongoing Disclosure	9
Section 12.	Ordinance and Laws a Contract with the Purchaser	9
Section 13.	Ratification; General Authorization	10
Section 14.	Severability	10
Section 15.	Effective Date	10

* This Table of Contents and the cover page are not a part of this ordinance; they are included for convenience of the reader only.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF SUMNER, WASHINGTON, PROVIDING FOR THE ISSUANCE AND SALE OF A LIMITED TAX GENERAL OBLIGATION BOND ANTICIPATION NOTE IN THE PRINCIPAL AMOUNT OF NOT TO EXCEED $[8,100,000] TO PROVIDE INTERIM FINANCING FOR DEMOLITION AND SITE PREPARATION/PRE-LOAD FOR THE PROPOSED PUBLIC WORKS OPERATIONS FACILITY, AND TO PAY COSTS OF ISSUANCE; AND DELEGATING CERTAIN AUTHORITY TO APPROVE THE FINAL TERMS OF THE NOTE TO THE DESIGNATED REPRESENTATIVE IN CONNECTION WITH THE SALE.

WHEREAS, the City of Sumner, Washington (the "City") is in need of interim financing for the City's proposed Public Works Operations Facility (as further described in Section 2, the "Project"); and

WHEREAS, RCW 39.50.020 authorizes local governments to issue notes in anticipation of the issuance of bonds, which notes can be paid from the proceeds of the bonds or from any other legally available funds; and

WHEREAS, the City Council (the "Council") deems it to be in the best interest of the City to provide interim financing for the Project through the issuance of a limited tax general obligation bond anticipation note of the City in the principal amount of not to exceed $[8,100,000] (the "Note"); and

WHEREAS, the Council has determined to delegate to certain City officials the authority, for a limited time, to solicit proposals and accept and select the response deemed most favorable by the City and approve the final principal amount, the interest rate, maturity date, and prepayment provisions of the Note authorized herein under such terms and conditions as are approved by this ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, DOES ORDAIN, as follows:

Section 1. Definitions. As used in this ordinance, unless a different meaning clearly appears from the context:

Approved Proposal means the proposal deemed by the Designated Representative to be most favorable for the City, and all terms stated therein and also may include a separate agreement, at the option of and as approved by the Designated Representative.

Bonds means the City of Sumner, Washington Limited Tax General Obligation Bonds to be issued to pay and redeem the Note or any refunding note or notes.

Chief Financial Officer means the duly qualified, appointed and acting Chief Financial Officer of the City, or any other officer who succeeds to the duties now delegated to that office.

City means the City of Sumner, Washington, a municipal corporation of the State of Washington.

City Administrator means the duly qualified, appointed and acting City Administrator of the City, or any other officer who succeeds to the duties now delegated to that office.

Closing Date means the date of issuance and delivery of the Note to the Purchaser.

Code means the Internal Revenue Code of 1986, as amended, and shall include all applicable regulations and rulings relating thereto.

Council means the City Council as the general legislative authority of the City, as the same shall be duly and regularly constituted from time to time.

Designated Representative means any of the following: (a) the Mayor, (b) the Chief Financial Officer, (c) the City Administrator or (d) any official or employee of the City designated in writing by any of the foregoing.

Final Maturity Date means the date as determined in the Approved Proposal, but no later than October 1, 2026.

First Interest Payment Date means the first interest payment date for the Note set forth in the Approved Proposal.

Mayor means the duly qualified, elected and acting Mayor of the City, or any other person who succeeds to the duties now delegated to that office.

Note means the City of Sumner, Washington Limited Tax General Obligation Bond Anticipation Note, 2023, to be issued in the aggregate amount of not to exceed $[8,100,000] issued pursuant to this ordinance.

Note Counsel means K&L Gates LLP.

Note Fund means the Limited Tax General Obligation Bond Anticipation Note Redemption Fund, 2023, created pursuant to this ordinance.

Note Register means the registration records maintained by the Note Registrar for the purpose of identifying ownership of the Note.

Note Registrar, initially, means the Chief Financial Officer. At any time following the issuance of the Note, however, the Chief Financial Officer may determine to appoint a different Note Registrar, including, but not limited to the fiscal agent of the State of Washington. The term

Note Registrar also shall include any successor Note Registrar appointed by the Chief Financial Officer as permitted by law.

Placement Agent means D.A. Davidson & Co., Seattle, Washington.

Principal Payment Dates mean the dates on which principal of the Note is payable in accordance with the Approved Proposal.

Project means the demolition and site preparation/pre-load for the proposed Public Works Operations Facility, described with more particularity in Section 2 of this ordinance.

Purchaser means the initial purchasing entity or bank purchaser of the Note.

Registered Owner means the person named as the registered owner of the Note in the Note Register.

Rule means the SEC's Rule 15c2-12 under the Securities Exchange Act of 1934, as the same may be amended from time to time.

SEC means the United States Securities and Exchange Commission.

Interpretation. In this ordinance, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this ordinance, refer to this ordinance as a whole and not to any particular article, section, subdivision or clause hereof, and the term "hereafter" shall mean after, and the term "heretofore" shall mean before, the date of this ordinance;

(b) Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa;

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons;

(d) Any headings preceding the text of the several articles and sections of this ordinance, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this ordinance, nor shall they affect its meaning, construction or effect; and

(e) All references herein to "articles," "sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof.

Section 2. Project; Authorization of the Bonds; Authorization of Note and Note Details.

(a) *Project.* The City Council has approved and authorized the demolition and site preparation/pre-load for the proposed Public Works Operations Facility (the "Project"). The proceeds of the Note shall be used to fund or reimburse the City for the costs of the Project and for the costs of selling the Note.

(b) *Authorization of the Bonds.* For the purpose of providing long term funding for the Project, the Council hereby authorizes the issuance of the Bonds. The Bonds shall be issued with such terms, in such principal amount or amounts and maturing and bearing interest at such rate or rates as shall be hereafter approved by ordinance of the City, subject to applicable legal limitations.

(c) *Authorization of Note and Note Details*. For the purpose of funding or reimbursing the costs of the Project and paying the costs of issuance related thereto, the City shall issue its limited tax general obligation bond anticipation note in the principal amount of not to exceed $[8,100,000] (the "Note").

The Note shall be designated as the "City of Sumner, Washington, Limited Tax General Obligation Bond Anticipation Note, 2023," shall be dated as of the Closing Date, shall be fully registered as to both principal and interest, shall be issued as a single fully registered note, and shall be numbered in such manner and with any additional designation as the Note Registrar deems necessary for purposes of identification.

The Note shall bear interest at the per annum rate(s), payable on the date(s) and maturing in principal amount(s) set forth in the Approved Proposal, pursuant to Section 10 of this ordinance.

Section 3. Registration, Exchange and Payments. The City's Chief Financial Officer shall act as Note Registrar. The duties of the Note Registrar hereunder shall be limited to authenticating the Note and to remitting money to the Purchaser on the payment dates as provided therein. Principal of and interest on the Note shall be payable in lawful money of the United States of America. Installments of principal of and interest on the Note shall be paid by check, wire, or electronic transfer on the date due to the Purchaser; *provided, however,* upon final payment of all installments of principal and interest thereon, the Note shall be submitted to the Note Registrar for cancellation and surrender.

The Note Registrar is authorized, on behalf of the City, to authenticate and deliver the Note and to carry out all of the Note Registrar's powers and duties under this ordinance.

The Note shall not be transferable, except in whole to a financial institution subject to the further limitations set forth in the Approved Proposal.

Section 4. Prepayment. The Note shall be subject to prepayment, if any, as provided in the Approved Proposal.

Section 5. Form of Note. The Note shall be in substantially the following form:

UNITED STATES OF AMERICA

NO. N-1 $[8,100,000]

STATE OF WASHINGTON

CITY OF SUMNER

LIMITED TAX GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2023

INTEREST RATE: _______% per annum

MATURITY DATE: ________________

REGISTERED OWNER: ________________
____
____

TAX IDENTIFICATION #: ________________

PRINCIPAL AMOUNT: EIGHT MILLION ONE HUNDRED THOUSAND] AND NO/100 DOLLARS

THE CITY OF SUMNER, WASHINGTON, a municipal corporation organized and existing under and by virtue of the laws and Constitution of the State of Washington (the "City"), hereby acknowledges itself to owe, and for value received promises to pay to the Registered Owner identified above, or registered assigns, the Principal Amount specified above, together with interest thereon, at the Interest Rate, which interest shall be payable [[semi][annually] on _____ 1 and ________ 1 of each year until paid, commencing on _________ 1, 202__. Principal shall be repaid in annual installments as provided on Exhibit A attached hereto. Interest shall be calculated on the basis of [a 360-day year consisting of twelve 30-day months]]. The final payment of all outstanding principal, together with interest thereon, shall be due on [____________].

Both principal of and interest on this note are payable in lawful money of the United States of America. Payments made to the Registered Owner shall be applied first to accrued interest and then to principal as of the date such payment is actually received by the Registered Owner. Installments of the principal of and interest on this note shall be paid by check or draft of the Chief Financial Officer of the City (the "Note Registrar") mailed on the date such principal and interest is due or by electronic funds transfer made on the date such interest is due to the Registered Owner at the address appearing on the Note Register. Upon final payment of all installments of principal and interest thereon, this note shall be submitted to the Note Registrar for cancellation and surrender.

This note may be prepaid in accordance with the following terms; _____________.

This note is issued under and in accordance with the provisions of the Constitution and applicable statutes of the State of Washington and Ordinance No. ____ duly passed by the City Council on August 21, 2023 (the "Ordinance"). Capitalized terms used in this note have the meanings given such terms in the Ordinance.

This note shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Ordinance until the Certificate of Authentication hereon shall have been manually signed by or on behalf of the Note Registrar or its duly designated agent.

This note is issued pursuant to the Ordinance for providing interim financing for the demolition and site preparation/pre-load for the proposed Public Works Operations Facility.

By the Ordinance, the City has irrevocably covenanted that, unless the principal of and interest on this note are paid from other sources, it will make annual levies of taxes without limitation as to rate or amount upon all of the property in the City subject to taxation for the payment of debt service on the Note in amounts sufficient to pay such principal and interest as provided in the Note. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and for the payment of such principal and interest.

This note has [not] been designated by the City as a "qualified tax-exempt obligation" for investment by financial institutions under Section 265(b) of the Code.

It is hereby certified that all acts, conditions and things required by the Constitution and statutes of the State of Washington to exist, to have happened, been done and performed precedent to and in the issuance of this note have happened, been done and performed and that the issuance of this note does not violate any constitutional, statutory or other limitation upon the amount of bonded indebtedness that the City may incur.

IN WITNESS WHEREOF, the City of Sumner, Washington, has caused this note to be signed on behalf of the City with the manual or facsimile signature of the Mayor, to be attested by the manual or facsimile signature of the Clerk of the City, and a facsimile of the seal of the City to be impressed, imprinted or otherwise reproduced hereon, as of this _____ day of ________, 2023.

[SEAL]

CITY OF SUMNER, WASHINGTON

By /s/ manual or facsimile signature
Mayor

ATTEST:

/s/ manual or facsimile signature
City Clerk

The Certificate of Authentication for the Note shall be in substantially the following form:

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _______________

This note is the note described in the within-referenced Ordinance as the City of Sumner, Washington Limited Tax General Obligation Bond Anticipation Note, 2023, dated _____________, 2023.

CHIEF FINANCIAL OFFICER OF THE
CITY OF SUMNER, as Note Registrar

By ______________________________
Authorized Signer

* * * * * * * * * * *

Exhibit A
Debt Service Schedule

Section 6. Execution of Note. The Note shall be executed on behalf of the City with the manual or facsimile signatures of the Mayor and City Clerk, and the seal of the City shall be impressed, imprinted or otherwise reproduced thereon. The Note shall not be valid or obligatory for any purpose or entitled to the benefits of this ordinance unless and until a Certificate of Authentication, in the form hereinbefore recited, has been manually executed by or on behalf of the Note Registrar or its duly designated agent.

In case either of the officers who shall have executed the Note shall cease to be an officer or officers of the City before the Note so signed shall have been authenticated or delivered by the Note Registrar, or issued by the City, the Note may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. The Note may be signed and attested on behalf of the City by such persons who at the date of the actual execution of the Note are the proper officers of the City, although at the original date of the Note any such person shall not have been such officer of the City.

Section 7. Disposition of Note Proceeds. The proceeds of the Note shall be deposited into the fund or account designated by the Chief Financial Officer and used to pay or reimburse the City for the costs of the Project and to pay costs of issuance of the Note.

The Chief Financial Officer shall invest the net proceeds of the Note in such obligations as may now or hereafter be permitted to cities of the State of Washington by law and that will mature prior to the date on which such money shall be needed. Earnings on such investments, except as may be required to pay rebatable arbitrage pursuant to the Federal Tax Certificate, if any, may be used for City purposes or transferred to the Note Fund for the uses and purposes therein provided.

Section 8. Tax Covenants; Special Designation.

(a) *Arbitrage Covenant*. The City hereby covenants that it will not make any use of the proceeds of sale of the Note or any other funds of the City which may be deemed to be proceeds of the Note pursuant to Section 148 of the Code which will cause the Note to be an "arbitrage bond" within the meaning of said section and said regulations. The City will comply with the requirements of Section 148 of the Code (or any successor provision thereof applicable to the Note) and the applicable regulations thereunder throughout the term of the Note.

[(b) *Designation under Section 265(b) of the Code.* The City hereby designates the Note as a "qualified tax-exempt obligation" for purchase by financial institutions pursuant to Section 265(b) of the Code. The City does not anticipate that it will issue more than $10,000,000 in qualified tax-exempt obligations during the year 2023 (excluding obligations permitted by the Code to be excluded for purposes of the City's qualification as a qualified small issuer).]

Section 9. Note Fund and Provision for Tax Levy Payments. A special fund of the City known as the "Limited Tax General Obligation Bond Anticipation Note Redemption Fund, 2023" which fund or account may be designated or re-designated in accordance with the practices of the City from time to time (the "Note Fund"), is hereby authorized to be established and maintained in the office of the Chief Financial Officer of the City. The proceeds of the Bonds or the proceeds of a refunding Note shall be deposited in the Note Fund for the purposes of paying and redeeming the Note. The taxes hereafter levied for the purpose of paying principal of and interest on the Note and other funds to be used to pay the Note shall be deposited in the Note Fund no later than the date such funds are required for the payment of principal of and interest on the Note. Money in the Note Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City funds.

The City covenants that on or before the Final Maturity Date it will issue the Bonds, refunding bond anticipation notes, or a combination of the foregoing in an amount if any, together with other available funds, sufficient to pay the Note when due.

The Note is a general obligation of the City. The City hereby irrevocably covenants and agrees for as long as the Note is outstanding and unpaid that each year it will include in its budget and levy an *ad valorem* tax upon all the property within the City subject to taxation in an amount that will be sufficient, together with all other revenues and money of the City legally available for such purposes, to pay the principal of and interest on the Note as the same shall become due. All of such taxes so collected and any other money to be used for such purposes shall be paid into the Note Fund.

The City hereby irrevocably pledges that the annual tax provided for herein to be levied for the payment of such principal and interest shall be within and as a part of the tax levy permitted to cities without a vote of the people, and that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Note will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Note. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of said taxes and for the prompt payment of the principal of and interest on the Note as the same shall become due.

Section 10. Sale of the Note The Council has determined that it would be in the best interest of the City to delegate to the Designated Representative for a limited time the authority, working with the City's Placement Agent, to solicit proposals from financial institutions and review and select a financial institution as the Purchaser. The actions of the Designated Representative in reviewing and approving a term sheet distributed to financial institutions is hereby ratified and approved. The Designated Representative is further authorized to approve the final principal amount, interest rate, the Final Maturity Date, prepayment provisions and other terms and conditions of the Note so long as (i) the principal amount of the Note does not exceed $[8,100,000]; (ii) the interest rate of the Note, if issued as a fixed rate per annum, does not exceed 5.50%, or if issued as a variable rate, uses an index approved by the Designated Representative; (iii) the true interest cost of the Note does not exceed 5.50% (based on the initial interest rate if the interest rate is variable); and (iv) the maximum term of the Note shall be no later than October 1, 2026. Upon approval of the final terms, the Designated Representative will execute a certificate confirming the final sales terms which certificate shall be made available to the Council.

The authority granted to the Designated Representative by this section shall remain in effect until December 31, 2023. If the sale for the Note has not been completed by December 31, 2023, the authorization for the issuance of the Note shall be rescinded, and the Note shall not be issued nor its sale approved unless the Note shall have been re-authorized by ordinance of the City. The ordinance reauthorizing the issuance and sale of the Note may be in the form of a new ordinance repealing this ordinance in whole or in part or may be in the form of an amendatory ordinance establishing terms and conditions for the authority delegated under this section.

Upon the adoption of this ordinance, the proper officials of the City including the Designated Representative, are authorized and directed to undertake all other actions necessary for the prompt sale, execution and delivery of the Note and further to execute all closing certificates and documents required to effect the closing and delivery of the Note in accordance with the terms of the Approved Proposal. In furtherance of the foregoing, the Designated Representative is authorized to approve and enter into agreements for the payment of costs of issuance, including the fees and expenses specified in the Approved Proposal, including fees and expenses of the Purchaser and other retained services, including Note Counsel, Placement Agent, and other expenses customarily incurred in connection with issuance and sale of the Note.

Section 11. Undertaking to Provide Information. The City is exempt from the ongoing disclosure requirements of the Rule by reason of the exemption set forth in subsection (d)(1) of that Rule with respect to the issuance of securities in authorized denominations of $100,000 or more. If approved in the Approved Proposal, the City may undertake to provide certain City operational or financial information to the Purchaser during the term of the Note.

Section 12. Ordinance and Laws a Contract with the Purchaser. This ordinance is adopted under the authority of and in full compliance with the Constitution and laws of the State of Washington. In consideration of the loan made by the Purchaser, evidenced by the Note, the provisions of this ordinance and of said laws shall constitute a contract with the Purchaser, and the obligations of the city and its Council under said laws and under this ordinance shall be enforceable by any court of competent jurisdiction; and the covenants and agreements herein and in the Note set forth shall be for the equal benefit of the Purchaser and any permitted transferee or assignee.

Section 13. Ratification; General Authorization. The Mayor and Chief Financial Officer and other appropriate officers of the City are authorized to take any actions and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

Section 14. Severability. If one or more of the covenants or agreements provided in this ordinance to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this ordinance and shall in no way affect the validity of the other provisions of this ordinance or of the Note.

Section 15. Effective Date. This ordinance shall be effective five days from its passage and publication as required by law.

PASSED by the City Council of the City of Sumner, Washington, and approved by its Mayor at a regular meeting of said Council held this 21st day of August, 2023.

CITY OF SUMNER, WASHINGTON

____
Mayor

ATTEST:

APPROVED AS TO FORM:

____
City Clerk

____
City Attorney

First Reading: ***August 21, 2023***
Date Approved: ***August 21, 2023***
Date of Publication: ***___________, 2023***
Effective Date: ***___________, 2023***

CERTIFICATE

I, the undersigned, City Clerk of the City of Sumner, Washington (the "City") and keeper of the records of the City Council (the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. ____ of the Council (the "Ordinance"), duly passed at a regular meeting thereof held on the 21st day of August, 2023.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a legal quorum was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of the Ordinance; that all other requirements and proceedings incident to the proper passage of the Ordinance have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2023.

____
City Clerk

506919865.1

FINANCE & PERSONNEL COMMITTEE MEETING
DATE: August 15, 2023
AGENDA BILL: 23-3563

SUBJECT: Motion to Approve Contact - Stafford Suites **CATEGORY:** Motion

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BUDGET IMPACT:
Expenditure Required: Per Agreement Within Budget Allocation: Yes

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ATTACHMENTS:
1. 2023 Stafford Suites Agreement

STAFF CONTACT: Jeff Steffens, Administrative Services Director

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SUMMARY BACKGROUND:
Stafford Suites has been providing day to day operations of the Sumner Senior Center under a contractual agreement since 2012. Stafford's current agreement expired December 31, 2022. The proposed agreement has a one-year term with an optional 3-year renewal. The monthly rate represents a 5.9% increase from 2022, which is below inflation and within the approved budget. The City will continue to work with Stafford on proposed Information Technology changes prior to the contract's renewal period.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Forward to City Council for action.

AGREEMENT BETWEEN THE CITY OF SUMNER AND STAFFORD SUITES, LLC FOR SENIOR CENTER SERVICES

This Agreement is made and entered into on this ___ day of _______________, 2023(the "Execution Date"), by and between the City of Sumner (hereinafter the "City") and Stafford Suites, LLC, a Washington limited liability company (hereinafter "Stafford") (collectively the "Parties") . Stafford's principal place of business is currently located at 15519 62nd Street Court East, Sumner, WA 98390.

WHEREAS, the Parties have collaboratively provided services to seniors residing in Sumner and other nearby cities at a senior center located at 15506 62nd Street Court East, Sumner, WA 98390 (the "Senior Center") through a mutually beneficial contractual arrangement that commenced in 2012; and

WHEREAS, such services include coordinated meal services, scheduled outings, and on site activities at the Senior Center; and

WHEREAS, Stafford has coordinated, and continues to coordinate many positive events and valuable medical classes and clinics to the benefit of the seniors in attendance; and

WHEREAS¸ the Parties desire to continue providing Stafford's senior related services to Sumner and nearby city residents; and

WHEREAS¸ the Parties agree that the City will engage Stafford to oversee the day to day operations at the Senior Center; and

WHEREAS, the services previously provided by the City at the Senior Center, and which are now proposed to be overseen by Stafford, assist and benefit those identified under state law as the poor and the infirm; and

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND AGREEMENTS CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:

1. **Senior Center Services**.

(a) The City does hereby engage Stafford and Stafford does hereby accept the engagement by the City to oversee the day to day operations at the Senior Center and in connection therewith Stafford shall provide the services described on Exhibit A hereto (the "Senior Center Services").

(b) The Senior Center shall be open to the public Monday through Friday from generally 8:00 a.m. to 4:00 p.m. excluding those state and/or federal holidays on which the offices of the City of Sumner are closed for business.

(c) The parties recognize that evening and weekend activities may be scheduled outside of these normal operating hours, however, these evening and weekend activities shall be an addition to the normal operating hours listed above and not be treated as an off-set or substitute.

2. **Employee Supervision and Independent Contractor.**

(a) The Parties intend that Stafford shall be an independent contractor in providing the Senior Center Services and accordingly that Stafford has the sole ability and responsibility to control and direct the performance and details of its work, the City being interested only in the results obtained under this Agreement. Stafford shall be solely responsible for the payment of salaries and/or benefits of its employees engaged in the provision of the Senior Center Services and in complying with all laws, rules, and regulations governing such payments.

(b) Stafford shall require and ensure all employees associated with the services to be performed under the terms of this Agreement pass all required background checks, including but not limited, to background checks under the Child and Adult Abuse Information Act.

(c) Stafford agrees that in the event any off site activities are included in the Senior Center Services, Stafford shall, at its sole cost and expense, use a Stafford bus/van to transport the participants engaged in that activity. In furtherance of the foregoing, Stafford shall, at its sole cost and expense, maintain the bus/van in good condition and repair, ordinary and wear and tear excepted.

(d) Stafford agrees that they will provide television service to the Senior Center . They will be solely responsible for the operations and maintenance of this service. Stafford will also supply all necessary television equipment.

(e) Stafford's employees working at the Senior Center will agree to follow the City's Computer Use Policy.

3. **City Rights and Responsibilities**.

(a) The Senior Center shall be used by Stafford solely for the provision of the Senior Center Services. The City reserves the right to use the Senior Center for other activities and by other entities so long as those activities do not interfere with the day to day operation of the Senior Center and the provision of the Senior Center Services in accordance with the terms of this Agreement.

(b) The City further agrees to maintain, repair, and, if and as deemed necessary in the sole discretion of the City, replace, the real property, including the landscaping and parking lot, furniture, fixtures, equipment, including a copier and computer, kitchen equipment and cookware comprising the Senior Center, subject to the City's right to seek indemnity with respect to the cost thereof, if applicable, pursuant to Section 7 below.

(c) The City shall maintain in full force and effect, and shall fulfill as and when due all of its obligations under, the contract with Catholic Community Services for the provision of meal services at the Senior Center.

(d) The City shall continue to pay all utilities (identified as water, sewer, storm sewer, gas, electric, telephone, internet, refuse and recycle) related to the ownership and/or operation of the Senior Center.

(e) The City shall continue to provide two computers for Senior Center office staff and used computers for the Senior Center's computer lab as deemed necessary.

(f) The City shall continue to publish Senior Center events and newsletters on the City's website.

4. **Compensation.**

(a) In consideration for the provision of the Senior Center Services, the City shall pay Stafford Twenty-One Thousand Two Hundred and Fifty and 00/100 dollars ($21,250.00) per month during the Term (as defined below) (the "Services Fee"). Each January thereafter for the entire duration of the Term, if not earlier terminated as described below, the Services Fee shall increase annually at a rate of 95% of the annual All Urban Consumer Price Index (CPI-U) for the Seattle-Tacoma area for June over June rounded up to the nearest Fifty Dollars ($50). The Services Fee shall be due quarterly and payable by the 10th day of the first month of each quarter and if not paid when due shall be subject to a late fee of 1% per month (the "Overdue Rate") from the date due to the date paid in full.

(b) The Services Fee shall be prorated in the event the Term commences other than on the first day of a month or terminates other than on the last day of a month.

(c) In consideration for the payment of the Services Fee, except for those costs and expenses for which the City has specifically agreed to remain responsible pursuant to Sections 3 and 6 hereof, Stafford shall be responsible for, and shall indemnify the City from, all of the costs and expenses related to the provision of the Senior Center Services including, but not limited to, all employee wages, benefits and related taxes and the cost of all office supplies.

5. **Term**.

(a) Unless earlier terminated as provided herein or unless extended as provided herein the initial term of this Agreement (the "Initial Term") shall commence on January 1, 2023 (the "Commencement Date") and continue for one (1) years therefrom.

(b) Upon mutual written agreement of the Parties, the Initial Term of this Agreement can be extended for an additional three year period (the "Renewal Term" and together with the Initial Term, the "Term").

(c) Notwithstanding the foregoing, the Term of this Agreement may be earlier terminated by either party without cause upon sixty (60) days written notice of termination to the non-terminating party which notice shall set forth the termination date.

(d) Further, this Agreement may be terminated by either party (the "non-defaulting party") on written notice to the other (the "defaulting party") in the event of a breach by the defaulting party of its obligations under this Agreement, which is not cured within ten (10) days in the case of a monetary breach or thirty (30) days in the case of a non-monetary breach setting forth in reasonable detail the nature of such breach; provided, however, in the case of a non-monetary breach which cannot reasonably and in good faith be cured within thirty (30) days, the defaulting party shall have an additional period of thirty (30) days in which to cure its breach provided the defaulting party commences the cure within the initial thirty (30) day cure period and diligently prosecutes the same to completion.

6. Insurance Requirements.

Stafford shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Stafford, their agents, representatives, employees or subcontractors.

No Limitation. Stafford's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Stafford to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

(a) Minimum Scope of Insurance. Stafford shall obtain insurance of the types (and coverage amounts) described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, products completed operations, stop gap liability, independent contractors and personal injury and advertising injury. The City shall be named as an insured under Stafford's Commercial General Liability insurance policy with respect to the work performed for the City.

3. A General Liability insurance policy with a claims made form, with equivalent coverage, shall be accepted if its retroactive date, and that of all subsequent renewals, shall be no later than the effective date of this Agreement. The policy shall state that coverage is claims made, and state the retroactive date. Claims-made form coverage shall be maintained by Stafford for 36 months following the termination of this Agreement, and Stafford shall annually provide the City with proof of renewal. In the event the claims made coverage is not renewed, then Stafford shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the City to assure financial responsibility for liability for services performed. In the event that the claims made coverage is not renewed and, as a result, it becomes necessary for Stafford to purchase the tail pursuant to this Section, then Stafford and the City shall negotiate in good faith with respect to the allocation of responsibility for the payment of the cost thereof.

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

(b) Minimum Amounts of Insurance. Stafford shall maintain the following insurance limits related to the following types of insurance:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and $2,000,000 products-completed operations aggregate limit.

(c) Other Insurance Provision. Stafford's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Stafford's insurance and shall not contribute with it.

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

(e) Verification of Coverage. Stafford 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 the Stafford before commencement of the work.

(f) Subcontractors. Stafford shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices if approved by the City pursuant to Section 10.

(g) Notice of Cancellation. Stafford shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation, within two business days of their receipt of such notice.

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

(i) Property Insurance

1. The City shall purchase and maintain property insurance on the Senior Center building and City owned contents. Stafford shall be responsible for and purchase and maintain property insurance covering the full value of Stafford's property and improvements with no coinsurance provisions. Each party will be responsible for any deductibles under the property insurance so maintained by it and each party will provide to the other evidence of their respective required insurance coverage.

2. Stafford and City hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance

on or in connection with the premises or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7. **Indemnification.**

(a) The City shall protect, defend, indemnify, and save harmless Stafford, its officers, agents and employees acting in their official capacity or course of employment, from any and all costs including reasonable attorney fees, claims, judgments, and/or awards of damages, arising out of or in any way resulting from either the negligent acts or omissions of the City, its officers, employers and/or agents pursuant to this Agreement. For this purpose, the City, by mutual negotiation with Stafford, hereby waives, as respects Stafford only, any immunity that would otherwise be available against such claims under the Industrial Insurance Provisions of Title 51 RCW. In the event Stafford incurs any judgment, award and/or cost arising therefrom, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the City. The City's obligations under this Section 7(a) may be satisfied by any defense or coverage afforded under the terms of any insurance maintained by the City whether pursuant to the terms of this Agreement or otherwise.

(b) Stafford shall protect, defend, indemnify, and save harmless the City, its officers, agents and employees acting in their official capacity or course of employment, from any and all costs including reasonable attorney fees, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the negligent acts or omissions of the Stafford, its officers, employers and/or agents pursuant to this Agreement. Stafford agrees that its obligations under this subparagraph extend to any claim, demand and/or cause of action brought by or on behalf of any of its employees or agents. For this purpose, Stafford, by mutual negotiation with the City, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance Provisions of Title 51 RCW. In the event the City incurs any judgment, award and/or cost arising therefrom, including reasonable attorney's fees, to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from Stafford. Stafford's obligations under this Section 7(b) may be satisfied by any defense or coverage afforded under the terms of any insurance maintained by Stafford whether pursuant to the terms of this Agreement or otherwise.

(c) The provisions of this section shall survive the expiration or termination of this Agreement.

8. Notices. All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of this Agreement, unless notified in writing to the contrary. Any written notice hereunder shall become effective three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

9. Compliance with Laws. In connection with the provision of the Senior Center Services, Stafford agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable thereto.

10. Assignment. Any assignment of this Agreement by either party, which for purposes hereof shall include the use of any subcontractors by Stafford to perform the obligations imposed on it under this Agreement, without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

11. Resolution of Disputes and Governing Law.

(a) If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator under JAMS Alternative Dispute Resolution service rules or policies before resorting to arbitration. The mediator may be selected by agreement of the parties or through JAMS. Following mediation, or upon written agreement of the parties to waive mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof shall be settled through arbitration which shall be conducted under JAMS rules or policies. The arbitrator may be selected by agreement of the parties or through JAMS. All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

(b) This Agreement shall be governed by the laws of the State of Washington. Although the agreed to and designated primary dispute resolution method is as set forth above, in the event any claim, dispute or action arising from or relating to this Agreement cannot be submitted to mediation and/or arbitration, then it shall be commenced exclusively in the Pierce County Superior Court or the United States District Court, Western District of Washington as appropriate. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit either party’s right to indemnification under Section 7 of this Agreement.

12. Modification. No change, alteration, modification or addition to this Agreement will be effective unless it is in writing and properly signed by the parties hereto.

13. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competitive jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated as a result of such decision, and the parties shall agree to either negotiate a replacement to such void provision or otherwise terminate this agreement.

14. Non-Waiver of Breach. The failure of either party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

15. Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

16. Time of Essence. Time is of the essence for each and all of the terms, covenants, and conditions of this Agreement.

17. Concurrent Originals. This Agreement may be signed in counterpart originals, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

18. Entire Agreement. This Agreement is the complete expression of the terms hereto and any oral, written, or other representations or understanding not incorporated herein are excluded.

19. Ratification and Confirmation. Any acts consistent with the authority granted to the parties hereunder and taken prior to the Execution Date are hereby ratified and confirmed.

IN WITNESS, the parties below execute this Agreement, which shall become effective as of the Execution Date.

STAFFORD SUITES: By:________________________ *(signature)* Print Name:__________________ Its________________________ *(Title)* DATE:______________________	**CITY OF SUMNER:** By:________________________ *(signature)* Print Name: Kathy Hayden Its Mayor *(Title)* DATE:______________________ By:________________________ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:______________________ Attest: Approved as to form: ________________ ________________ City Clerk Michelle Converse City Attorney Andrea Marquez DATE: DATE:
NOTICES TO BE SENT TO: **Stafford Suites**	**NOTICES TO BE SENT TO:** **CITY OF SUMNER:**

Tina Pries Stafford Suites, LLC 15519 62nd Street Court East Sumner, WA 98390 253.862.1818 (telephone) 253.862.5464 (facsimile)	City Administrator City of Sumner 1104 Maple Street Sumner, WA 98390 253.299.5500 (telephone) 253.299.5509 (facsimile)

Exhibit A

STAFFORD PROVIDED SERVICES AND RESPONSIBILITIES[1]

With input from the City, develop the goals of the Senior Center which shall include maximizing the benefits and resources offered by the Senior Center.

Develop a schedule of programs and activities to be offered at the Senior Center which are designed to achieve the goals of the Senior Center; provided, however, in no event shall the programs and activities offered at the Senior Center during the Term of this Agreement be less than what is being offered by the City as of the Execution Date.

Hire and manage the staff necessary to effectively operate the Senior Center including, but not limited to, an on-site Director, a full-time Activity Assistant and a bus driver as needed for scheduled outings.

Create, review and/or modify all policies and procedures required for the effective operation of the Senior Center.

Monitor customer satisfaction and take such steps as may be deemed necessary and appropriate by Stafford to maintain and/or improve, as applicable, customer satisfaction and provide a written report as requested by the City.

Coordinate the services offered at the Senior Center with City-contracted vendors.

Coordinate meal services provided by Catholic Community Services.

Provide housekeeping services and supplies necessary to maintain the cleanliness of the Senior Center.

Identify and promptly notify the City of any maintenance requirements and/or needed capital improvements to the Senior Center.

[1] The Senior Center Services contained in this list are not exclusive, and may be modified by mutual agreement of the Parties in writing from time to time.

SUBJECT: Surplus Authorization **CATEGORY:** Information Only

BUDGET IMPACT:
Expenditure Required: None Within Budget Allocation: N/A

ATTACHMENTS:
1. August Surplus

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Staff has identified several items that that they would like to surplus. The items have an estimated value of greater than $500 and fall within the Committee's authorization authority.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Approve the attached list of surplus items.

CITY OF SUMNER WASHINGTON

MEMORANDUM

DATE: August, 2023
TO: Finance and Personnel Committee
FROM: Jeff Steffens, Administrative Services Director

RE: Surplus Authorization

The City's Wastewater Treatment Plan has some old and obsolete lab equipment that they would like to surplus. With an estimated value of more then $500, the surplus authority resides with the Finance Committee.

Hach Distillation Apparatus: Great condition, heating element and stir plate work, glassware has some staining, couplers are intact, comes with a splash shield.

Estimated Value - $700

Hach DR4000U Spectrophotometer: Good condition, passed internal calibration, comes with accessories such as a rotating auto sampler and sample cells.

Estimated Value - $1,500

Public Works Shops is requesting to surplus a Skid Steer. This piece of equipment was replaced during the budget cycle. The current equipment was undersized for the City's needs which was causing breakdowns and repairs.

Estimated Value - $8,000

The Sumner Police Department has recently put a new patrol vehicle into service and wishes to surplus Unit 21-106

2013 Ford Explorer Police SUV – estimated value of $4,000

FINANCE & PERSONNEL COMMITTEE MEETING
DATE: August 15, 2023
AGENDA BILL: 23-3338

SUBJECT: Monthly Sales Tax Report **CATEGORY:** Information Only

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BUDGET IMPACT: N/A

ATTACHMENTS:
STAFF CONTACT: Kassandra Raymond, Chief Financial Officer

SUMMARY BACKGROUND:
Staff will review monthly sales tax reporting. This is a regular reporting item. Please note, this report is provided only to those who have a WA State Department of Revenue Secrecy Affidavit Confidential Affidavit on file.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION: Informational only; no Committee action required.

STAFF RECOMMENDATIONS/MOTION:
Informational only; no further action required.

SUBJECT: Recruitment & Negotiation Update **CATEGORY:** Information Only

BUDGET IMPACT: N/A

ATTACHMENTS:
STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Staff will provide a verbal update on recruitment and negotiation activity.

COUNCIL COMMITTEE/STUDY SESSION: **Finance & Personnel Committee**
MEETING/STUDY SESSION DATE: 8/15/2023
COMMITTEE RECOMMENDATION: Informational only; no Committee action required.

STAFF RECOMMENDATIONS/MOTION:
Informational only; no Committee action required.