CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
August 21, 2023 6:00 PM

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 (Council Chambers), or virtually by using the meeting access link below.
https://sumnerwa-gov.zoom.us/j/84690189935
Or One tap mobile: +12532158782,,84690189935#
Or Telephone: +1 253 215 8782 / +1 253 205 0468 US
Webinar ID: 846 9018 9935

CALL TO ORDER

Pledge of Allegiance

Invocation

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard

The following items are distributed to Councilmembers in advance for study and review, and the recommended actions will be accepted in a single motion. Any item may be removed for further discussion if requested by a Councilmember.

CONSENT AGENDA

1. Biosolids Dewatering Improvements - Project Acceptance
2. Town Center: Utility & Woonerf Project - Construction Management Services Amendment
3. Resolution No. 1661 - Pollution Prevention Assistance Partnership / Interagency Agreement Authorization
4. Approval of the electronic payments and warrants in the amount of $1,498,704.06.
5. Cemetery Building - Construction Contract Award
6. Contract Approval - Stafford Suites
7. Contract Approval for Fiber Optic Services - Astound
8. Approval of the meeting minutes from the regular council meeting of August 7, 2023 and the August 14, 2023 study session.

PUBLIC HEARING

REGULAR BUSINESS

1. **Unfinished Business**
   a. Ordinance No. 2863 - Franchise Agreement with Ziply Wireless LLC
   b. Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC
2. **Public Comment (Limit 3 minutes)**
   Members of the community who wish to give public comment are strongly encouraged to join the meeting via the provided link or by telephone. If you are unable to attend the meeting, please submit your public comment in writing via email to the City Clerk at Michellec@sumnerwa.gov no later than 5:30pm on the day of the meeting. Any written comments received will be read into the record and/or distributed to the City Council. Please contact the City Clerk at 253-299-5590 with any questions.

3. **New Business**

a. Forestry & Parks Commission Appointment - McCaul

b. Ordinance No. 2860 - Sumner Municipal Code Update 12.60.050 - General Park Hours

c. Ordinance No. 2861 - Sumner Municipal Code Update - Cemetery - Green Burial

d. Ordinance No. 2870 - Delegation Authority for Bond Anticipation Note (BAN) - Public Works Operations Facility

4. **Reports**

   a. Council

   b. City Administrator

   c. Mayor

5. **Executive Session**

6. **Adjournment**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact the City Clerk at (253) 299-5590, 24 hours in advance.

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 21-1831

SUBJECT: Biosolids Dewatering Improvements - Project Acceptance **CATEGORY:** Consent

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

ATTACHMENTS:
1. Project Completion Report
2. Notice of Completion

STAFF CONTACT: Michael Kosa, City Engineer

SUMMARY BACKGROUND:
The City of Sumner's Wastewater Treatment Facility contracted for procurement and installation of a second centrifuge to provide needed redundancy and capacity within the biosolids dewatering operation.

The original construction contract amount was $1,487,969.76, the ending construction contract amount was $1,489,438.83. The contractor, Stellar J Corporation, has met all necessary obligations under the contract. Staff is recommending that the Council accept the contract as complete.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 8/1/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion accepting the completion of Biosolids Dewatering Improvments (CIP 17-18) contract with Stellar J Corporation, in the final contract amount of $1,489,438.83, and authorizing the Mayor and City Administrator to execute any and all documents necessary to formally accept the project, substantially in a form as approved by the City Attorney.

DocuSign Envelope ID: 37B445BA-1C59-42A0-8BDB-02043E05E326

Public Works - Project Completion Report

Project Title:	Biosolids Dewater Improvements
Project Number:	CIP 17-18
Project Manager	Jason Van Gilder/ Michael Kosa

City Council Authorization (if required) Contract Type	Auth Date	Auth Amount		
Preliminary Engineering	August 2017	$ 103,700	G&O	Design
Preliminary Engineering	November 2017	3,980	G&O	Splitter Box Design Amendment
Construction	8/7/2017	1,477,408	Stellar J	Original Contract (includes sales tax)
Construction	10/7/2020	32,615	Stellar J	Change Order (sales tax added)
Construction Engineering	9/19/2019	128,600	G&O	
Construction Engineering	1/12/2021	12,144	G&O	Change Order COVID-19 Construction Reqmts
Total Amount Authorized		$ 1,758,447		

Project Financing Summary

Project Revenue Source			
City Funding Source(s)			
Fund	402		*Enter fund*
Budgeted Amount			
	$ 1,872,219		*40259438.564438*
Total Budget	$ 1,872,219		
Other Funding Source(s)			
Agency	n/a		*Enter granting/lending agency*
Contract Number	n/a		*Enter agreement number*
Grant/Loan Amount	$ -		*Enter awarded amount*
Total Funding Sources	$ 1,872,219		*Calculated*

Construction Summary	*Signature on this section constitutes contract acceptance*
Construction	
Engineer's Estimate	$ 1,577,000
Low Bid/Contract	1,487,969.76
Change Order 1	32,614.66
Total Ending Contract Amount	$ 1,520,584
% Variance from Council Award	3%
Total Expended	1,489,438.83
% Variance from Council Award	1%
Signature	DocuSigned by: Michael Kosa
Title	19C4D58CA9E546D... City Engineer
Date	7/25/2023 | 11:35 AM PDT

DocuSign Envelope ID: 37B445BA-1C59-42A0-8BDB-02043E05E326

Project Expenditures

Preliminary Engineering/Design	$	107,608.40
Construction		1,489,438.83
Construction Engineering		140,744.00
Staff Time		6,530.57
Other Expenses		3,379.30
Total Project Cost	$	1,747,701.10

Summary

Total Project		
Authorized Budget	$	1,872,219
Total City Funds utilized	$	1,747,701
Total Other Funding	$	-
Total (Under) / Over Budget	$	(124,518)

Authorized by Council

Contract Type	Authorized	Actual	Variance
Preliminary Engineering	$ 107,680	$ 107,608	$ (72)
Construction	1,510,023	1,489,439	(20,584)
Construction Engineering	140,744	140,744	-
Total Amount Authorized	$ 1,758,447	$ 1,737,791	$ (20,656)

Reviewed by: DocuSigned by: Michael Kosa 19C105BCA97546D... PW Project Manager

Reviewed by: DocuSigned by: Kassandra Raymond 9A5D5E5EBAEC4A5... Finance Department

NOTICE OF COMPLETION OF PUBLIC WORKS CONTRACT

Department Use Only	
Assigned to:	**Date Assigned:**

Date 03/30/2022	**Form Version** Original	**Revision Reason**

Awarding Agency Information		**Prime Contractor Information**	
Name SUMNER, CITY OF	**UBI** 277000014	**Name** STELLAR J CORPORATION	**UBI** 601702222
Address 1104 MAPLE ST SUMNER,WA-98390		**Address** 1363 DOWN RIVER DR WOODLAND,WA-98674	
Email Address kelseyw@sumnerwa.gov		**Email Address** stephanie@stellarj.com	
Contact Name Kelsey White	**Phone** 253-299-5700	**Contact Name** STELLAR J CORPORATION	**Phone** 360-225-7996

Project Information			
Project Name Biosolids Dewatering Improvements		**Contract #** CIP 17-18	**Affidavit ID** 1016009
Jobsite Address			
Date Awarded 09/17/2019	**Date Work Commenced** 12/30/2019	**Date Work Completed** 04/04/2021	**Date Work Accepted** 11/08/2021
Federally Funded Transportation Project *If yes, attach Contract Bond Statement.* ☐			
Bond Waived?	**Retainage Waived?**	**Subcontractors Used?** *If yes, complete Addendum A.* ☒	
Detailed Description of Work Completed Wastewater treatment plant biosolids dewatering improvements.			

DOR Tax Information			
**Right-click on the total field and select Update Field to auto-calculate.*			
Contract Amount	$1,351,700.00	Liquidated Damages	$ 0.00
Additions (+)	$29,839.58	Amount Disbursed	$1,489,438.83
Reductions (-)	$18,863.87	Amount Retained	$ 0.00
Sub-Total*	**$1,362,675.71**	Other	$ 0.00
Sales Tax Amount	$126,763.12	Sales Tax Rate *If multiple rates, attach a list.*	9.30%
TOTAL*	**$1,489,438.83**	**TOTAL***	**$1,489,438.83**
These two totals must be equal.			

Apprentice Utilization Information	
Was Apprentice Utilization Required? *If yes, complete this entire section.* ☐	**Engineer's Estimate** $ 0.00
Utilization % 0.48%	**Was a Good Faith Effort approved?**

Comments

Sales tax prior to 7/1/21 (9.3%*$1,328,408.87) = $123,542.04
Sales tax after 7/1/21 (9.4%*$34,266.84) = $3,221.08
Total Tax paid : $126,763.12

The Disbursing Officer must submit this completed notice immediately after acceptance of the work done under this contract. NO PAYMENT SHALL BE MADE FROM THE RETAINED FUNDS until receipt of all release certificates and affidavits.

Submitting Form: Submit the completed form by email to all three agencies below.

Department of Revenue
Public Works Section
(360) 704-5650
PWC@dor.wa.gov

Washington State Department of
Labor & Industries
Contract Release
(855) 545-8163, option # 4
ContractRelease@LNI.WA.GOV

Employment Security Department
Registration, Inquiry, Standards & Coordination Unit
(360) 890-3499
publicworks@esd.wa.gov

Addendum A: Please List all Subcontractors and Sub-tiers Below

This addendum can be submitted in other formats.

Provide known affidavits at this time. **No L&I release will be granted until all affidavits are listed.**

Subcontractor's Name:	UBI Number: (Required)	Affidavit ID*
CASCADE SAWING & DRILLING INC	600436993	**1078649**
CENTRE POINTE SURVEYING	601752691	**938285**
DRAIN-PRO INC	602740534	**1077978**
E C I SERVICES	602026577	**965397**
GRIZZLY BAR & POST TENSNNG INC	604212630	**933225**
MADSEN ELECTRIC	278030668	**1021768**
MILES SAND & GRAVEL COMPANY	171004760	**1071730**
OLSON BROTHERS PRO-VAC LLC	602170975	**1097520**
RALPH'S CONCRETE PUMPING	578085430	**1064567**
STELLAR J CONSTRUCTION INC	603084540	**1016200**

Employment Security Department
WASHINGTON STATE

March 31, 2022

ESD# 000863924005
UBI# 601702222000

STELLAR J CORPORATION
1363 DOWN RIVER DR
WOODLAND,WA-98674

SUMNER, CITY OF

Employment Security Department hereby certifies those contributions, penalties and interest due from the above named contractor under the Employment Security Act have been paid in full or provided for with respect to the following public works contract:

Description Biosolids Dewatering Improvements
Contract number CIP 17-18

The Employment Security Department hereby certifies that it has no claim pursuant to RCW 50.24.130 against the public body named above for tax attributable to service performed for said public body by the above named contractor on the above described contract. The Employment Security Department releases its lien on the retained percentage which is provided by RCW 60.28.040 for contributions, penalties and interest due from said contractor.

This certificate does not release said contractor from liability for additional contributions, penalties and interest which may be later determined to be due with respect to the above mentioned contract.

If we may be of further assistance, please call (360) 890-3499 or email publicworks@esd.wa.gov

EMPLOYMENT SECURITY DEPARTMENT

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES
PO Box 44274 Olympia, Washington 98504-4274

May 31, 2022

SUMNER, CITY OF
1104 MAPLE ST
SUMNER WA 98390

2350031000016102000000000

CERTIFICATE TO RELEASE L&I'S HOLD ON RETAINAGE

The Washington State Department of Labor & Industries is granting approval to release our hold on the retained amount for **BIOSOLIDS DEWATERING IMPROVEMENTS**, **Contract CIP 17-18**, **Affidavit 1016009** to the following contractor:

STELLAR J CORPORATION	908,480-00	601 702 222

We have determined that all workers' compensation premiums, increases, and penalties for this contractor have been paid in full or are readily collectible without recourse to the retained funds, per chapter 60.28 RCW.

The contractor may still be liable for payment if we later determine they owe additional premiums related to this contract or other activities.

Before final payment can be made to the contractor, you will also need to receive releases from the Departments of Revenue and Employment Security Department in addition to ensuring:

- All liens against retainage have been satisfied
- All *Affidavit of WagesPaid* forms have been filed

Thank you,

Christina Summers
Contract Release Specialist
(360)902-5772
SUMC235@LNI.WA.GOV

cc: STELLAR J CORPORATION
1363 DOWN RIVER DR
WOODLAND WA 98674

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

CITY OF SUMNER
C/O KELSEY WHITE
1104 MAPLE ST
SUMNER WA 98390-1407

July 8, 2022
Letter ID: L0020107737
UBI: 601-702-222
Account ID: 601-702-222
Account Type: Excise Tax
Audit ID: A15631
Audit Period: 09/01/19 - 02/28/22

We hereby certify that taxes, increases and penalties due or to become due from the contractor listed below under Chapter 180, Laws of 1935, as amended, with respect to the following publics works contract:

STELLAR J. CORPORATION

Public Agency: SUMNER, CITY OF

Project Name: Biosolids Dewatering Improvements

Contract Number: CIP 17-18

Description of Work: Wastewater treatment plant biosolids dewatering improvements.

has been paid in full, or is in the Department's opinion readily collectible without recourse to the state's lien on the retained percentage.

This certificate is issued pursuant to the provision of Chapter 60.28 Revised Code of Washington for the sole purpose of informing the state, county, or municipal officer charged with the duty of disbursing or authorizing the payment of public funds to said contractor that the Department of Revenue hereby releases the state's lien on the retained percentage provided by this Chapter for excise taxes due from said contractor.

This certificate does not release said contractor from liability for additional tax that may be later determined to be due with respect to the above-mentioned contract or other activities.

Dated July 8, 2022 at Olympia, Washington,

State of Washington
Department of Revenue

Certifying Officer

Public Works Audit Unit
6500 Linderson Way SW Tumwater, WA 98501
dor.wa.gov Phone (360) 704-5650 Fax (360) 704-5647

ggL0050

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3521

SUBJECT: Town Center: Utility & Woonerf Project - Construction Management Services Amendment

CATEGORY: Consent

BUDGET IMPACT:
Expenditure Required: $96,880.00 Within Budget Allocation: Yes

ATTACHMENTS:
1. Amendment with Scope & Fee

STAFF CONTACT: Alisa O'Haver-Ayala , Associate City Engineer

SUMMARY BACKGROUND: The Town Center:Utility & Woonerf project is a combination of the Alder Kincaid Utility and the Academy Street Bike Lanes projects. This contract provides for the installation of new water mains and services at Kincaid Avenue, Alder Avenue, Park Street, and Maple Street. The project includes the trenching, excavation, and installation of the new water lines as well as the removal or abandonment of the existing water lines and the surface restoration associated with the work. Improvement also includes the stamped, colored concrete sidewalks and roadway that make up the woonerf around Heritage Park on Kincaid Avenue, Cherry Avenue, and the intersection with Main Street to the north. This project also replaces the non-conforming curb ramps, installing bulbouts, storm drainage, and associated restoration along Academy Street.

The purpose of this supplement is to expand the consultant's scope to supplement the current contract for Construction Management Services with additional funds to complete the project. KPG-Psomas was previously selected to provide consulting services for this project through a qualification-based selection process. An hourly rate agreement supplement was previously negotiated for the Construction Management Services phase of this project and is being supplemented here for the following reasons:

- There have been RFI's and design questions that have been more extensive than were originally anticipated to manage
- 29 working days have been added to the contract (6 additional days since the last contract supplement).
- The Contractor is currently 21 working days beyond the contract and does not expect to be fully complete with the project until September at the earliest.
- The original CM Services contract anticipated a 40 hour work week for inspection, but the Contractor typically works 50 hours work weeks and this requires inspection coverage.
- There have been non-working days that required continued coordination and discussion with the contractor to keep everything moving forward. The original CM Services contract assumed 10 non-working days. In the previous supplement there were 24 non-working days. To date, there have been 47 unworkable/suspension days, and we expect there to be more between now and completion in September.
- The Contractor intends to pursue a number of claims at the conclusion of this project and the City needs to continue to include our Construction Management team as a resource on this project.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 8/1/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion approving a supplement to KPG Psomas's Consultant Services Contract for the Town Center: Utility & Woonerf project (CIPs 19-05 and 20-08), increasing the contract amount by $96,880.00 to a total authorized amount not-to-exceed $989,603.75, and authorizing the Mayor and City Administrator to execute any and all documents necessary to effectuate the amendment, substantially in a form as approved by the City Attorney.

CITY OF SUMNER WASHINGTON

AMENDMENT NO. 4

NAME OF CONSULTANT, CONTRACTOR OR VENDOR: **KPG Psomas Inc.**

CONTRACT NAME & PROJECT NUMBER: **Academy Street Bike Lanes (CIP 20-08)**

ORIGINAL AGREEMENT DATE: **October 19, 2020**

This Amendment is made between the City and the above-referenced Consultant, Contractor or Vendor and amends the original Contract/Agreement and all prior Amendments. All other provisions of the original Contract/Agreement or prior Amendments not inconsistent with this Amendment shall remain in full force and effect. For valuable consideration and by mutual consent of the parties, Consultant, Contractor or Vendor's work is modified as follows:

1. Section I of the Agreement, entitled "Description of Work," is hereby modified to add additional work or revise existing work as follows:

In addition to work required under the original Agreement and any prior Amendments, the Consultant, Contractor or Vendor shall:

See Exhibit A

2. The contract amount and time for performance provisions of Section II "Time of Completion," and Section III, "Compensation," are modified as follows:

Original Contract Sum, *including applicable WSST*	**$34,821.00**
Net Change by Previous Amendments *including applicable WSST*	**$857,902.75**
Current Contract Amount *including all previous amendments*	**$892,723.75**

Current Amendment Sum	**$96,880.00**
Applicable WSST Tax on this Amendment	**$N/A**
Revised Contract Sum	**$989,603.75**

Original Time for Completion *(insert date)*	**12/31/2023**
Revised Time for Completion under prior Amendments *(insert date)*	**12/31/2024**
Add'l Days Required (±) for this Amendment	**N/A**
Revised Time for Completion *(insert date)*	**N/A**

In accordance with Section XIV E of the Contract/Agreement, the Contractor, Consultant or Vendor accepts all requirements of this Amendment by signing below, by its signature waives any protest or claim it may have regarding this Amendment, and acknowledges and accepts that this Amendment constitutes full payment and final settlement of all claims of any kind or nature arising from or connected with any work either covered or affected by this Amendment, including, without limitation, claims related to contract time, contract acceleration, onsite or home office overhead, or lost profits. This Amendment, unless otherwise provided, does not relieve the Contractor, Consultant or Vendor from strict compliance with the guarantee and warranty provisions of the original Agreement.

All acts consistent with the authority of the Agreement, previous Amendments (if any), and this Amendment, prior to the effective date of this Amendment, are hereby ratified and affirmed, and the terms of the Agreement, previous Amendments (if any), and this Amendment shall be deemed to have applied.

The parties whose names appear below swear under penalty of perjury that they are authorized to enter into this Amendment, which is binding on the parties of this contract.

IN WITNESS, the parties below have executed this Amendment, which will become effective on the last date written below.

CONSULTANT, CONTRACTOR OR VENDOR:	**CITY OF SUMNER:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	By:_____ *(signature)* Print Name: Kathy Hayden Its Mayor *(Title)* DATE:_____
CITY OF SUMNER:	**APPROVED AS TO FORM:**
By:_____ *(signature)* Print Name: Jason Wilson Its City Administrator *(Title)* DATE:_____	_____ Sumner City Attorney

EXHIBIT A

Project Scope of Work

Supplement

July 2023

Construction Services

This supplement will provide construction management services for the construction contract to complete the City of Sumner – Town Center Utility and Woonerf Project (hereinafter called "Project"). City of Sumner project number CIP 21-08. These services will include project management, inspection, and contract administration during the construction of the project, as detailed below KPG Psomas ("Consultant") will provide to the City of Sumner, Washington ("City") construction management for the project. A detailed scope for the Contract follows:

I. INTRODUCTION

Amendment #3 to the Contract assumed construction of the project would be complete June 7th, 2023 based on the available information at the time it was submitted. The construction contract finish date has been pushed back for a variety of reasons and project difficulties. Additionally, the contractor has exceeded the contract working days. CIPP is potentially scheduled for August and final seeding is scheduled for September. The contractor has not yet provided a schedule to complete these items. Based off current projections, the project is now scheduled to be complete in September at the earliest. We anticipate construction services will be needed into the middle of October. This supplement assumes required efforts will continue to trend down as the assumed Physical Completion date approaches.

The following scope of services and associated costs are based upon the assumptions outlined below.

Assumptions:

- This supplement is for a part-time project manager, a part-time resident engineer at 20 hours/ week, a part-time documentation specialist at 20 hours/week, and one part-time inspector during construction and punchlist activities. The level of services is based on a projected completion date of September 29, 2023. This scope covers **59 working days** from July 26th, 2023 to October 13th, 2023. It is anticipated that site observation will be part-time for punchlist work and full-time for any remaining major items.

- Services will be performed in general accordance with the Local Agency Guidelines (LAG), the interlocal Agreements between ("Utilities") (if applicable), the City, and the WSDOT Construction Manual.

- Services considered incidental to this work include management of temporary construction licenses secured by the City. The Consultant will also direct the work of the Contractor consistent

with said licenses as well as the terms of any easements secured for project improvements.

- Hours of work. Work is anticipated to take place during daylight hours on a single shift of up to 8 hours per day, 5 days per week. No night shift work related to this project is included in this scope and budget. Any night shift work shall be negotiated as requested by the Project.

- Field office: No field office support is included in this agreement.

II. SCOPE OF WORK

TASK 1 – MANAGEMENT/COORDINATION/ADMINISTRATION

Provide overall project management, coordination with the City, monthly progress reports, and invoicing. This effort will include the following elements.

- Organize and support work for project staff.
- Review monthly expenditures, prepare invoice and submit project progress letter to the City.

TASK 2 – CONSTRUCTION MANAGEMENT AND ADMINISTRATION

Construction Management and Office Support Services:

Document Control. Original documentation will be housed at the Consultant's office, and filed in accordance with standard filing protocol.

Project Coordination: Liaison with the City on a regular basis to discuss project issues and status. Coordinate with utilities, and community outreach issues as requested by the City.

Plan Interpretations: Provide technical interpretations of the drawings, specifications, and contract documents, and evaluate requested deviations from the approved design or specifications. Coordinate with the City for resolution of issues involving scope, schedule, and/or budget changes.

Weekly Meetings: Lead weekly meetings, including preparation of agenda, meeting minutes, and distribution of minutes to attendees. Outstanding issues to be tracked on a weekly basis.

Initial Schedule Review: Perform detailed schedule review of contractor provided CPM for conformance with the contract documents.

Monthly Pay Requests: Prepare monthly requests for payment, review with the City and Contractor and approve, as permitted. Utilize City provided format for pay estimates, or Consultant format.

Submittals: Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other submittals from the Contractor for compliance with the contract documents. Key submittals to be transmitted to the City for their review and approval. Submittals shall be logged and tracked.

Request for Information (RFI): Review and respond to RFI's. RFI's shall be logged and tracked.

Certified Payroll: City shall take lead on verification of subcontractors and tracking of Certified Payrolls.

Change Orders: Develop change orders, provide technical assistance to negotiate change orders, and

assist in resolution of disputes which may occur during the course of the Project. It is recognized any change orders to the City's Contractor that extend time for the Contractor shall also be reflected in this agreement to extend time for the Consultant.

Community Communication: The City shall take lead on community Communications.

Project Closeout: Documentation necessary for closeout will be provided upon Physical Completion.

Legal Support: In the event of a claim on the project, KPG will support City requests as needed.

TASK 3 – FIELD INSPECTION

Field Inspection:

The Consultant shall provide the services of one part-time inspector to monitor the progress of the work. Construction staff shall oversee the following items of work, on the project site, and will observe the technical progress of the construction, including providing day-to-day contact with the Contractor and the City.

The presence of the Consultant's personnel at the construction site is for the purpose of providing to the City a greater degree of confidence that the completed work will generally conform to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. The Consultant's personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The Consultant will endeavor to protect all parties against defects and deficiencies in the work of the Contractor, but cannot guarantee the Contractor's performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the Contractor and any Subcontractors.

Field inspection staff will perform the following duties as a matter of their daily activities:

i. Prepare daily construction reports detailing the Contractor's operations performed for each day the Contractor is on-site; measure the quantities of materials installed, log equipment and staff used, and other associated information necessary to develop monthly pay estimates.

ii. Respond to questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the Contractor, including response to related questions from adjacent property owners and the general public.

iii. Prepare field records and documents to help assure the project is administered in accordance with funding requirements.

iv. Provide periodic photographs during the course of construction. Photographs will be in digital format and cataloged by date. A series of post construction photographs will also be provided to the City in digital format.

v. Coordinate with the contractor-provided surveyor and verify general adequacy of surveying provided.

vi. Coordinate with the City utility and traffic signal operations and maintenance personnel as needed.

Substantial Completion: Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punchlist' of items to be completed. A punchlist and Certificate of Substantial Completion will be prepared by the Consultant and issued by the City.

MANAGEMENT RESERVE

The services described under this task, and any other additional services requested by the City, will be performed only when authorized by the City. Authorization to perform additional services will be in the form of a supplement to this agreement, specifying the work to be performed, and basis of payment.

- Provide any additional services resulting from changes in scope or design of the project. Changes include, but are not limited to, changes in size, complexity, the schedule, character of construction, or method of financing.

- Preparation of award submittal for APWA, ASCE, and other agencies.

- Provide claims analysis and assistance in resolving claims that are protracted in nature and beyond the scope of the change order process described herein.

- Ribbon Cutting Ceremony: Conduct a ribbon cutting ceremony that provides information about the project elements and schedule, and that provides information about how to stay informed through the project. Handouts to be prepared for this task. Refreshments, tables, and other necessary items to be provided by the Consultant.

- Other activities deemed necessary by the City.

III. DELIVERABLES

i. Daily Reports
ii. Construction Photographs – 1 set, including preconstruction photographs
iii. Weekly meeting minutes
iv. Certificate of Substantial Completion with punchlist
v. Monthly Contractor pay requests
vi. Physical completion letter and recommendation of final acceptance letter – BY CITY
vii. All project records at the completion of the contract, including submittals, RFI's, change orders, correspondence, and other information.

EXHIBIT D

PRIME CONSULTANT COST COMPUTATIONS
Client: City of Sumner
Project Name: Academy Bike Lanes and Town Center CM
KPG Psomas Inc. Project Number: 20076
59 additional working days to close the project in October
Date: 7/26/23

Task No.	Task Description	Labor Hour Estimate								Total Hours and Labor Cost Computations by Task
		Principal	Construction Manager	Resident Engineer	Construction Observer II	Document Control Specialist I	Document Control Admin	Senior Admin	Hours	
		285	185	155	130	121	104	133		
Task 1 - MANAGEMENT / COORDINATION / ADMINISTRATION										
1.1	Project Management and Administrative Services	12	8						20	$ 4,900.00
1.2	Prepare, review and submit monthly expenditures							4	4	$ 532.00
	Task Total	**12**	**8**	**0**	**0**	**0**	**0**	**4**	**24**	**$ 5,432.00**
Task 2 - Construction Management (CM) and Administrative Services.										
4.1	Construction Management and Office Support @4 hrs/day			236		236			472	$ 65,136.00
4.3	Certifiied Payrolls						8		8	$ 832.00
	Task Total	**0**	**0**	**236**	**0**	**236**	**8**	**0**	**480**	**$ 65,968.00**
Task 3 - Field Inspection										
5.1	Construction Inspection @4 hrs/day through September				196				196	$ 25,480.00
	Task Total	**0**	**0**	**0**	**196**	**0**	**0**	**0**	**196**	**$ 25,480.00**
	Total Labor Hours and Fee	**3,420**	**1,480**	**36,580**	**25,480**	**28,556**	**832**	**532**	**700**	**$ 96,880.00**
Subconsultants										
	Subtotal									$ -
	Administrative Charge (5%)									**$ -**
	Total Subconsultant Expense									**$ -**
Reimbursable Direct Non-Salary Costs										
	Mileage at current IRS rate									
	Reproduction Allowance									$ -
	Total Reimbursable Expense									**$ -**
	Total Estimated Budget									**$ 96,880.00**

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3506

SUBJECT: Resolution No. 1661 - Pollution Prevention Assistance Partnership / Interagency Agreement Authorization

CATEGORY: Consent

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Resolution No. 1661 - Pollution Prevention Assistance Partnership Interagency Agreement Authorization

STAFF CONTACT: Courtney Littrell, Engineering Specialist

SUMMARY BACKGROUND:
The City of Sumner has participated as a partner in the Washington State Department of Ecology's statewide "Pollution Prevention Assistance Program" since 2011. Through this partnership, we have been able to provide free assistance to businesses throughout the City on the proper management of hazardous waste. This contract will provide funding for the City to continue this work and complete an additional 120 visits between July 2023 and July 2024. The total agreement amount is $170,500.00.

COUNCIL COMMITTEE/STUDY SESSION: **Public Works Committee**
MEETING/STUDY SESSION DATE: 8/1/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion to adopt Resolution No. 1661 authorizing the Mayor to enter into an interlocal agreement between the City of Sumner and the Washington State Department of Ecology related to the Pollution Prevention Assistance Program in a form as approved by the City Attorney.

RESOLUTION NO. 1661
CITY OF SUMNER, WASHINGTON

A RESOLUTION OF THE CITY OF SUMNER, WASHINGTON, AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SUMNER AND THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR THE POLLUTION PREVENTION ASSISTANCE PROGRAM.

WHEREAS, the City of Sumner and the Washington State Department of Ecology seek to enter into an intergovernmental agreement enabling the City of Sumner to provide Pollution Prevention Assistance to small business within the City of Sumner; and

WHEREAS, the City Council has determined it to be in the best interest of the City of Sumner to enter into said intergovernmental agreement; and

WHEREAS, the City of Sumner is authorized, pursuant to Chapter 39.34 RCW, Interlocal Cooperation Act, to enter into such agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON:

Section 1. **Authorization.** That the City Council hereby approves the Interlocal Agreement between the City of Sumner and the Washington State Department of Ecology for the purpose of providing Pollution Prevention Assistance to small businesses, a copy of which is attached and incorporated by reference and authorizes the Mayor to sign said agreement on behalf of the City of Sumner substantially in a form as approved by the City Attorney.

Section 2. **Corrections by City Clerk or Code Reviser**. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this resolution, including but not limited to the correction of clerical errors; or references to other local, state, or federal laws, codes, rules, or regulations.

Section 3. **Effective Date.** This resolution shall take effect and be in force immediately upon passage by the City Council.

ADOPTED AND APPROVED this _____ day of ____, 20_____.

_____
Kathy Hayden, Mayor

Attest:

_____
Michelle Converse, City Clerk

Approved as to form:

_____
Andrea Marquez, City Attorney

DEPARTMENT OF ECOLOGY
State of Washington

IAA No. C2400050

INTERAGENCY AGREEMENT (IAA)

BETWEEN

THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

AND

City of Sumner

THIS INTERAGENCY AGREEMENT ("Agreement" or "IAA") is made and entered into by and between the state of Washington, Department of Ecology, hereinafter referred to as "ECOLOGY," and the City of Sumner hereinafter referred to as the "CONTRACTOR," pursuant to the authority granted by Chapter 39.34 of the Revised Code Washington, Interlocal Cooperation Act.

THE PURPOSE OF THIS AGREEMENT is for the CONTRACTOR to provide Pollution Prevention Assistance (PPA) Specialists who will provide technical assistance and education outreach to small businesses in an effort to prevent pollution of waters of the state as part of the Pollution Prevention Assistance Partnership (formerly known as the Local Source Control (LSC) Partnership).

WHEREAS, ECOLOGY has legal authority (RCW 70A.214 and RCW 70A.300) and the CONTRACTOR has legal authority (13.48.900 Source Control Responsibility, requiring businesses to assess potential pollutants and develop pollution prevention plans. The city provides voluntary technical assistance for this.) that allows each party to undertake the actions in this agreement.
THEREFORE, IT IS MUTUALLY AGREED THAT:

1. SCOPE OF WORK

The CONTRACTOR shall furnish the necessary personnel, equipment, material and/or service(s) and otherwise do all things necessary for or incidental to the performance of the work set forth in Appendix A, *Statement of Work,* and Appendix B, *Budget Detail,* attached hereto and incorporated herein.

2. PERIOD OF PERFORMANCE

The period of performance of this IAA will commence on **July 1, 2023**, and be completed by **June 30, 2025**, unless the Agreement is terminated sooner as provided herein. Amendments extending the period of performance, if any, shall be at the sole discretion of ECOLOGY.

3. COMPENSATION

Compensation for the work provided in accordance with this IAA has been established under the terms of RCW 39.34.130 and RCW 39.26.180(3). This is a performance-based agreement, under which payment is based on the successful completion of expected deliverables.

Compensation for this agreement will be release in two 1-year phases. Phase One is limited to 50 percent of the project budget and Phase Two can be up to the remaining percentage of the project budget. On or before August 15, 2024, Ecology will evaluate available funding and the CONTRACTOR's performance and progress towards meeting contract deliverables and spending. To release the second-year funding the CONTRACTOR, by June 30, 2024, must:

1. Complete a minimum of 40% of the total site visit deliverables, and
2. Utilize 40% of the total compensation award.

If performance obligations have been met and funding is available per ECOLOGY's determination, the full year 2 budget award will be considered available. Should the CONTRACTOR fail to make satisfactory progress or funding is limited, ECOLOGY will determine the appropriate additional funding to release for year 2 of the contract. ECOLOGY will consider various factors in determining year 2 funding including, but not limited to, available funding, performance to date, staff vacancies, time and costs spent on unique program elements, and potential circumstances beyond the CONTRACTOR's control.

The source of funds for this IAA is **Model Toxics Control Operating Account (23P), Model Toxics Capital Account (23N).** Both parties agree to comply with all applicable rules and regulations associated with these funds.

The parties have determined that the cost of accomplishing the work identified herein will not exceed One hundred seventy thousand, five hundred dollars and zero cents ($170,500.00), including any indirect charges. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree via an amendment to a higher amount. Compensation for services shall be based on the terms and tasks set forth in Appendix A, *Statement of Work*. ECOLOGY will not make payment until it has reviewed and accepted the work.

Travel expenses (meals, lodging, and mileage) will be reimbursed according to current state rates at the time of travel, not to exceed the budget (see Appendix B, *Budget Detail*).

Purchase of source control tools or equipment (e.g., spill kits, plastic drum covers) and promotional items for distribution to businesses under this contract must be listed in *Goods and Services budget* or *Equipment budget* in Appendix B. Any purchases of equipment or good and services over $1,000.00 not specifically listed in Appendix B must be pre-approved by ECOLOGY. When the agreement expires, or when the equipment is no longer needed for the originally authorized purpose (whichever comes first) the disposition of equipment shall be at ECOLOGY's sole discretion.

Indirect rates will be paid as indicated in Appendix B, *Budget Detail*. Changes to the indirect rate may be considered by ECOLOGY. CONTRACTOR shall provide supporting documentation necessitating the change to ECOLOGY. ECOLOGY's approval will be communicated by e-mail. An increase in indirect rate does not increase the total contract award. Changes are handled by adjusting the budget between categories listed in Appendix B. Changes to the total budget cost of the contract shall require an amendment. The budget referenced in Appendix B may be adjusted between categories with ECOLOGY's preapproval, and if the total budget is not exceeded.

ECOLOGY may, at its sole discretion, terminate or suspend this Contract, or withhold payments claimed by the CONTRACTOR for services rendered, if the CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

4. BILLING AND PAYMENT PROCEDURE

Payment requests shall be submitted on state form, Invoice Voucher A19-1A. Invoice voucher shall reference the Agreement (IAA) number and clearly identify those items that relate to performance under this Agreement. Invoices shall describe and document to ECOLOGY's satisfaction a description of the work performed, the progress of the work, and related costs. Each invoice shall bill for actual hours worked during the quarter. The actual hours billed may be higher (if the total budget compensation award is not exceeded) or lower than the FTE estimate in Appendix A, *Statement of Work.* Attach supporting documentation to the invoice. See Appendix A, *Statement of Work*, Sections IV, V and X for additional information (and Section XI, Small Change Voucher Program if applicable).

Send invoices to:

State of Washington
Department of Ecology
Hazardous Waste & Toxics Reduction Program
Attn: Andrew Maher
4601 N. MONROE ST.
SPOKANE, WA 99205

OR

Electronically submit invoices to:
Andrew Maher at anma461@ecy.wa.gov **AND**
Kristine Ray at kray461@ecy.wa.gov

Payment requests will be submitted on a Quarterly basis. Invoices must be submitted by the dates outlined in Appendix A, *Statement of Work*, Section X, Table 8. Upon expiration of this Agreement, any claim for payment not already made shall be submitted to ECOLOGY within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

Payment will be made within thirty (30) days of submission of a properly completed invoice (form A19-1A) with supportive documentation. All expenses invoiced shall be supported with copies of invoices paid.

Payment will be issued through Washington State's Office of Financial Management's Statewide Payee Desk. To receive payment, CONTRACTOR must register as a statewide vendor by submitting a statewide vendor registration form and an IRS W-9 form at website, https://ofm.wa.gov/it-

systems/statewide-vendorpayee-services. For questions about the vendor registration process, contact Statewide Payee Help Desk at (360) 407-8180 or email PayeeRegistration@ofm.wa.gov.

5. ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

6. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

7. ASSURANCES

Parties to this Agreement agree that all activity pursuant to this agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations.

8. CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

9. DISPUTES

Parties to this Agreement shall employ every effort to resolve a dispute themselves without resorting to litigation. In the event that a dispute arises under this Agreement that cannot be resolved among the parties, it shall be determined by a Dispute Board in the following manner. Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, agreement terms, and applicable statutes and rules, and then make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto, unless restricted by law. The cost of resolution will be borne by each party paying its own cost. As an alternative to this process, if state agencies, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control. The parties may mutually agree to a different dispute resolution process.

10. FUNDING AVAILABILITY

ECOLOGY's ability to make payments is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the Agreement, in whole or part, for convenience or to renegotiate the Agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the Agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions, although ECOLOGY will make a reasonable attempt to provide notice.

In the event of termination or suspension, ECOLOGY will reimburse eligible costs incurred by the CONTRACTOR through the effective date of termination or suspension. Reimbursed costs must be agreed to by ECOLOGY and the CONTRACTOR. In no event shall ECOLOGY's reimbursement exceed ECOLOGY's total responsibility under the agreement and any amendments.

11. GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be the Superior Court for Thurston County.

12. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

13. ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

a. Applicable federal and state of Washington statutes, regulations, and rules.

b. Mutually agreed upon written amendments to this Agreement.

c. This Agreement, number C2400050.

d. Appendix A, *Statement of Work*.

e. Appendix B, *Budget Detail.*

f. Appendix C, *Special Terms and Conditions.*

g. Any other provisions or term of this Agreement, including materials incorporated by reference or otherwise incorporated.

14. RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents, and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These materials shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other materials relevant to this Agreement must be retained for six years after expiration of this Agreement. The Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period. Each party will utilize reasonable security procedures and protections for all materials related to this Agreement. All materials are subject to state public disclosure laws.

15. RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

16. RIGHTS IN DATA

Unless otherwise provided, data which originates from this Agreement shall be "work made for hire" as defined by the United States Copyright Act, Title 17 U.S.C. section 101 and shall be owned by state of Washington, ECOLOGY. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, and register these items, and the ability to transfer these rights.

17. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

18. SUBCONTRACTORS

CONTRACTOR agrees to take complete responsibility for all actions of any Subcontractor used under this Agreement for the performance. When federal funding is involved, there will be additional COTRACTOR and subcontractor requirements and reporting.

Prior to performance, all subcontractors who will be performing services under this Agreement must be identified, including their name, the nature of services to be performed, address, telephone, WA State Department of Revenue Registration Tax number (UBI), federal tax identification number (TIN), and anticipated dollar value of each subcontract. Identify whether subcontractor is certified with OMWBE, WA Veterans, or is a WA small business. Provide such information to ECOLOGY's Agreement manager.

19. SUSPENSION FOR CONVENIENCE

ECOLOGY may suspend this Agreement or any portion thereof for a temporary period by providing written notice to the CONTRACTOR a minimum of seven (7) calendar days before the suspension date. CONTRACTOR shall resume performance on the first business day following the suspension period unless another day is specified in writing by ECOLOGY prior to the expiration of the suspension period.

20. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

21. TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement without cause upon thirty (30) calendar day prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

22. WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a written amendment to this Agreement signed by an authorized representative of the parties.

23. AGREEMENT MANAGEMENT

The representative for each of the parties shall be responsible for and shall be the contact person for all communications, notifications, and billings questions regarding the performance of this Agreement. The parties agree that if there is a change in representatives, they will promptly notify the other party in writing of such change, such changes do not need an amendment.

The ECOLOGY Representative is:

Name: Andrew Maher
Address: 4601 N. Monroe Street
Spokane, WA 99205
Phone: (509) 290-7806 cell
Email: anma461@ecy.wa.gov

The City of Sumner Representative is:

Name: Courtney Littrell
Address: 1104 Maple Street
Sumner, WA 98390
Phone: (253) 299-5710
Email: courtneyl@sumnerwa.gov

24. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

IN WITNESS WHEREOF, the parties below, having read this Agreement in its entirety, including all attachments, do agree in each and every particular as indicated by their signatures below.

State of Washington
Department of Ecology

By:

_____
Signature Date

Katrina Lassiter
_____
Print Name

Hazardous Waste and Toxics Reduction Program Manager
_____
Title

City of Sumner

By:

_____
Signature Date

Kathy Hayden
_____
Print Name

Mayor
_____
Title

APPENDIX A

STATEMENT OF WORK

Section I. Introduction

This Statement of Work is for the 2023 – 2025 biennial Interagency Agreement (IAA) for the Pollution Prevention Assistance (PPA) Partnership, which is overseen by the Washington State Department of Ecology (ECOLOGY), Hazardous Waste & Toxic Reduction Program.

The mission of the Pollution Prevention Assistance (PPA) Partnership is:

"We protect Washington's residents and environment by helping small businesses reduce toxic chemical use, safely manage dangerous waste, and keep stormwater free of pollutants."

The CONTRACTOR, through their Pollution Prevention Assistance (PPA) program, will conduct multimedia source control site visits and pollution prevention activities to businesses that are small quantity generators (SQGs) of dangerous waste. In this context an SQG is any business, non-profit, facility, school, or other organization that generates less than 220 pounds of dangerous waste per calendar month and less than 2.2 pounds of extremely hazardous waste per calendar month. The site visits, along with other pollution prevention activities conducted by the CONTRACTOR, will be designed to reduce or eliminate dangerous waste and other pollutants at the source through best management practices that prevent spills and discharges to ground, air, and water (especially to industrial wastewater and stormwater).

To further facilitate the reduction or elimination of toxic chemical use at the source, the CONTRACTOR will seek and discuss opportunities to assist businesses with switching processes, products, or equipment to use effective safer alternatives. This program will be known as the "Product Replacement Program" or PRP.

PPA work is expected to fall within these general proportions:	
Technical Assistance (TA) Visits (Approximately 10 – 15% of TA Visits may involve PRP) (See Section III)	65%
Unique Program Elements (See Section II)	20%
Training (See Section VIII)	10%
Other (admin, staff meetings, etc.)	5%

The CONTRACTOR is expected to:

- Interact with other partners within the PPA Partnership to provide technical assistance and training and share resources and experiences.
- Set up alerts to receive notifications when requests for information have been made on the PPA Partnership SharePoint Discussion Board.
- Ensure at least one staff member is available to provide timely information and feedback to ECOLOGY's PPA Coordinator and to attend mandatory meetings and trainings. Feedback on Partnership goals, direction, and projects will occasionally be requested via online surveys and email requests.

- Act in a professional and ethical manner and shall avoid any conflict of interest that might influence the CONTRACTOR's actions or judgement.
- Disclose immediately to ECOLOGY any interest, direct or indirect, that might be construed as prejudicial in any way to the professional judgment of the CONTRACTOR in rendering service under this Agreement.

Key staff, estimated FTE, and their roles are identified in Table 1. Please note, this is an estimate of time dedicated to this contract over the full two years of the contract; quarterly invoicing must reflect actual hours worked even if hours are higher or lower than the FTE estimate.

Table 1: Key Staff

Staff Name	Estimated FTE	Role
Courtney Littrell	0.20	Education & Outreach / Contract Management
TBD	0.80	PPA Specialist

Section II. Unique Program Elements

The CONTRACTOR will conduct the unique program elements for their PPA program as outlined in Table 2, below.

Table 2: Unique Program Elements

Unique Program Element	Description	Deliverable(s)
Case Study	Present a case study at a PPA All-Staff or PPA Monthly Webinar. Provide lessons learned to the partnership. Plan on about thirty minutes total, depending on the case study, to present the case and the facts to the partnership, discuss with the partnership, and answer questions.	Present a case study at either: • A.) PPA All-Staff meeting **AND/OR** • B.) PPA Monthly Webinar.
Business Sector Workshop	Participate in existing meetings with businesses in the Manufacturing Industrial Center, providing short periodic information on relevant rotating topics.	• Attend at least 6 business meetings with materials and information to share related to local businesses and proper waste management and stormwater best management practices. • Share any materials developed for meetings on PPA SharePoint. • Present at a PPA meeting (either all staff or quarterly webinar)

Section III. Technical Assistance Visits

The CONTRACTOR will conduct technical assistance site visits to small quantity generators of dangerous wastes, and to businesses or organizations that have the potential to pollute stormwater. Approximately 60% of the visits will be Initial Visits. If Initial Visits fall below 60%, combined Initial Visits and Follow-Up Visits must account for at least 80% of the total visits. While necessary, efforts should be made to minimize Screening Visits.

- An **Initial Visit** occurs at the actual site and results in a completed "Basic Checklist" (or enough data gathered to complete data entry into the LSC Database). It will either be the first complete visit to a site OR the first visit in two (2) or more years.
- A **Screening Visit** is an attempted visit to the site, but the business declined or put off the visit, **OR** you were interrupted during the visit and were unable to gather complete data, **OR** you discover that the facility does not exist anymore **OR** you discover that the business does not qualify for a visit under the PPA program (e.g., it is a medium or large quantity generator).
- A **Follow-Up Visit** should occur within 90 days of the Initial Visit. Follow-up should generally be done through an on-site visit. However, a phone conversation, mail or email exchange may count as a Follow-Up Visit if it includes confirmation that the issues that were identified in the initial visit were resolved. Follow-Up Visits must be conducted to resolve High Priority Environmental Issues (See Section Below).

Table 3: Total Number of Technical Assistance Visits

Number of Total Visits	**120**
Target for Initial Visits (60% of Total)	**72**

Business sectors, organizations, waste streams, and/or geographical area that will provide a focus for the 2023 – 2025 technical assistance visits are listed in Table 4.

ECOLOGY may direct a portion of technical assistance visits towards specific priority sources or contaminants.

Table 4: Technical Assistance Targets

Technical Assistance Targets	Rationale for Selection
Fleet Vehicle Yards	Potential pollutants are BOD, Metals, Oil & grease, TSS, caustics, Organo-chemicals (benzene, vehicle fluids), and solvents. Fleet yards make up a significant portion of industrial use in the City.
Vehicle / Equipment Repair, leasing	Potential pollutants are BOD, Metals, Oil & grease, TSS, caustics, Organo-chemicals (benzene, vehicle fluids), and solvents. Fleet yards make up a significant portion of industrial use in the City.

<u>High Priority Environmental Issues</u>

The below list is ECOLOGY's High Priority Environmental Issues list because they have the potential to directly impact human health and/or the environment. If one or more of these issues are found during a site visit, a Follow-Up Visits is justified but not necessarily required. The severity of the issue will help

determine if a Follow-Up Visit is necessary. A Follow-Up Visit to a business for other (non-high priority) issues is at the discretion of the CONTRACTOR.

When unable to resolve High Priority Environmental Issues, the Pollution Prevention Specialists will refer the issue to ECOLOGY or another appropriate agency. Serious concerns about impacts to human health and/or the environment warrant a consultation with ECOLOGY or other regulatory agencies to determine whether the issue needs to be referred.

High Priority Environmental Issues List:

- Hazardous waste being improperly designated.
- Hazardous waste being improperly disposed.
- Hazardous products / wastes being improperly stored.
- Compromised dangerous waste containers need to be repaired or replaced.
- Illegal plumbing connection.
- Illicit discharge of wastewater to storm drain.
- Improperly stored containerized materials.
- Improperly stored non-containerized materials.
- Leaks and spills in dangerous waste storage areas.

Visit Guidance

The following guidance applies to technical assistance visits, unless otherwise discussed with ECOLOGY:

Prior to the Visit:

- Coordinate with other entities that may be conducting business visits in the area to reduce potential "inspection fatigue".
- Check with ECOLOGY Urban Waters Staff (where applicable) to ensure that the business is not currently being visited by Urban Waters Staff.
- Research site and issues prior to the visit using a combination of data sources such as LSC Database for previous visits or visit to similar businesses, industry resources, news articles, etc.
- To the extent possible, verify the site is not a medium or large quantity generator.
- Check to see if a sector specific Checklist or Tip Sheet is available on the PPA Partnership SharePoint site to help guide the visit.

During the Visit:

- Provide technical assistance on proper management of dangerous waste, prevention of stormwater pollution, spill prevention, and reduction of hazardous substance use (when applicable).
- Ensure, at a minimum, all items on the Basic Checklist are reviewed.
- If while at the site, it becomes apparent the business is a medium or large quantity generator, either complete the visit and count it as a screening visit, OR formally refer the dangerous waste portion to ECOLOGY to count it as a full initial visit.
    - This site should not be scheduled for future visits, unless it is likely their generator status has changed to qualify as an SQG.
- If appropriate, encourage businesses to participate in local green business programs, such as the EnviroStars business certification program, EnviroCertified, or other green business programs.

- If a Product Replacement Program (PRP) opportunity exists for the business, discuss the opportunity, terms and conditions, and steps to qualify as outlined in Appendix A, *Statement of Work*, Section V, Product Replacement Program.
- Discuss spill response preparedness and offer spill kit for developing a plan. Funds can be used to purchase spill kits to provide to businesses. Occasionally, ECOLOGY will provide spill kits through a bulk order if funding is available.
- Photograph observed issues for before and after photos to use in writing up case studies.
- Activities that may be beneficial during the visit include, but are not limited to:
    - Walking the site (interior and exterior).
    - Checking storm drains.
    - Checking for illicit connections.
    - Checking dumpster and waste storage.
    - Providing handouts with technical information and guidance.
    - Ensuring necessary permits are in place.

End of Visit / After Visit:

- Provide written follow-up to the business to document the results of the visit. This can be done by leaving a copy of the checklist or other documentation with the business at the end of the visit, by using a commitment postcard (format available in Education & Outreach Documents on PPA Partnership SharePoint), or by sending follow-up letters/emails, or alternatively by sending a "thank you" postcard if no issues were identified.
- If necessary, coordinate with other agencies (e.g., the fire marshal, code enforcement, stormwater, wastewater treatment, and/or moderate risk waste staff) to ensure that the information you are providing is consistent with the other agency's regulations and/or best management practices.
- PPA Specialists will make referrals to ECOLOGY as needed and report results.

Section IV: Partnership Branding and Outreach

When unique outreach or education materials are developed by the CONTRACTOR using PPA Partnership funds, a draft must be sent to ECOLOGY for review and approval. To the extent feasible, the CONTRACTOR must utilize the Partnership's branding tools and templates available to produce these materials. The intent of this requirement is to facilitate a unified branding image and consistent messaging across the Partnership. The Partnership logo and other branding resources are available on the PPA Partnership SharePoint site.

It may be appropriate to include funding acknowledgement on some outreach materials. The CONTRACTOR will consult with ECOLOGY's PPA Partnership Coordinator to determine whether funding acknowledgement is required.

Finalized materials which may be useful to other Partnership contractors should be provided for upload to the Education & Outreach Document Library on the PPA Partnership SharePoint Site.

Each CONTRACTOR must maintain a PPA webpage which meets the minimum requirements. See PPA Partnership SharePoint site for requirements (Link in Appendix A, *Statement of Work* section XII Resources).

Section V: Product Replacement Program (PRP)

The Product Replacement Program (PRP) is designed to eliminate Persistent, Bio-accumulative, Toxic (PBT) chemicals from use in commerce. The PRP removes and replaces PBT chemicals present in products, processes, or technologies to help prevent toxics from entering the environment. One of the best and most effective ways to prevent further environmental contamination, protect water quality, and reduce human health risk, is to eliminate these toxic chemicals at the sources. The PRP assists businesses with switching to safer alternatives.

PPA contractors are integral to the PRP. The CONTRACTOR will seek and discuss opportunities to assist businesses with switching processes, products, or equipment to use effective safer alternatives.

The CONTRACTOR will assist ECOLOGY with the following programs:

- Replacement of dry-cleaning technology that uses perchloroethylene by visiting dry cleaners, discussing the program, assisting with required paperwork, and completing the final visit after new machine installations. Guidelines for this program are outlined in separate documents and posted on the PPA Partnership SharePoint.
- Degreasers in parts washing systems in the automotive repair sector by visiting automotive repair facilities, discussing the program, assisting with required paperwork, and completing the final visit after new machine installation. Guidelines for this program are outlined in separate documents and posted on the PPA Partnership SharePoint.
- Promoting proper management and recycling of mercury containing thermostats through the national program Thermostat-Recycle.Org

Additional takeback and replacement programs ECOLOGY is exploring for addition to the PRP include, but are not limited to:

- BPA Thermal receipts replacement program to replace thermal receipts which contain BPA.
- Flame retardants in foam and equipment at gymnasiums, play centers, and recreations facilities.
- PCB containing light ballasts in public schools.
- Public School Laboratory Clean-Outs
- PFAS-containing firefighting foam takeback program. Currently ECOLOGY is working directly with fire departments, but this program may be expanded to businesses with PFAS-containing fire suppression systems.

ECOLOGY, in collaboration with the PPA Partnership, will develop procedures and criteria, which must be met for a business to receive reimbursement for any of the chemicals or products included in the PRP. PRP payments for reimbursement to the business will come directly from ECOLOGY and are not included with the CONTRACTOR's funding compensation associated with this contract.

The PRP reimbursement payment will be made through direct disbursement from ECOLOGY to the business implementing the product or equipment replacement. To facilitate these payments, the CONTRACTOR must assist ECOLOGY in maintaining records indicating how the business qualified for the PRP reimbursement per the PRP program's eligibility criteria. Eligibility criteria will be developed by ECOLOGY and the Product Replacement Program Committee for each type of reimbursement offered.

The CONTRACTOR will provide technical assistance to the businesses to help ensure the business qualifies for a PRP reimbursement payment from ECOLOGY by completing the following steps, unless

otherwise specified in guidelines developed specific to an individual reimbursement. Specific requirements for individual reimbursement programs will be maintained on the PPA Partnership SharePoint site.

- CONTRACTOR conducts technical assistance visit and provides business with recommendations to reduce or eliminate a qualifying chemical or product. These recommendations must be recorded in the LSC Database.
- CONTRACTOR must communicate to the businesses that it may take up to 4 months to receive payment from ECOLOGY after purchase and that the business must respond to inquiries from ECOLOGY or the Office of Financial Management (OFM) in a timely manner to avoid delays in payment.
- CONTRACTOR assists businesses as needed with paperwork required to apply for reimbursement, including a state payee registration form.
- Business purchases approved product or equipment and converts fully to utilization of new product or equipment in accordance with the eligibility criteria for the PRP reimbursement.
- Business submits receipts for the product or equipment purchase and installation to ECOLOGY's PRP Coordinator. This submittal may be facilitated through the CONTACTOR's representative for some PRP projects.
- CONTACTORS may be requested by ECOLOGY to verify through a site visit and review of records that product or equipment has been installed per PPA Specialist or ECOLOGY recommendations, old product or equipment has been legally disposed of or decommissioned, and all other eligibility criteria have been met.

For information about an optional voucher program that the CONTRACTOR can provide directly to a business, see Appendix A, *Statement of Work*, Section XI, Small Change Voucher Program.

Section VI: Timeline

Table 5: Timeline

Time Period	Goal for # of Site Visits	Unique Program Element Activities	Technical Assistance Target Activities
July 1, 2023 – December 31, 2023	30	Form and deploy an Environmental Technical Assistance Coordination team	Industrial wastewater permitees, food establishments, fleet yards, maintenance-repair facilities, and businesses that have notable potential pollutant sources.
January 1, 2024 – June 30, 2024	30	Form and deploy an Environmental Technical Assistance Coordination team	Industrial wastewater permitees, food establishments, fleet yards, maintenance-repair facilities, and businesses that have notable potential pollutant sources.
July 1, 2024 – December 31, 2024	30	Form and deploy an Environmental Technical Assistance Coordination team	Industrial wastewater permitees, food establishments, fleet yards, maintenance-repair facilities, and businesses that have notable potential pollutant sources.

January 1, 2025 – June 30, 2025	30	Form and deploy an Environmental Technical Assistance Coordination team	Industrial wastewater permitees, food establishments, fleet yards, maintenance-repair facilities, and businesses that have notable potential pollutant sources.

Section VII: Local Source Control (LSC) Database

Information gathered during technical assistance site visits by the CONTRACTOR must include all the elements that are listed in the most up to date PPA Basic Checklist (check PPA Partnership SharePoint site for details) and be entered into ECOLOGY's LSC database. The following guidance applies to all technical assistance visits, unless other discussed with ECOLOGY:

- Collect enough information to complete all the applicable fields in ECOLOGY's LSC database and enter it into the database ***within 15 workdays*** of the visit.
- If you make a referral to a regulatory agency, enter the information about the referral into the database ***within 15 workdays*** of the referral.
- Ensure that data entry is complete and accurate.
- At a minimum, all elements on the most recent version of ECOLOGY's PPA Basic Checklist must be checked at each business visit. Specialists must attest that they have verified all elements.
    - Additional sector specific checklists are available on the ECOLOGY PPA Partnership SharePoint Site.
    - CONTRACTOR may substitute use of their own version(s) of the checklist(s) if it contains all elements of ECOLOGY's PPA Basic Checklist and has been reviewed and approved by ECOLOGY.
- Refer to the LSC database instructions posted in the database interface or contact ECOLOGY PPA Staff for assistance with database entry.
- If using paper checklists or equivalent documentation, maintain originals in accordance with your local public disclosure laws.

Section VIII: Training

ECOLOGY expects that the CONTRACTOR will provide basic training to the Pollution Prevention Assistance Specialists on topics relevant to their position. ECOLOGY will provide additional training to ensure that CONTRACTOR's staff are properly trained and supported to conduct PPA activities, and that experienced staff are exposed to new information, and have opportunities to share their expertise for the benefit of the PPA Partnership.

ECOLOGY staff and experienced PPA Specialists will provide a variety of training support to new PPA staff. ECOLOGY will provide new hires a "welcome email" within the first two weeks of work as a PPA Specialist. This email will provide instructions for accessing the PPA Partnership SharePoint, LSC Database, and guidance on resources and training. All Specialists are expected to create an "alert" for the PPA Partnership SharePoint Discussion Board to receive email alerts at least once per week when topics are posted.

Table 7 below contains a tentative training schedule for monthly webinars and the twice annual All-Staff meetings; ECOLOGY will communicate the final schedule to the CONTACTOR.

New PPA Specialist Training & SharePoint Resources

New PPA specialist training is provided in the form of self-paced online modules available through ECOLOGY's Partnership SharePoint site, web-based new specialist discussion panels, and mentoring. The web-based new specialist discussion panels will be planned and conducted by ECOLOGY staff and include new specialists and experienced PPA specialists who can offer suggestions and feedback to new specialists. The discussion panels are scheduled for the second Thursday of every other month from 10:30 to 12:00. On occasion these meetings will need to be rescheduled to accommodate panelists or new specialists who cannot make the originally scheduled date. ECOLOGY staff will provide as much notice as possible when these panels are rescheduled.

Table 6: New Specialist Discussion Panel Schedule

2023	2024	2025
August 10, 2023	February 8, 2024	February 13, 2025
October 12, 2023	April 11, 2024	April 10, 2025
December 14, 2023	June 13, 2024	June 12, 2025
	August 8, 2024	
	October 10, 2024	
	December 12, 2024	
Attendance Requirement: All new specialists who have not yet attended six (6) discussion panels are required to attend. Panelists are required to attend all discussion panels.		

Field Mentoring & Shadow Workday

The CONTRACTOR will provide training to their new staff to ensure they can perform field work. In addition, ECOLOGY will assign two experienced PPA Specialists as mentors to provide field training and support to a new hire. If available, one mentor will be from the CONTRACTOR's organization and the other mentor from another PPA contractor (partner) jurisdiction in as close a geography as possible. Mentors will be assigned within two weeks of notifying ECOLOGY of new staff hires.

Field mentoring will involve a series of accompanied field visits designed by the mentor and ECOLOGY staff to support the needs of the new hire. When the mentor and new hire determine they are ready, an ECOLOGY staff person will accompany the new hire on a few technical assistance visits in their jurisdiction on a shadow workday, to ensure that they are providing accurate information on proper waste management, spill prevention, storm water pollution prevention, and toxics reduction opportunities. See New Specialist Training Plan (link in Appendix A, *Statement of Work* section XII Resources) for additional details on mentoring and training resources provided to new specialists.

All-Staff Training for all PPA Specialists

All-Staff Trainings will be planned and conducted by teams of PPA Specialists from two or three PPA Partners, who have signed up to plan these trainings as a unique program element. When appropriate, these trainings will be held in-person to facilitate interaction and networking between PPA Specialists, ECOLOGY, and invited presenters.

Training topics at All-Staff Trainings are intended to help new staff become more competent in their work, and experienced staff to gain greater technical depth on relevant topics. ECOLOGY staff will determine the teams, provide initial guidance, review agendas, and provide support for planning and logistics.

Typically, these trainings are held the second Wednesday in September/October and March/April. The in-person trainings are typically scheduled to run between 8:30 a.m. and 3:30 p.m. with overnight travel allowed for jurisdictions if needed (see state travel rules). ECOLOGY must pre-approve overnight travel if it is being charged to the PPA partner budget.

When trainings are held virtually online, the training will typically be scheduled for 8:30 a.m. to 12:00 p.m. across two days, usually a Tuesday and Wednesday.

Attendance Requirement: Unless prior approval has been given by ECOLOGY, it is mandatory for at least one PPA Specialist per jurisdiction to attend the All-Staff Training. This person is responsible for disseminating information back to the PPA Specialists from that jurisdiction. Managers are welcome to attend the All-Staff Trainings but are not required to attend.

Generally, training substitutions are not allowed for the All-Staff Training, however, exceptions may apply. Ecology staff must approve non-emergency absences or training substitutions at least two weeks prior to the training.

Monthly Webinar Trainings

ECOLOGY conducts monthly webinar trainings during most of the months of the year. These sessions are intended to expose PPA Specialists to new information or technical topics relevant to their work. Suggestions on topics and speakers are welcomed from PPA Partners. ECOLOGY will also ask PPA Partners to present on case studies.

These meetings are one and a half hour (1.5 hours) sessions, held on the second Wednesday of the month. Occasionally these sessions will need to be scheduled at alternative times to accommodate speaker availability. Up to eight (8) webinars will be scheduled each year. See Table 7 for the tentative training schedule.

Attendance Requirement: Each PPA Specialist must attend at least six (6) of the eight (8) Webinars each year.

Other trainings, relevant to PPA Specialists' work, may be substituted for up to two of the Webinars. Notification of the substitution must be provided to and pre-approved by the PPA Coordinator at least two weeks in advance of the Webinar that will be missed by the Specialist.

Table 7: Tentative Training Schedule (Subject to Change)

Date	Training Type	Date	Training Type
July 2023	No Training	July 2024	No Training
August 9, 2023	Webinar	August 14, 2024	Webinar
September 13, 2023	Webinar or All-Staff	September 11, 2024	Webinar or All-Staff
October 11, 2023	Webinar or All-Staff	October 9, 2024	Webinar or All-Staff

November 8, 2023	Webinar	November 13, 2024	Webinar
December 13, 2023	Webinar	December 11, 2024	Webinar
January 10, 2024	Webinar	January 8, 2025	Webinar
February 14, 2024	Webinar	February 12, 2025	Webinar
March 13, 2024	Webinar or All-Staff	March 12, 2025	Webinar or All-Staff
April 10, 2024	Webinar or All-Staff	April 9, 2025	Webinar or All-Staff
May 8, 2024	Webinar	May 14, 2025	Webinar
June 12, 2024	Webinar	June 11, 2025	Webinar
Attendance Requirement: Each PPA Specialist must attend at least six (6) of the eight (8) scheduled Webinars each year. PPA Specialists must attend both All-Staff Trainings unless prior approval has been obtained from the PPA Coordinator.			

Section IX: Reporting and Contract Changes

Quarterly Progress Reports

A brief progress report shall be submitted quarterly with each invoice (See Schedule in Section X, Table 8, *Invoicing Schedule*). This report should indicate the work completed during the quarter and billed on the invoice, including the type and number of visits conducted, progress on unique program elements, and any other information regarding contract performance that should be brought to ECOLOGY's attention. The Quarterly Progress Report should **ONLY** include the status of the work conducted during the quarter and **NOT** include a roll-up of progress to-date since it serves as backup documentation for the expenses included in the quarterly invoicing. See Appendix A, *Statement of Work*, Section X, Invoicing.

Annual Reports

Annual Reports are used to briefly summarize contract status to-date including; number of site visits performed, unique program element activities conducted, Technical Assistance target activities conducted, lessons learned, and budget status. Annual reports shall be provided to ECOLOGY by ***July 31, 2024, and July 31, 2025***. The report shall include two to three "case studies" of a business or organization that benefitted from a PPA site visit. Photographs of the business before and after the visit, showing the beneficial changes should be provided, if possible. The second-year annual report should capture details for the full contract period as ECOLOGY will use these reports to create a biennial report on the Partnership. ECOLOGY will make report templates available on the PPA Partnership SharePoint. ECOLOGY will request, with advanced notice, that PPA CONTRACTORS provide presentations on their case studies at Webinars and/or All-Staff Trainings.

Contract Changes

Any of the following changes shall be reported to the ECOLOGY PPA Partnership Coordinator within **10 businesses days.**

- Key personnel changes (staff or manager leaving, new hires, etc.). Changes to key personnel must be documented with updated copies of the key staff table.
- Initiation of, or changes to, a subcontract. See Section 18 of the Interagency Agreement for specific information that is required regarding subcontractors.

Section X: Invoicing

Invoice (billing) procedures are outlined in the Interagency Agreement, (see Section 4). In addition, the following information is provided:

- See also Appendix A, *Statement of Work*, Section V.
- The Invoice Voucher (form A19-1A) must have a wet signature or scanned, if submitted electronically. An electronic signature is also allowed for electronic submittals. If submitting a scanned or electronic copy, the CONTRACTOR will retain the original signed A19-1A in CONTRACTOR's records, per record retention requirements.
- Supporting documentation may be submitted via email.
- Each invoice shall only bill for actual hours worked during the quarter, which may be higher or lower than the FTE estimate in Appendix A, *Statement of Work,* Section 1, Table 1 – Key Staff Table.
- Quarterly invoicing will follow the schedule in Table 8.

Table 8: Invoicing Schedule

Quarter in Contract Cycle	Months in Quarter	Invoice Due Date
1	July, August, September 2023	November 10, 2023
2	October, November, December 2023	February 9, 2024
3	January, February, March 2024	May 10, 2024
4	April, May, June 2024	July 31, 2024*
5	July, August, September 2024	November 8, 2024
6	October, November, December 2024	February 7, 2024
7	January, February, March 2025	May 9, 2025
8	April, May, June 2025	July 31, 2025*
* - Earlier due date during these quarters due to end of fiscal year requirements.		

Section XI: Small Change Voucher Program

The CONTRACTOR will offer businesses vouchers for the cost of pollution prevention equipment or other recommendations, in accordance with the procedures developed for this voucher program. Payments will be made directly by the CONTRACTOR to the business. Examples of qualifying equipment or costs include but are not limited to; secondary containment, drum covers, drum funnels with lids, infrastructure changes, substitution of less toxic products, and catch basin cleaning. The CONTRACTOR must maintain records for each of their voucher reimbursement payments, and ensure a business is limited to one voucher per calendar year. Each voucher payment will be capped at $500.00 or less. These reimbursements will

come from the Small Change Voucher Program budget category (see Appendix B). Documentation of voucher payments will be submitted to ECOLOGY with the quarterly invoicing (See Section X).

The CONTRACTOR will follow the procedures approved by ECOLOGY and housed on the PPA Partnership SharePoint.

Section XII: Resources

The following are link to resources to materials referenced in this contract. Links and resources listed are subject to change.

- PPA Partnership SharePoint: https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/SitePages/Home.aspx
- LSC Database: http://ecyaphwtr/lsc/Search.aspx
- Invoice Voucher A19-1A: https://des.wa.gov/sites/default/files/public/documents/HRPayroll/SACS/A-19-1AForm.doc?=5c82f
- Partnership Report Templates: https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/Templates/Forms/AllItems.aspx
- Checklists & Tip Sheets: https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/Checklist%20%20Tip%20Sheets/Forms/AllItems.aspx
- New Specialist Training Plan: https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/_layouts/15/guestaccess.aspx?guestaccesstoken=sKGMtCuahLyLqRg3DVAtFJUEFUmri%2f47wAGdA%2bVUOdY%3d&docid=2_1d683e4662c1b424896349a0e1ead4150&rev=1
- New Specialist Training modules: https://partnerweb.ecy.wa.gov/sites/HWTR/LSC2016/New%20Specialist%20Training/Forms/By%20Training%20Type.aspx
- Travel Per Diem Rates:
    - Rate Tables - https://ofm.wa.gov/accounting/administrative-accounting-resources/travel/diem-rate-tables
    - Rate Map - https://ofm.wa.gov/sites/default/files/public/resources/travel/colormap.pdf

APPENDIX B
BUDGET DETAIL

See Section # 3, *Compensation* and Section # 4, *Billing and Payment Procedures*, for additional instructions.

Category		Amount
Salaries		$111,500.00
Benefits		$53,000.00
Subcontracts		$0.00
Goods & Services (see Table A Below)		$1,000.00
Equipment (see Table B Below)		$3,000.00
Travel / Training		$2,000.00
Small Change Voucher Program (See Section XI)		$0.00
	Subtotal Direct Costs	$170,500.00
Indirect Costs*	Rate (%)	0%
	Indirect Amount	$0.00
	Total Award	**$170,500.00**

* ☐ **Applied to Salaries & Benefits, OR**
☐ **Applied to All Categories Except Small Change Voucher Program**

Table A: Goods & Services

Goods & Services over $1,000 must be listed here or approved by ECOLOGY PRIOR to reimbursement.	Estimated Cost

Table B: Equipment

Equipment over $1,000 must be listed here or approved by ECOLOGY PRIOR to reimbursement.	Estimated Cost

APPENDIX C

SPECIAL TERMS AND CONDITIONS

1) Certification Regarding Suspension, Debarment, Ineligibility or Voluntary Exclusion

a) CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot.

b) CONTRACTOR shall provide immediate written notice to ECOLOGY if at any time the CONTRACTOR learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

c) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact ECOLOGY for assistance in obtaining a copy of those regulations.

d) CONTRACTOR agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

e) CONTRACTOR further agrees by signing this agreement, that it will include this clause titled "CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

f) Pursuant to 2CFR180.330, the CONTRACTOR is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements.

g) CONTRACTOR acknowledges that failing to disclose the information required in the Code of Federal Regulations may result in the delay or negation of this funding agreement, or pursuance of legal remedies, including suspension and debarment.

h) CONTRACTOR agrees to keep proof in its agreement file, that it, and all lower tier CONTRACTORS or subcontractors, are not suspended or debarred, and will make this proof available to ECOLOGY before requests for reimbursements will be approved for payment. CONTRACTOR must run a search in The System for Award Management and print a copy of completed searches to document proof of compliance.

CITY OF SUMNER WASHINGTON

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3571

SUBJECT: Approval of the electronic payments and warrants in the amount of $1,498,704.06.

CATEGORY: Consent

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. Cover Sheet

STAFF CONTACT: Jeff Steffens, Administrative Services Director

SUMMARY BACKGROUND:
Electonic payments and warrents from previous check runs.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Approve as presented.

DocuSign Envelope ID: 9A395D5F-4B6E-488A-9978-C25C687E1358

CITY OF SUMNER WASHINGTON

CLAIMS VOUCHER APPROVAL
City of Sumner
Finance Department

The following check/electronic payments are approved for payment:

Accounts Payable Check #:	From:	31472	To:	31605	$773,148.86
Use Tax (paid to WA State Department of Revenue)		n/a		n/a	$3,009.20
Voided Check(s)		-		-	$0.00
Voided EFT(s)		-		-	$0.00
AP Electronic (EFTs) Payments:	From:	613	To:	619	$4,705.76
AP Wire(s):	From:	15282	To:	15289	$10,726.03
Payroll & Benefits Electronic Payments	From:	7/20/2023	To:	8/3/2023	$707,114.21
Payroll & Benefits Checks	From:	-	To:	-	$0.00
				TOTAL	$1,498,704.06

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

DocuSigned by:
Kassandra Raymond
9A3D6E5EBAEC4A5...
Chief Financial Officer

8/14/2023 | 3:11 PM PDT
Date

We, the undersigned Finance and Personnel Committee of the City of Sumner City Council, do hereby certify that the check numbers and electronic payments listed above are approved for payment in the amount of: $1,498,704.06

DocuSigned by:
Patricia Cole
1B38614FF4084BF...
Chair

8/14/2023 | 9:17 AM PDT
Date

DocuSigned by:
Barbara Bitetto
74E3EC62FDD845C...
Committee Member

8/11/2023 | 8:29 AM PDT
Date

DocuSigned by:
Stuard
5A1E706F863C41B...
Committee Member

8/11/2023 | 11:33 AM PDT
Date

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3572

SUBJECT: Cemetery Building - Construction Contract Award **CATEGORY:** Consent

BUDGET IMPACT:
Expenditure Required: $1,742,145 Within Budget Allocation: Yes

ATTACHMENTS:
1. Bid Tab
2. Public Works Contract

STAFF CONTACT: Drew McCarty, Engineering Specialist, Alisa O'Haver-Ayala , Associate City Engineer

SUMMARY BACKGROUND:
This project consists of a new 4,800 square foot single-story maintenance building located at the cemetery. The building is wood framed with veneer masonry and metal siding, a trussed roof structure, a high bay workshop, restrooms, office, breakroom and mezzanine level.

Nine (9) bids were received on August 1, 2023 for this project. The lowest responsible bid was submitted by Berschauer Construction, Inc. with a base bid amount of $1,586,000. The overall contract amount of $1,742,145, includes Alternate A and sales tax. The engineer's estimate was $1,450,000 to $1,600,000.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 8/1/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Berschauer Construction, Inc., in an amount not-to-exceed $1,742,145 for the Cemetery Maintenance Facility Project (CIP 22-03), substantially in a form approved by the City Attorney.

Bid Tabulation

	Project Name:	CEMETERY MAINTENANCE FACILITY															
	CIP No.:	22-03															
	Acct No.:																
	Bid Opening Date:	August 1, 2023															
	Notes:			**Engineer's Estimate**		**Bidder #1**		**Bidder #2**		**Bidder #3**		**Bidder #4**		**Bidder #5**		**Bidder #6**	
	Indicates error corrected by PW dept	$X,XXX.XX		1,450,000 to 1,600,000		Arcon GC LLC		Boyce Construction		Construct Inc		GLY Construction		Christensen Inc		Kassel & Associates	
	Indicates Bidder modified Proposal	$X,XXX.XX				2100 124th Ave NE Suite 120		628 S Brandon St		855 Trosper RD. SW		14432 SE Eastgate Way Suite 300		2840 Crites Street SW #100		7126 180th Avenue NE #C103	
	Indicates Revision Due to Duplication	*				Bellevue, WA		Seattle, WA		Tumwater, WA		Bellevue, WA		Tumwater, WA		Redmond, WA	
				Total		**Total**		**Total**		**Total**		**Total**		**Total**		**Total**	
Bid Item	**Bid Item Description**	**Unit**	**Quant**	**Unit Price**	**Amount**		**Amount**		**Amount**		**Amount**		**Amount**		**Amount**		**Amount**
1	Cemetery Facility Base Bid	LS	1	$1,600,000.00	$1,600,000.00		$2,091,040.95		$2,038,500.00		$1,758,000.00		$1,816,443.00		$1,849,000.00		$2,057,000.00
2	Alternate #1 - Metal Roof	LS	1	$55,000.00	$55,000.00		$96,141.54		$14,600.00		$30,000.00		$103,200.00		$30,000.00		$93,000.00
3	Alternate #2 - Exterior Building Interior Fencing	LS	1	$41,000.00	$41,000.00		$22,188.32		$33,600.00		$27,500.00		$35,820.00		$22,500.00		$4,800.00
				Subtotal	$1,600,000.00	Subtotal	$2,091,040.95	Subtotal	$2,038,500.00	Subtotal	$1,758,000.00	Subtotal	$1,816,443.00	Subtotal	$1,849,000.00	Subtotal	$2,057,000.00
				Tax (9.5%)	$152,000.00	Tax (9.5%)	$198,648.89	Tax (9.5%)	$193,657.50	Tax (9.5%)	$167,010.00	Tax (9.5%)	$172,562.09	Tax (9.5%)	$175,655.00	Tax (9.5%)	$195,415.00
	Total of Base Bid				**$1,752,000.00**		**$2,289,689.84**		**$2,232,157.50**		**$1,925,010.00**		**$1,989,005.09**		**$2,024,655.00**		**$2,252,415.00**
				Subtotal	$1,655,000.00	Subtotal	$2,187,182.49	Subtotal	$2,053,100.00	Subtotal	$1,788,000.00	Subtotal	$1,919,643.00	Subtotal	$1,879,000.00	Subtotal	$2,150,000.00
				Tax (9.5%)	$157,225.00	Tax (9.5%)	$207,782.34	Tax (9.5%)	$195,044.50	Tax (9.5%)	$169,860.00	Tax (9.5%)	$182,366.09	Tax (9.5%)	$178,505.00	Tax (9.5%)	$204,250.00
	Total of Base Bid + Alt #1				**$1,812,225.00**		**$2,394,964.83**		**$2,248,144.50**		**$1,957,860.00**		**$2,102,009.09**		**$2,057,505.00**		**$2,354,250.00**
				Subtotal	$1,641,000.00	Subtotal	$2,113,229.27	Subtotal	$2,072,100.00	Subtotal	$1,785,500.00	Subtotal	$1,852,263.00	Subtotal	$1,871,500.00	Subtotal	$2,061,800.00
				Tax (9.5%)	$155,895.00	Tax (9.5%)	$200,756.78	Tax (9.5%)	$196,849.50	Tax (9.5%)	$169,622.50	Tax (9.5%)	$175,964.99	Tax (9.5%)	$177,792.50	Tax (9.5%)	$195,871.00
	Total of Base Bid + Alt #2				**$1,641,000.00**		**$2,113,229.27**		**$2,072,100.00**		**$1,785,500.00**		**$2,028,227.99**		**$1,871,500.00**		**$2,257,671.00**
				Subtotal	$1,696,000.00	Subtotal	$2,209,370.81	Subtotal	$2,086,700.00	Subtotal	$1,815,500.00	Subtotal	$1,955,463.00	Subtotal	$1,901,500.00	Subtotal	$2,154,800.00
				Tax (9.5%)	$161,120.00	Tax (9.5%)	$209,890.23	Tax (9.5%)	$198,236.50	Tax (9.5%)	$172,472.50	Tax (9.5%)	$185,768.99	Tax (9.5%)	$180,642.50	Tax (9.5%)	$204,706.00
	Total of all Schedules				**$1,857,120.00**		**$2,419,261.04**		**$2,284,936.50**		**$1,987,972.50**		**$2,141,231.99**		**$2,082,142.50**		**$2,359,506.00**
	Prepared by:	Drew McCarty															
	Date:	8/1/2023															

Bid Tabulation

	Project Name:	CEMETERY M							
	CIP No.:	22-03							
	Acct No.:								
	Bid Opening Date:	August 1, 2023							
	Notes:			**Bidder #7**		**Bidder #8**		**Bidder #9**	
	Indicates error corrected by PW dept	$X,XXX.XX		A to B Builders		Bershauer Construction		D&D Construction	
	Indicates Bidder modified Proposal	$X,XXX.XX		718 Griffin Ave #908		730 O'Leary Sreeet NW		120 NW Corrin Ave	
	Indicates Revision Due to Duplication	*		Enumclaw, WA		Olympia, WA		Orting, WA	
				Total		**Total**		**Total**	
Bid Item	**Bid Item Description**	**Unit**	**Quant**		**Amount**		**Amount**		**Amount**
1	Cemetery Facility Base Bid	LS	1		$1,590,311.00		$1,586,000.00		$1,628,090.00
2	Alternate #1 - Metal Roof	LS	1		$30,100.00		$97,000.00		$35,640.00
3	Alternate #2 - Exterior Building Interior Fencing	LS	1		$5,500.00		$5,000.00		$5,496.00
				Subtotal	$1,590,311.00	Subtotal	$1,586,000.00	Subtotal	$1,628,090.00
				Tax (9.5%)	$151,079.55	Tax (9.5%)	$150,670.00	Tax (9.5%)	$154,668.55
	Total of Base Bid				**$1,741,390.55**		**$1,736,670.00**		**$1,782,758.55**
				Subtotal	$1,620,411.00	Subtotal	$1,683,000.00	Subtotal	$1,663,730.00
				Tax (9.5%)	$153,939.05	Tax (9.5%)	$159,885.00	Tax (9.5%)	$158,054.35
	Total of Base Bid + Alt #1				**$1,774,350.05**		**$1,842,885.00**		**$1,821,784.35**
				Subtotal	$1,595,811.00	Subtotal	$1,591,000.00	Subtotal	$1,633,586.00
				Tax (9.5%)	$151,602.05	Tax (9.5%)	$151,145.00	Tax (9.5%)	$155,190.67
	Total of Base Bid + Alt #2				**$1,747,413.05**		**$1,742,145.00**		**$1,788,776.67**
				Subtotal	$1,625,911.00	Subtotal	$1,688,000.00	Subtotal	$1,669,226.00
				Tax (9.5%)	$154,461.55	Tax (9.5%)	$160,360.00	Tax (9.5%)	$158,576.47
	Total of all Schedules				**$1,780,372.55**		**$1,848,360.00**		**$1,827,802.47**
	Prepared by:	Drew M							
	Date:	8/1/20							

PUBLIC WORKS CONTRACT
between City of Sumner and

Berschauer Construction, Inc.

THIS AGREEMENT, made and entered into this day _____, between the City of Sumner under and by virtue of RCW Title 35 (Cities and towns) as amended and Berschauer Construction, Inc., hereinafter called the Contractor.

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

I. The Contractor shall do all work and furnish all tools, materials and equipment for

Cemetery Maintenance Facility (CIP 22-03)

in accordance with and as described in the (a) attached plans and specifications and general conditions of the American Institution of Architects (AIA), and (b) all other documents, specifications, provisions and required regulations contained in the Bid Document package provided at bid opening, all of which are considered the "Contract Documents" and are incorporated herein by this reference and made part hereof as if fully set forth in this contract, and, shall perform any changes in the work in accord with the Contract Documents.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned therein to be furnished by the City of Sumner.

II. The City of Sumner hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above described work and to complete and finish the same in accord with the attached plans and specifications and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices at the time and in the manner upon the conditions provided for in this contract. The Contractor for himself/herself/themselves, and for his/her/their heirs, executors, administrators, successors, and kin, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

III. Contractor's Employees – Employment Eligibility Requirements (E-Verify).

The Contractor and any subcontractors shall comply with E-Verify as set forth in Sumner Municipal Code Chapter 3.30. E-Verify is an Internet-based system operated by United States Citizenship and Immigration Services in partnership with the Social Security Administration. E-Verify is free to employers and is available in all 50 states. E-Verify provides an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The Contractor shall enroll in, participate in and document use of E-Verify as a condition of the award of this contract. The Contractor shall continue participation in E-Verify throughout the course of the Contractor's contractual relationship with the City. If the Contractor uses or employs any subcontractor in the performance of work under this contract, or any subsequent renewals, modifications or extension of this contract, the subcontractor shall register in and participate in E-Verify and certify such participation to the Contractor. Upon execution of this Contract, the Contractor shall provide proof of compliance with this section by filling out and signing the attached Certification of Compliance with Sumner's Municipal Code 3.30 "E-Verify" attached hereto as Exhibit B.

IV. It is further provided that no liability shall attach to the City of Sumner by reason of entering into this contract except as provided herein.

V. Debarment. The Contractor must certify that it, and its subcontractors, have not been and are not currently on the Federal or the Washington State Debarment List and if the Contractor or its subcontractors become listed on the Federal or State Debarment List, the City will be notified immediately.

VI. Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), provisions (A)-(J) in Appendix II to Part 200 of the Uniform Guidance (2 CFR Ch. 11 (1-1-14 edition) are hereby incorporated, as applicable, as if fully set forth herein. *See* attached Exhibit C.

VII. Insurance and Indemnification.

Indemnification / Hold Harmless

The Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this

indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

A. Insurance Term

The Contractor shall procure and maintain insurance, as required in this Section, without interruption from commencement of the Contractor's work through the term of the contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

Contractors required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

2. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.

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

D. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

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

3. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

E. City Full Availability of Contractor Limits

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

F. Other Insurance Provision

The Contractor'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 self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

G. Contractor's Insurance for Other Losses

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers, contractors or subcontractors as well as to any temporary structures, scaffolding and protective fences.

H. Waiver of Subrogation

The Contractor and the Public Entity waive all rights against each other, any of their Subcontractors, Sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

I. Acceptability of Insurers

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

J. Verification of Coverage

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

K. Subcontractors' Insurance

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by Subcontractors. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

L. Notice of Cancellation

The Contractor 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.

M. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Contractor to correct the breach, immediately terminate the contract 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 the Contractor from the City.

This section is intended to supplement the attached specifications and Contract Documents. If any provision in this Section VII conflicts with any provision of the specifications attached hereto, the terms of this contract shall control.

VIII. Retainage

Pursuant to RCW 60.28.011, the City shall withhold up to 5% of the Contract sum, not including sales tax as retainage until the entire scope of work under this Contract is accepted. In lieu of retainage being withheld, Contractor may opt to submit a retainage bond instead covering any or all of the sum.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the Local Agency Approving Authority has caused this instrument to be executed by and in the name of said City of Sumner the day and year first above written.

CONTRACTOR:	**CITY OF SUMNER:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	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 City Attorney DATE:_____ DATE:_____

NOTICES TO BE SENT TO:	NOTICES TO BE SENT TO:
CONTRACTOR: Jake Berschauer, President Berschauer Construction, Inc. 730 O'Leary Street NW Olympia, WA 98502 360-866-1484 greg@berschauerconst.com	**CITY OF SUMNER:** Drew McCarty, Engineering Specialist City of Sumner 1104 Maple Street Sumner, WA 98390 253-299-5719 drewm@sumnerwa.gov

1.1 **BASE BID:**

AMOUNTS BID INCLUDE ALL WORK SHOWN ON THE DRAWINGS AND SPECIFIED IN THE BIDDING AND CONTRACT DOCUMENTS.

A. CEMETERY MAINTENANCE BUILDING

List Base Bid Total both in words and figures in the Space provided below (do not include sales tax):

One Million Five Hundred Eighty Six Thousand and 00/100 DOLLARS ($ 1,586,000.00).

1.2 **BID ALTERNATES:** Refer to Section 01 2000 – Price and Payment

A. ~~ALTERNATE BID NO. 1: STANDING SEAM METAL ROOF IN LIEU OF ASPHALT SHINGLE ROOF~~ Alternate A - Not Selected

List Base Bid Total both in words and figures in the Space provided below(do not include sales tax):

Ninety Seven Thousand and 00/100 DOLLARS ($ 97,000.00).

B. ALTERNATE BID NO. 2: NEW FENCING AT INTERIOR OF EXISTING BUILDING

List Base Bid Total both in words and figures in the Space provided below(do not include sales tax):

five Thousand and 00/100 DOLLARS ($ 5000.00).

1.3 **TRENCH EXCAVATION SAFETY COSTS:**

Included in the above Base Bid is an amount for Trench Excavation Safety for any trenching exceeding a depth of four feet. In accordance with Chapter 39.04 RCW and WAC 296-155-850, all costs for adequate trench safety systems are required to be identified in this Bid. The Bidder certifies that the following amount is included in the Base Bid for Trench Excavation Safety Provisions. If no amount is entered, the Owner will presume that the Bidder represents that there are no Trench Excavation Safety costs for this Project.

Trench Safety System Costs Included are
$ 500.00

1.4 **SALES TAX:** None of the above bid prices include State or Local Sales Tax. Sales tax will be added to payment invoices.

Contract Amount:
Base Bid $1,586,000
Alternate B $5,000
WSST $151,145
Total: $1,742,145

EXHIBIT B

CITY OF SUMNER

CERTIFICATION OF COMPLIANCE WITH SUMNER MUNICIPAL CODE CHAPTER 3.30
"E-VERIFY"

As the person duly authorized to enter into such commitment for

_____,
BERSCHAUER CONSTRUCTION, INC.

I hereby certify that the Company or Organization named herein will

(check one box below)

☐ Be in compliance with all of the requirements of City of Sumner Municipal Code Chapter 3.30 for the duration of the contract entered into between the City of Sumner and the Company or Organization.

OR

☐ Hire no employees for the term of the contract between the City and the Company or Organization.

NAME

TITLE

DATE

EXHIBIT C

APPENDIX II TO PART 200---CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the City of Sumner under federal award(s) are subject to the following provisions, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of " federally assisted construction con tract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-l.4(b), in accordance with Executive Order 11246, " Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964- 1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S .C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, the following language is hereby incorporated into the contract as if fully set forth therein:

Application of Uniform Guidance. If this contract involves the use, in whole or in part, of federal award(s), the following provisions (29 CFR, Subtitle A Part 5, Subpart A, § 5.5, subsections (a)(1) – (a)(10)) shall apply:

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and
(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The City of Sumner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the City. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying

number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the City, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the City may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7.. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or sub recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of par ties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S .C. 7401-767lq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended-Contracts and sub grants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to

comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-767lq) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S .C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)-A contract award (see 2 CFR 180.220) must not be made to par ties listed on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the 0MB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), " Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)-Contractors that apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or at tempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C . 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3563

SUBJECT: Contract Approval - Stafford Suites

CATEGORY: Motion

BUDGET IMPACT:
Expenditure Required: Per Agreement

Within Budget Allocation: Yes

ATTACHMENTS:
1. 2023 Stafford Suites Agreement

STAFF CONTACT: Jeff Steffens, Administrative Services Director

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: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Approve the Services Contract for Stafford Suites.

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:	**CITY OF SUMNER:**
By:_____ *(signature)* Print Name:_____ Its_____ *(Title)* DATE:_____	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.

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3551

SUBJECT: Contract Approval for Fiber Optic Services - Astound **CATEGORY:** Motion

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

ATTACHMENTS:
1. Astound MSA and Job Order_Fully Signed 8.10.23

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

SUMMARY BACKGROUND:
Following discussion and Council's authorization regarding the City's fiber infrastructure study, and following a public RFP process, staff moved forward with negotiating a Master Service Agreement with Astound for dark fiber installation and service to the City.The MSA is for a term of 30 years, and Astound provided the most financially feasible and favorable payment terms to the City.

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

STAFF RECOMMENDATIONS/MOTION:
A motion authorizing the Mayor and City Administrator to execute all necessary contract documents with Astound, for fiber optic services, and ratifying any and all prior acts consistent with this authority.

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Astound Business Solutions Powered by RCN | GRANDE | wave

MASTER SERVICES AGREEMENT FOR ENTERPRISE SERVICES – GOVERNMENTAL CUSTOMER

This Master Services Agreement for Enterprise Services (this "**MSA**") is entered into as of this 8th day of August, 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 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, (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 (30th) 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.

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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 expeditiously process and/or assist with the application for all required permits and 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. 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 ten (10) 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.

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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, 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.

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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) one hundred percent (100%) of all remaining MRC Customer was to pay Provider for the Service during the first (1st) year of the Service Term; (v) seventy-five percent (75%) of all remaining MRC Customer was to pay Provider for the Service during the second (2nd) year of the Service Term; (vi) fifty percent (50%) of all remaining MRC Customer was to pay Provider for the Service during the third (3rd) year of the Service Term; and (vii) twenty-five percent (25%) of all remaining MRC Customer was to pay provider for the Service during the fourth (4th) and later years of the Service Term (if applicable). 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

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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. Except as otherwise required by the Public Records Act (RCW 42.56), 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 provide Provider with third party notice; 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.

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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

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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:	**If to Customer:**
Astound Business Solutions, LLC	City of Sumner

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650 College Road East, Suite 3100
Princeton, NJ 08540
ATTN: Business Solutions

1104 Maple Street, Suite 200
Sumner, WA 98390
ATTN: City Attorney

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

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.

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

CUSTOMER:

City of Sumner, a Washington municipal corporation

DocuSigned by:
By: Kathy Hayden
3420AB72F52C4FD...

Name: Kathy Hayden

Title: Mayor

PROVIDER:

Astound Business Solutions, LLC, a Delaware limited liability company

DocuSigned by:
By: David Lampkin
D47D40EB3080480...

Name: David Lampkin

Title: Vice President, Business Solutions

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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.

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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.

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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:

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

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 any ninety (90) day period, 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

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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:

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

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.

"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;

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(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.

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"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 any ninety (90) day period, 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.

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5. CLAIMING CREDITS AND REMEDIES

5.1 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 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 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

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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 August 8, 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:

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

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. Attached to this Service Order as Schedule 2 are the fiber testing specifications (the "Fiber Testing Specifications") that Provider covenants the Services shall meet at all times during the Initial Service Term. Consistent with Section 3.2 of the MSA, upon completion of installation, Provider shall test each fiber strand comprising the Services to verify that each such fiber strand meets or exceeds the Fiber Testing Specifications. From time to time during the Initial Service Term, Provider shall, upon reasonable request by Customer, test some or all of the fiber strands comprising the Services to ensure said fiber strands continue to meet the Fiber Testing Specifications.

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 Brianc@sumnerwa.gov	Accounts Payable	Brian Cunningham Brianc@sumnerwa.gov

Office: (253) 299-5602		Office: (253) 299-5602

Section 8: Termination Charge. For purposes of this Service Order, Section 6.4 of the MSA is deleted in its entirety and replaced with the provisions of this Section 8. Customer understands and acknowledges that Provider will incur significant capital costs in expanding Provider's network to provide the Services to Customer at the Service Sites. Accordingly, in the event of Termination for Customer Convenience pursuant to Section 6.2 of the MSA, or termination for Customer Default pursuant to Section 5.2 of the MSA, Customer shall pay a "Termination Charge" to Provider in an amount equal to all actual, documented costs Provider incurred in establishing the Services for Customer that Provider has not already recovered through Customer's payments of NRC and MRC under this Service Order at the time this Service Order is terminated. If a Termination Charge is incurred, Provider shall invoice Customer for the Termination Charge, which invoice shall include documentation reasonably substantiating the basis for the amounts charged. Provider's invoice for the Termination Charge will be due and payable consistent with Article 4 of the MSA. If the City disputes any portion of any charge or fee outlined on Astound's invoice, the Parties shall follow the disputed invoicing procedures set forth in Section 4.2 of the MSA. Customer acknowledges that the calculation of the Termination Charge reflects Provider's actual damages in the event of early termination of this Service Order and is not a penalty.

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:

CITY OF SUMNER

By DocuSigned by: Kathy Hayden 3420AB72F52C4FD...

Name: Kathy Hayden

Title: Mayor

Date: 8/10/2023 | 12:39 PM PDT

PROVIDER:

ASTOUND BUSINESS SOLUTIONS, LLC

By DocuSigned by: David Lampkin D47D40EB3980480...

Name: David Lampkin

Title: Vice President, Business Solutions

Date: 8/10/2023 | 11:55 AM PDT

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SCHEDULE 1
to
Dark Fiber Service Order OP357079

Map Depicting Approximate Locations of the Fiber Routes

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SCHEDULE 2
to
Dark Fiber Service Order OP357079

Fiber Testing Specifications

Circuit Testing Acceptance Standards

OTDR traces will be taken in both directions at 1310 nm and 1550 nm for all circuits less than 50 Km. For circuits over 50 Km we take OTDR traces at 1550 nm. These traces will be reviewed before the circuit is handed off. For a circuit to be handed off it must comply with the specifications for splice, reflectance and span attenuation.

Splice Loss Specifications

Pig Tail - < .5 per connector or 1.0 per jumper

For values greater than this, the splice will be broken and re-spliced until an acceptable loss value is achieved. If, after three attempts is not able to produce a loss value less than 0.50 dB, the splice will be marked as Out-of-Spec ("OOS") on the OTDR report.

Splice Point - Bi-directional average loss of 0.15 dB or less.
The objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable. If, after two additional attempts, a value of less than 0.25 dB is not achievable, then the splice will be marked as OOS

Splice Point - Uni-directional OTDR testing, the objective for each splice is a loss of 0.15 dB or less. If, after three attempts, we are not able to produce a loss value of less than 0.15 dB, then 0.25 dB will be acceptable.

Connector Reflectance

Reflectance at jumper – Will be less than -40dB, we will work to achieve less than -40dB by cleaning & polishing fiber tips and/or fiber jumpers or provide alternative fiber strands that achieve results less than -40dB. If we are unable to do so after 3 attempts, the port will be marked as OOS.

Total loss for a circuit

Attenuation due to distance
At 1310nm: (0.40 dB/km x km of cable)
At 1550nm: (0.30 dB/km x km of cable)

Average Splice Loss per circuit
The standard for each fiber within a span shall be an average bi-directional loss of 0.10 dB or less for each splice. For example, if a given span has 10 splices, each flow shall have total bi-directional loss (due to the 10 splices) of 1.0 dB or less. Each individual splice may have a bi-directional loss of 0.15 dB or less, but the average bi-directional splice loss across the span must be 0.10 dB or less.

Acceptable Total loss per circuit will be calculated with the following formula:
At 1310nm: (0.40 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).
At 1550nm: (0.30 dB/km x km of cable) + (number of connectors x 0.5 dB) + (0.10 dB x number of splices).

Mass Fusion Splicing

Fiber Bi-directional Splice Loss Standards

Fiber Type	Splicing Method	Splice Loss (dB)
Standard Single Mode	Mass fusion splicing	0.20 dB

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In the event that the splice loss values listed cannot be achieved by at least 66% (8 out of the 12) of the fibers in the cable, the cable containing the OOS fiber(s) will be broken and re-spliced. The re-splice procedure and acceptable values are listed in the table below. Cables containing any splices above a 1.0 dB loss will be broken and re-spliced.

Mass Fusion Re-splice Acceptance

Ribbon Fiber	Standard Single Mode	Non-zero Dispersion Shifted
Acceptance Criteria	0.20 dB	0.25 dB
After 3 attempts	0.30 dB	0.35 dB
After 2 additional attempts	0.40 dB	0.50 dB

Note:
Five (5) attempts are to be performed and all non-successful splices will be recorded and marked as OOS.

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CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3580

SUBJECT: Approval of the meeting minutes from the regular council meeting of August 7, 2023 and the August 14, 2023 study session.

CATEGORY: Consent

BUDGET IMPACT:
Expenditure Required: None

Within Budget Allocation: N/A

ATTACHMENTS:
1. August 7, 2023 Regular Council Meeting Minutes
2. August 14, 2023 Study Session Minutes

STAFF CONTACT: Michelle Converse, City Clerk

SUMMARY BACKGROUND:
Minutes from the previous two council meetings.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION:

STAFF RECOMMENDATIONS/MOTION:
Approve as presented.

CITY COUNCIL MEETING AGENDA
City Hall – 1104 Maple Street
August 7, 2023 6:00 PM

The city conducted this public meeting using a hybrid model, in-person and on the Zoom platform.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community & Economic Development Director Ryan Windish, Public Works Director Mike Dahlem, Police Chief Brad Moericke, Communications Director Carmen Palmer, Administrative Services Director Jeff Steffens, Chief Financial Officer Kassandra Raymond, City Engineer Michael Kosa, Engineering Specialist Courtney Littrell and City Clerk Michelle Converse

THE REGULAR MEETING OF THE SUMNER CITY COUNCIL WAS CALLED TO ORDER BY MAYOR HAYDEN AT 6:00PM.

CALL TO ORDER

Pledge of Allegiance Invocation
Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed and Stuard (arrived at 6:04pm)

CONSENT AGENDA

MOVED BY HOCHSTATTER SECONDED BY COLE TO APPROVE THE CONSENT AGENDA CONSISTING OF:
1. Approval of the minutes from the July 17, 2023 regular council meeting and the study session of July 24, 2023.
2. Resolution No. 1660 - Interlocal Agreement for School Resource Officer with Sumner-Bonney Lake School District
3. Approval of electronic payments and warrants in the amount of $4,819,406.96.

PASSED BY VOICE VOTE

PUBLIC HEARING

There was no Public Hearing tonight.

REGULAR BUSINESS

1. **Unfinished Business**

There was none tonight.

2. **Public Comment**

There was no public comment tonight.

3. **New Business**

a. Ordinance No. 2865 - Pierce County Boundary Review Board Water and Sewer Service Extension Approval

MOVED BY STUARD SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2865 PIERCE COUNTY BOUNDARY REVIEW BOARD WATER AND SEWER SERVICE EXTENSION.

Engineering Specialist Courtney Littrell spoke to the topic.

PASSED BY ROLL CALL VOTE.

DRAFT

b. Ordinance No. 2866 - Amending the 2023/2024 Biennial Budget

MOVED BY COLE SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2866, AMENDING THE 2023/2024 BIENNIAL BUDGET

Chief Financial Officer Kassandra Raymond addressed the Council.

Discussion ensued.

PASSED BY ROLL CALL VOTE 6-0 (COUNCILMEMBER STUARD EXPERIENCED TECHNICAL DIFFICULTIES)

c. Ordinance No. 2857 - Repealing and Amending Sumner Municipal Code 9.16 and 9.20

MOVED BY BROWN SECONDED BY BITETTO TO ADOPT ORDINANCE 2857.

City Attorney Andrea Marquez addressed the Council.

PASSED BY ROLL CALL VOTE.

d. Ordinance No. 2867 - Amending Sumner Municipal Code 2.100: Personnel Policies

MOVED BY HOCHSTATTER SECONDED BY BITETTO TO APPROVE ORDINANCE NO. 2867 - AMENDING SUMNER MUNICIPAL CODE 2.100: PERSONNEL POLICIES.

Administrative Services Director Jeff Steffens addressed the Council.

Discussion ensued.

PASSED BY ROLL CALL VOTE.

e. Ordinance No. 2868 - Amending the 2023 Compensation Schedule

MOVED BY BITETTO, SECONDED BY HOCHSTATTER TO APPROVE ORDINANCE NO. 2868 – AMENDING THE 2023 COMPENSATION SCHEDULE.

Administrative Services Director Jeff Steffens addresses the Council.

PASSED BY ROLL CALL VOTE.

f. Ordinance No. 2863 - Franchise Agreement with Ziply Wireless LLC

MOVED BY NEUMAN SECONDED BY HOCHSTATTER TO CONDUCT REQUIRED READINGS FOR ORDINANCE NO. 2863 – FRANCHISE AGREEMENT WITH ZIPLY WIRELESS LLC.

City Attorney Andrea Marquez spoke to the topic.

Since this is the first of two required readings, there was no vote.

g. Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC

MOVED BY STUARD SECONDED BY HOCHSTATTER TO CONDUCT THE REQUIRED READINGS FOR ORDINANCE NO. 2864 – FRANCHISE AGREEMENT WITH ZIPLY FIBER PACIFIC LLC.

City Attorney Andrea Marquez spoke to the topic.

Since this is the first of two required readings, there was no vote.

DRAFT

4. **Reports**

a. **Council**

Deputy Mayor Hochstatter, Councilmembers Stuard, Brown, Neuman, Reed and Cole had no reports tonight.

Councilmember Bitetto thanked the voters who approved the library bond!

b. **Mayor**

Mayor Hayden spoke about three items:

- She congratulated everyone on the library bond;
- Had a great time at the Classy Chassis event and is looking forward to the upcoming Nights on Ryan (August 12, beginning at 6pm)
- Spoke about the road work. She thanked RW Scott, Courtney Littrell and the Public Works staff, for updating the intersection at Wood and Main, and repairing the damage at the same intersection caused by another contractor.

c. **City Administrator**

City Administrator Jason Wilson updated the Council and the public on the following items:

Upcoming Policy Issues:

- August 14, 2023 – Study Session
  - MIC Transit update
  - Parks Planning Update
- August 21, 2023 – Regular Council Meeting
  - Construction Contract Award – Cemetery Building
  - Fiber Services Contract with Astound
  - Second reading of an Ordinance authorizing a Franchise Agreement with Ziply Wireless LLC
  - Second reading of an Ordinance authorizing a Franchise Agreement with Ziply Fiber Pacific LLC
  - Ordinance – Updating Code regarding Trails
  - Ordinance – Green Burials at Sumner Cemetery

Personnel Issues: Sumner PD has hired two new officers; Brittanie Miller has been promoted from CSO and Marcello Cuellar who comes from Thuston County Sherrif's office where he was a Corrections Officer.

Miscellaneous: The playground at Loyalty Park will be closed until the 11th while the contractor makes warranty repairs to the surface.

The water line at Wood/Maple has been repaired and the contractor has taken steps to begin repairing the road.

5. **Executive Session**

There was none tonight.

6. **Adjournment**

With no other matters before the Council, Mayor Hayden adjourned the meeting at 6:17pm. Councilmembers concurred.

ATTEST:

_____

Michelle Converse, City Clerk

_____

Kathy Hayden, Mayor

DRAFT

CITY OF SUMNER WASHINGTON

STUDY SESSION MINUTES
City Hall – 1104 Maple Street
August 14, 2023 6:00 PM

The city conducted this public meeting using a hybrid model, in-person and Zoom.

Staff present: City Administrator Jason Wilson, City Attorney Andrea Marquez, Community Development and Economic Director Ryan Windish, Administrative Services Director Jeff Steffens, Deputy City Attorney Maili Barber, City Engineer Michael Kosa and Community Development Manager Derek Barry

Mayor Hayden called to order the Study Session, at 6pm.

CALL TO ORDER

Roll Call: Bitetto, Brown, Cole, Hochstatter, Neuman, Reed (arrived at 6:02pm) and Stuard

DEPUTY MAYOR HOCHSTATTER WAS ABSENT.

A MOTION TO EXCUSE THE DEPUTY MAYOR WAS MADE BY BITETTO SECONDED BY COLE. MOTION PASSED BY VOICE VOTE.

REGULAR BUSINESS

1. Mic Transit Update and Report
2. Parks Planning Update

CITY ADMINISTRATOR REPORT

ADJOURNMENT
With no additional business, Mayor Hayden adjourned the meeting at 6:42pm.

Attest:

_____
Kathy Hayden, Mayor

_____
Michelle Converse, City Clerk

DRAFT

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3395

SUBJECT: Ordinance No. 2863 - Franchise Agreement with Ziply Wireless LLC **CATEGORY:** Ordinance

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

ATTACHMENTS:
1. Ordinance No. 2863 - Ziply Wireless LLC Wireline Franchise

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:
Ziply approached the City with a request for two separate franchises for the fiber network they're building out. Ziply Wireless LLC and Ziply Fiber Pacific LLC have both applied for agreements with the City, to serve two separate purposes. Both are attached.

This is the second of the two required readings for the franchise agreement, the first one was August 7, 2023.

COUNCIL COMMITTEE/STUDY SESSION: Public Works Committee
MEETING/STUDY SESSION DATE: 7/11/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Approve Ordinance No. 2863 - authorizing the Mayor to to enter into an agreement with Ziply Wireless LLC, substantially in a form as approved by the City Attorney.

ORDINANCE 2863
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF SUMNER ("CITY") TO ZIPLY WIRELESS, LLC ("GRANTEE"). THE CITY AND GRANTEE ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES."

WHEREAS, Ziply Wireless, LLC dba Ziply Fiber, a limited liability company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services ("Wireline Communications Services"), which desires to occupy the City of Sumner rights-of-way to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain telecommunication facilities within the boundaries of the City.

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

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways; and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way; and

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

WHEREAS, the City has the authority to grant, issue or deny franchises and use permits for the use of the right-of-way for telecommunications services subject to Chapter 12.90 of the Sumner Municipal Code ("SMC") but subject to applicable law; and

WHEREAS, the City and Grantee desire to enter into an agreement authorizing Grantee to use the Rights-of-Way throughout the City and specifying the terms and conditions under which said use may be made;

NOW, THEREFORE, THE CITY AND THE GRANTEE AGREE AS FOLLOWS:

1. Authority Granted. The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for the Telecommunications Facilities defined in Section 4 below. The

Grantee is authorized to place its Telecommunications Facilities in, under, on, across, through, along, or below the specific rights-of-way of the City (the "Franchise Area").

2. Authority Limited to Occupation of Rights-of-Way. The authority granted herein is a limited and non-exclusive authorization to occupy and use the rights-of-way of the City for the purpose of providing those Telecommunications Facilities (as defined in Section 4 below). This Franchise does not and shall not convey any right to Grantee to install its facilities on, under, over, across or to otherwise use City owned or leased properties of any kind without a valid lease agreement with the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to the Grantee. No reference herein to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Franchise may only grant than those rights which the City may have the undisputed right and power to give.

3. Permits Required. Grantee must obtain a permit from the City prior to performing any work within the rights-of-way. All facilities must be installed and maintained within the public rights-of-way in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public safety and welfare.

4. Telecommunications Facilities.

4.1 The scope of this Franchise extends only to the wireline telecommunications facilities owned, operated or controlled by Grantee in the rights-of-way (the "Telecommunications Facilities"). This Franchise does not grant any rights in any easement granted for or in favor of any City or public utility facilities or operations.

4.2 This Franchise does not authorize the offering of Cable Services as defined in 47 U.S.C. § 522(6).

4.3 This Franchise does not authorize the installation of small wireless facilities as that term is defined in 47 USC 1.6002 or personal wireless facilities as that term is defined in RCW 35.99.010.

4.4 Unless the City and the Grantee have entered into a site-specific agreement or lease, this Franchise does not authorize Grantee to place new structures, including but not limited to poles and pedestals, in the rights-of-way regardless of height.

5. Terms, Conditions, and Provisions of SMC Chapter 12.90 Incorporated by Reference. The terms, conditions, and provisions of SMC Chapter 12.90 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of SMC Chapter 12.90, as such chapter now exists or is hereinafter amended. The terms of this Franchise shall supplement SMC Chapter 12.90. In the event of a conflict between this Franchise and SMC Chapter 12.90, the terms of this Franchise shall prevail.

6. Term of Franchise. The term of this Franchise shall be for a period of ten (10) years from the date the last party signs the Franchise, unless sooner terminated as provided herein.

7. Location of Facilities. Grantee may locate its Facilities anywhere within the Franchise Area, consistent the City's applicable Code requirements and the City's Design and Construction

Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services to Cable Services or small wireless facilities.

8. Non-Exclusive Grant.

8.1 This Franchise shall not in any manner prevent the City from granting additional franchises or entering into other similar agreements or franchises in, under, on, across, over, through, along or below any rights-of-way of the City or other City-owned properties, nor from exercising such other powers and authorities granted to the City by law.

8.2 This Franchise shall in no way prevent or prohibit the City from using any of its rights-of-way or other City-owned properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and other City-owned properties of every type and description.

8.3 This Franchise does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the City and the facility therein removed at the cost of the Grantee in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

9. Relocation.

9.1 **Relocation Requirement.** The City may require Grantee, and Grantee covenants and agrees, to protect, support, temporarily disconnect, relocate, and remove, its Facilities within the City's rights-of-way as set forth in SMC Section 12.90.240 when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any rights-of-way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 9.1 shall be considered a "Public Improvement Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 9.1 shall be borne by Grantee. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

9.2 **Notice and Relocation Process.** If the City determines that the Public Improvement Project necessitates the relocation of Grantee's existing Facilities, the City shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Grantee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2) or unless any delays are caused by a force majeure event. To provide guidance on this notice process, the City will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Improvement Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City (unless delays are caused by a force majeure event) and at no charge or expense to the City, except as otherwise permitted by RCW 35.99.060. Such timeline may be extended by a mutual agreement.

9.3 **Locate Facilities.** Upon request of the City or of a third-party performing work on behalf of the City in the rights-of-way and in order to facilitate the design of the rights-of-way, Grantee agrees, at its sole cost and expense, to locate its Facilities so that the Facilities' location may be taken into account in the improvement design. Grantee shall also locate its Facilities upon the request of a third party. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement Project shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least fourteen (14) days' written notice to perform any location services necessary to locate Grantee's facilities.

9.4 **Third Party Requests for Relocation.** The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public Improvement Projects. The City shall take into account payment by third parties of relocation costs or expenses in establishing or extending the Relocation Date.

9.5 Contractor Delay Claims. Grantee shall be responsible for the actual third party costs, City incurred expenses, and/or damages incurred by the City for delays in a Public Improvement Project to the extent the delay is caused by or arises out of Grantee's failure to comply with the final agreed upon schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any other reason outside of Grantee's reasonable control. Grantee agrees to work cooperatively with the City, other franchisees and utilities and the City's third-party contractor with respect to the Public Improvement Project. Upon a notification of a delay due to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues and if Grantee breaches its obligations under this Section 9 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option: tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 0 and Section 18; or

require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

9.6 Indemnification. Grantee will indemnify, hold harmless and defend the City, in accordance with the provisions of Section 20, against any all claims, suits, actions, damages, or liabilities for delays to the extent caused by or arising out of the failure of Grantee to remove or relocate its facilities as required in this Section 9; provided that Grantee shall not be responsible for indemnifying, holding harmless or defending City for any claims due to delays not caused by grantee or to the extent caused by the negligence, willful misconduct or unreasonable delay of the City or any third party.

9.7 City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as described in this Section 9, except for in Section 9.4, then the City may perform such work or cause it to be done, and the City's reasonable and direct costs shall be paid by Grantee pursuant to Section 12.

9.8 Survival. The provisions of this Section 9 shall survive the expiration or termination of this Franchise for so long as Grantee continues to have Facilities in the rights-of-way.

10. Undergrounding of Facilities.

10.1 The parties agree that this Franchise does not limit or expand the City's authority under federal, law, or local laws, to require the undergrounding of utilities, including without limitation RCW 35.99.

10.2 Whenever all new or existing telephone, cable television, and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground in the manner required by SMC 12.90.120 and/or specified by the City Engineer or designee at no expense or liability to the City. Grantee shall only be required to pay its proportionately fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

10.3 Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by RCW Chapter 19.122 (Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

11. Facilities for City's Use.

Grantee shall inform the City with at least thirty (30) days' advance written notice, when feasible or reasonable, that it is constructing, relocating, or placing ducts or conduits in the rights-of-way and provide the City with an opportunity to request that Grantee provide the City with additional

duct or conduit and related structures necessary to access the conduit at City's costs and expense pursuant to RCW 35.99.070 and SMC 12.90.120(E).

12. Recovery of Costs.

12.1 Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City.

12.2 Where the City incurs reasonable costs and expenses for which a fee is not established, Grantee shall reimburse the City the actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, and this Franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW. These fees may include reimbursement for time associated with attorneys, consultants, City Staff and City Attorney's Office review.

12.3 Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise. Grantee shall pay the reimbursements pursuant to this Section 0 upon acceptance of this Franchise. No permits shall be issued for the installation of Facilities until such time as the City has received payment of this fee. Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Grantee's Telecommunications Facilities.

12.4 Grantee shall reimburse the City for any costs incurred by the City in removing any Grantee Telecommunication Facilities upon abandonment, or in response to an emergency involving Grantee's Facilities.

12.5 Whenever necessary, after construction or maintaining any of Grantee's facilities within the rights-of-way, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface and subsurface disturbed by Grantee to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights of- way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired, upon receiving fourteen (14) business days prior written demand from the City, the Grantee shall promptly commence to remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public rights-of-way. Any removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition reasonably satisfactory to the City. Any of Grantee's affected equipment or facilities remaining in place after the expiration of the one hundred eighty (180) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time

with prior written request from the Grantee, such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon Grantee's permanent abandonment of the equipment or facilities in place, the equipment or facilities shall become the City's property, and the Grantee shall submit an instrument in writing to the Public Works Director, to be approved by the City Attorney, transferring the ownership of such equipment or facilities to the City.

13. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis or sooner, but the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information purposes. Reservation of Rights.

13.1 Grantee's operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result of these statutes and other federal law, the City will not impose a franchise fee under the terms of this Franchise. The parties shall, in good faith, negotiate a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the s prohibitions of RCW 35.21.860 or federal law no longer apply, or if prohibitions on the imposition of such fees are removed. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws and such fee shall be suspended while any such challenge is pending.

14. Unsafe Working Conditions.

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

1. Be in writing;
2. Be given to the person doing the work or posted on the work site;
3. Be sent to Grantee by overnight delivery;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

15. Dangerous Conditions; Authority for City to Abate.

15.1 Whenever construction, installation, or excavation of Grantee's telecommunications facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the City Engineer may reasonably require Grantee, at Grantee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, and utilities. Grantee shall be required to take action immediately and without notice from the City or within a prescribed time indicated in writing from the City.

15.2 In the event that Grantee fails or refuses to promptly take the action as directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which

require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, and other City property, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Grantee shall be liable to the City for the reasonable costs thereof.

16. Safety and Maintenance Standards.

16.1 Grantee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the rights-of-ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Grantee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its facilities. Additionally, Grantee shall keep its facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Grantee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Grantee, the City reserves the general right to inspect the facilities to evaluate if they are constructed and maintained in a safe condition.

16.2 Additional standards include:

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

16.2.2 Any opening or obstruction in the rights-of-way or other public places made by Grantee in the course of its operations shall be protected by Grantee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

17. Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

18. Indemnification; Exclusion of Damages.

18.1 Grantee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, reasonable costs, judgments, awards, or other liability asserted by a third party to the extent related to any injury or death of any person or damage to property caused by or arising out of any negligent, fraudulent, or willful acts or omissions of Grantee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to such claims

that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

18.2 Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance by Grantee of any of its obligations under this Section 18.

18.3 The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City, pursuant to this Section 19. Grantee may choose counsel to defend the City subject to this Section 19.3. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. Grantee may accept defense of a claim or claims under a reservation of rights in which case, a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) determines that such claim or claims were not subject to Grantee's obligations under this Section, City shall promptly reimburse Grantee for all costs and expenses, including attorneys' fees, incurred in the defense of the claim or claims.

18.4 Grantee understands the intent. Grantee is indemnifying and controlling the defense. Nonetheless, it is the City's discretion to engage separate counsel if it deems there is a conflict of interest. Counsel have procedures, and ethical requirements, to deal with conflicts. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

18.5 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Grantee under the indemnification provisions of this Section 18 and any other indemnification provision herein shall apply. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating

solely to indemnity claims made by the City directly against the Grantee for claims made against the City by Grantee's employees. This waiver has been mutually negotiated by the parties.

18.6 Notwithstanding any other provisions of this Section 18, Grantee assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors.

18.7 The provisions of this Section 188 shall survive the expiration, revocation, or termination of this Franchise.

18.8 NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES. Grantee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

19. Insurance.

19.1 Grantee shall procure and maintain for so long as Grantee has Facilities in the rights-of-way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Grantee. Grantee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Grantee. Grantee shall procure insurance from insurers with a current A.M. Best rating of not less than A:VII. Grantee shall provide a copy of a certificate of insurance and blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of no less than $5,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in the aggregate

(d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(e) Excess Umbrella liability policy with limits of no less than $5,000,000 per occurrence and in the aggregate. Grantee may use any combination of primary and excess to meet required total limits.

19.2 Payment of deductible or self-insured retention shall be the sole responsibility of Grantee. Grantee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 19.1. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

19.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability, and Pollution Liability obtained by Grantee shall include the City, its officers, officials, employees, representatives, engineers, consultants, agents, and volunteers ("Additional Insureds"), as an additional insured under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 00 01 and/or CG 20 26. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Grantee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Grantee's required insurance and shall not contribute with it.

19.4 Upon receipt of notice from its insurer(s) Grantee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 19.1. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 19.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 19.1 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 23 below, subject to the applicable cure periods.

19.5 Grantee's maintenance of insurance as required by this Section 19 shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee. If Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Grantee, irrespective of whether such

limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

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

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

20. Security Fund and Liquidated Damages.

20.1 At the same time as providing acceptance of this Franchise, Grantee shall establish a permanent security fund in the amount of Fifty Thousand Dollars ($50,000) to guarantee the full and complete performance of the requirements of this Franchise, the requirements of SMC Chapter 12.90, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. The Grantee may provide, in lieu of a cash security deposit to the City, an unconditional letter of credit made out to the City, or bond in the amount of Fifty Thousand Dollars ($50,000) to secure performance under this Franchise. The letter of credit or bond shall be in the form acceptable to the City Attorney.

20.2 If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings, pursuant to SMC 12.90.350(C), (2) refuse to grant additional permits, (3) claim liquidated damages of Two Hundred Fifty Dollars ($250.00) per day against the Security Fund, or (4) pursue other remedies to compel or force Grantee to comply with the terms hereof. If liquidated damages are used, then those damages shall be the exclusive monetary remedy for the breach.

20.3 Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to utilize any other remedies available in equity or law.

20.4 Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:

20.4.1 Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of Grantee's act or default regarding the installation, maintenance, repair or removal of telecommunications facilities in the rights-of-way, other ways or upon City property or in connection with restoration of the foregoing;

20.4.2 Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair or removal of the Facilities;

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

20.4.4 That Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

20.5 Grantee shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

20.6 Upon termination or expiration of the Franchise all funds remaining in the Security Fund shall be returned to Grantee within thirty (30) days after removal of Grantee's Telecommunications Facilities within the rights-of-way.

21. Remedies Cumulative. All remedies under SMC Chapter 12.90 and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve Grantee of its obligations to comply with this Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Grantee's duty to indemnify the City in any way; nor shall such recovery relieve Grantee of its obligations under this Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

22. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

23. Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in SMC Chapter 12.90 as said Chapter presently exists or is hereafter amended.

24. No Waiver. The failure of the City to insist on timely performance or compliance by Grantee shall not constitute a waiver of the City's right to later insist on timely performance or compliance by Grantee. The failure of the City to enforce any provision of SMC Chapter 12.90 on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of SMC Chapter 12.90 on any other occasion, nor shall the failure to enforce any prior ordinance, law or contractual provision affecting Grantee's facilities act as a waiver or estoppel against application of SMC Chapter 12.90, this Franchise or any other provision of applicable law.

25. City Ordinances and Regulations. Grantee agrees to comply with all present and future applicable federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Neither the granting of this Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time this Franchise is issued or thereafter be obtained. Nothing herein shall be deemed to direct or restrict or expand the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

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

27. Assignment. This Franchise may not be assigned or transferred except as provided in SMC 12.90.370.

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

City:
City of Sumner
Attn: Mike Dahlem
Public Works Director
1104 Maple St.
Sumner, WA 98390
(253) 299-5702
miked@sumnerwa.gov

Grantee:
Ziply Wireless
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033
legal@ziply.com

29. Notice of Tariff Changes. If applicable to Grantee, Grantee shall, when making application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of the application and provide the City Engineer with a copy of the submitted application within three days of filing with the Washington Utilities and Transportation Commission or other regulatory body. If applicable to Grantee, Grantee shall further provide the City Engineer with a copy of any actual approved tariff change affecting the provisions of this Franchise.

30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Grantee's Telecommunications Facilities for the fair market value thereof. In determining the value of such Telecommunications Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

31. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to Grantee by reason of such vacation. The City shall notify Grantee in writing not less than sixty (60) days before vacating all or any portion of any such area in which Grantee has Telecommunications Facilities. The City may, after sixty (60) days written notice to Grantee, terminate this Franchise with respect to such vacated area.

32. Condition of Facilities. Grantee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Grantee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services.

33. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the substantially prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

34. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

35. Acceptance. Acceptance shall occur upon Grantee's filing with the City Engineer all of the following: (i) this executed Franchise; (ii) certificate of insurance and additional insured endorsement pursuant to Section 19; and (iii) establishment of the security fund required pursuant to Section 20. The effective date of this Franchise shall be the date upon which Grantee has filed all of the acceptance documents listed in the preceding sentence (the "Effective Date"). Acceptance shall occur within sixty (60) days after the approval of the Franchise by the City Engineer. If an administrative fee pursuant to Section 0 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

36. Governing Law. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

37. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 13, 18, 19, 25, and 36 shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its legal representatives, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

38. Miscellaneous.

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

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

38.3 This Franchise may be enforced at both law and equity.

38.4 This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

38.5 Grantee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the premises or Grantee's equipment is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

IN WITNESS WHEREOF, this Franchise is entered into and granted on _____, 20_____, by and between the City of Sumner ("City"), a Washington municipal corporation, and Ziply Wireless, LLC ("Grantee"). Grantee accepts all of the terms and conditions of this Franchises as of the Effective Date.

CITY OF SUMNER	GRANTEE:
_____	_____
By:_____	By:_____
City Engineer	Title:_____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By:_____

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3416

SUBJECT: Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC **CATEGORY:** Ordinance

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

ATTACHMENTS:
1. Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC

STAFF CONTACT: Andrea Marquez, City Attorney

SUMMARY BACKGROUND:
Ziply Wireless approached the City for two separate fiber and telecommunications franchises. Ziply operates under two separate entities/affiliates: Ziply Wireless and Ziply Fiber Pacific. Franchise agreements are formal authorizations to utilize the right of way, but Ziply will still be required to obtain permits prior to all work. The term of this franchise is for 10 years. Tonight is the second and final reading of the franchise agrement.

COUNCIL COMMITTEE/STUDY SESSION: PW Committee
MEETING/STUDY SESSION DATE: 7/11/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Approve Ordinance No. 2864 - Franchise Agreement with Ziply Fiber Pacific LLC, substantially in a form approved by the City Attorney.

ORDINANCE 2864
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, OR REMOVE FIBER OPTIC CABLES WITHIN THE PUBLIC WAYS OF THE CITY OF SUMNER ("CITY") TO ZIPLY FIBER PACIFIC, LLC ("GRANTEE"). THE CITY AND GRANTEE ARE SOMETIMES HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES."

WHEREAS, Ziply Fiber Pacific, LLC dba Ziply Fiber, a limited liability company organized and existing under the laws of the State of Delaware is a competitive telecommunications company providing telecommunication services, including voice, Internet and data services (“Wireline Communications Services”), which desires to occupy the City of Sumner rights-of-way to install, construct, operate, and maintain its telecommunications facilities and network for the purpose of providing services to its customers at locations within the City; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain telecommunication facilities within the boundaries of the City.

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

WHEREAS, Grantee shall be responsible for its actual costs in using, occupying and repairing public ways; and

WHEREAS, the City and Grantee desire to effectuate good coordination of the use of the rights-of-way; and

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

WHEREAS, the City has the authority to grant, issue or deny franchises and use permits for the use of the right-of-way for telecommunications services subject to Chapter 12.90 of the Sumner Municipal Code (“SMC”) but subject to applicable law; and

WHEREAS, the City and Grantee desire to enter into an agreement authorizing Grantee to use the Rights-of-Way throughout the City and specifying the terms and conditions under which said use may be made;

NOW, THEREFORE, THE CITY AND THE GRANTEE AGREE AS FOLLOWS:

1. Authority Granted. The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for the Telecommunications Facilities defined in Section 4 below. The Grantee is authorized to place its Telecommunications Facilities in, under, on, across, through, along, or below the specific rights-of-way of the City (the "Franchise Area").

2. Authority Limited to Occupation of Rights-of-Way. The authority granted herein is a limited and non-exclusive authorization to occupy and use the rights-of-way of the City for the purpose of providing those Telecommunications Facilities (as defined in Section 4 below). This Franchise does not and shall not convey any right to Grantee to install its facilities on, under, over, across or to otherwise use City owned or leased properties of any kind without a valid lease agreement with the City. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to the Grantee. No reference herein to a public right-of-way shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Franchise may only grant than those rights which the City may have the undisputed right and power to give.

3. Permits Required. Grantee must obtain a permit from the City prior to performing any work within the rights-of-way. All facilities must be installed and maintained within the public rights-of-way in such manner and at such points so as not to inconvenience the public use of the public rights-of-way or to adversely affect the public safety and welfare.

4. Telecommunications Facilities.

4.1 The scope of this Franchise extends only to the wireline telecommunications facilities owned, operated or controlled by Grantee in the rights-of-way (the "Telecommunications Facilities"). This Franchise does not grant any rights in any easement granted for or in favor of any City or public utility facilities or operations.

4.2 This Franchise does not authorize the offering of Cable Services as defined in 47 U.S.C. § 522(6).

4.3 This Franchise does not authorize the installation of small wireless facilities as that term is defined in 47 USC 1.6002 or personal wireless facilities as that term is defined in RCW 35.99.010.

4.4 Unless the City and the Grantee have entered into a site-specific agreement or lease, this Franchise does not authorize Grantee to place new structures, including but not limited to poles and pedestals, in the rights-of-way regardless of height.

5. Terms, Conditions, and Provisions of SMC Chapter 12.90 Incorporated by Reference. The terms, conditions, and provisions of SMC Chapter 12.90 are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of SMC Chapter 12.90, as such chapter now exists or is hereinafter amended. The terms of this Franchise shall supplement SMC Chapter 12.90. In the event of a conflict between this Franchise and SMC Chapter 12.90, the terms of this Franchise shall prevail.

6. Term of Franchise. The term of this Franchise shall be for a period of ten (10) years from the date the last party signs the Franchise, unless sooner terminated as provided herein.

7. Location of Facilities. Grantee may locate its Facilities anywhere within the Franchise Area, consistent the City's applicable Code requirements and the City's Design and Construction Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services to Cable Services or small wireless facilities.

8. Non-Exclusive Grant.

8.1 This Franchise shall not in any manner prevent the City from granting additional franchises or entering into other similar agreements or franchises in, under, on, across, over, through, along or below any rights-of-way of the City or other City-owned properties, nor from exercising such other powers and authorities granted to the City by law.

8.2 This Franchise shall in no way prevent or prohibit the City from using any of its rights-of-way or other City-owned properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way and other City-owned properties of every type and description.

8.3 This Franchise does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and any right, permission or consent to occupy any location in the public right-of-way shall be revocable and terminable at the discretion of the City and the facility therein removed at the cost of the Grantee in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

9. Relocation.

9.1 **Relocation Requirement.** The City may require Grantee, and Grantee covenants and agrees, to protect, support, temporarily disconnect, relocate, and remove, its Facilities within the City's rights-of-way as set forth in SMC Section 12.90.240 when reasonably necessary for construction, alteration, repair, or improvement of the right-of-way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same rights-of-way upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any rights-of-way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party private entities. Collectively all such projects described in this Section 9.1 shall be considered a

"Public Improvement Project". Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 9.1 shall be borne by Grantee. Nothing contained within this Franchise shall limit Grantee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

9.2 **Notice and Relocation Process.** If the City determines that the Public Improvement Project necessitates the relocation of Grantee's existing Facilities, the City shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, the City shall consult with Grantee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantee shall complete the relocation by the Relocation Date, unless the City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2) or unless any delays are caused by a force majeure event. To provide guidance on this notice process, the City will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Improvement Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City (unless delays are caused by a force majeure event) and at no charge or expense to the City, except as otherwise permitted by RCW 35.99.060. Such timeline may be extended by a mutual agreement.

9.3 **Locate Facilities.** Upon request of the City or of a third-party performing work on behalf of the City in the rights-of-way and in order to facilitate the design of the rights-of-way, Grantee agrees, at its sole cost and expense, to locate its Facilities so that the Facilities' location may be taken into account in the improvement design. Grantee shall also locate its Facilities upon the request of a third party. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement Project shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least fourteen (14) days' written notice to perform any location services necessary to locate Grantee's facilities.

9.4 **Third Party Requests for Relocation.** The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public Improvement Projects. The City shall take into account payment by third parties of relocation costs or expenses in establishing or extending the Relocation Date.

9.5 Contractor Delay Claims. Grantee shall be responsible for the actual third party costs, City incurred expenses, and/or damages incurred by the City for delays in a Public Improvement Project to the extent the delay is caused by or arises out of Grantee's failure to comply with the final agreed upon schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any other reason outside of Grantee's reasonable control. Grantee agrees to work cooperatively with the City, other franchisees and utilities and the City's third-party contractor with respect to the Public Improvement Project. Upon a notification of a delay due to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues and if Grantee breaches its obligations under this Section 9 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs,

expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option: tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 0 and Section 18; or

require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

9.6 Indemnification. Grantee will indemnify, hold harmless and defend the City, in accordance with the provisions of Section 20, against any all claims, suits, actions, damages, or liabilities for delays to the extent caused by or arising out of the failure of Grantee to remove or relocate its facilities as required in this Section 9; provided that Grantee shall not be responsible for indemnifying, holding harmless or defending City for any claims due to delays not caused by grantee or to the extent caused by the negligence, willful misconduct or unreasonable delay of the City or any third party.

9.7 City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as described in this Section 9, except for in Section 9.4, then the City may perform such work or cause it to be done, and the City's reasonable and direct costs shall be paid by Grantee pursuant to Section 12.

9.8 Survival. The provisions of this Section 9 shall survive the expiration or termination of this Franchise for so long as Grantee continues to have Facilities in the rights-of-way.

10. Undergrounding of Facilities.

10.1 The parties agree that this Franchise does not limit or expand the City's authority under federal, law, or local laws, to require the undergrounding of utilities, including without limitation RCW 35.99.

10.2 Whenever all new or existing telephone, cable television, and electric utilities are located or relocated underground within public ways, the Grantee that currently occupies the same public ways shall concurrently relocate its Facilities underground in the manner required by SMC 12.90.120 and/or specified by the City Engineer or designee at no expense or liability to the City. Grantee shall only be required to pay its proportionately fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Grantee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.

10.3 Grantee will maintain membership in good standing with the Utility Coordinating Council One Call Center, or other similar or successor organization designated to coordinate underground equipment locations and installations. Grantee shall abide by RCW Chapter 19.122

(Washington State's "Underground Utilities" statutes) and will further comply with and adhere to local procedures, customs and practices relating to the one call locator service program.

11. Facilities for City's Use.

Grantee shall inform the City with at least thirty (30) days' advance written notice, when feasible or reasonable, that it is constructing, relocating, or placing ducts or conduits in the rights-of-way and provide the City with an opportunity to request that Grantee provide the City with additional duct or conduit and related structures necessary to access the conduit at City's costs and expense pursuant to RCW 35.99.070 and SMC 12.90.120(E).

12. Recovery of Costs.

12.1 Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City.

12.2 Where the City incurs reasonable costs and expenses for which a fee is not established, Grantee shall reimburse the City the actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, and this Franchise, to inspecting plans and construction, or to the preparation of a detailed statement pursuant to chapter 43.21C RCW. These fees may include reimbursement for time associated with attorneys, consultants, City Staff and City Attorney's Office review.

12.3 Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise. Grantee shall pay the reimbursements pursuant to this Section 0 upon acceptance of this Franchise. No permits shall be issued for the installation of Facilities until such time as the City has received payment of this fee. Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Grantee's Telecommunications Facilities.

12.4 Grantee shall reimburse the City for any costs incurred by the City in removing any Grantee Telecommunication Facilities upon abandonment, or in response to an emergency involving Grantee's Facilities.

12.5 Whenever necessary, after construction or maintaining any of Grantee's facilities within the rights-of-way, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface and subsurface disturbed by Grantee to as good or better condition as it was in before the work began, reasonable wear and tear excepted. Grantee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Grantee's work in the rights-of-way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable. If Grantee fails to undertake such repairs as herein provided, the City may perform the repairs at Grantee's expense. In the event that the use of any part of the system is discontinued for any reason for a continuous period of twelve (12) months, or in the event such system equipment or facilities have been installed in any public ways or rights of- way without complying with the requirements of this Franchise or other City ordinances, or the Franchise has been terminated or has expired,

upon receiving fourteen (14) business days prior written demand from the City, the Grantee shall promptly commence to remove, at its expense, such affected equipment or Facilities, other than any which the City may permit to be abandoned in place, from the public rights-of-way. Any removal shall be completed within one-hundred eighty (180) days from receipt of the City's written demand. In the event of such removal, the Grantee shall promptly restore the public ways or rights-of-way from which such property has been removed to a condition reasonably satisfactory to the City. Any of Grantee's affected equipment or facilities remaining in place after the expiration of the one hundred eighty (180) days after the termination or expiration of the Franchise, and upon written notice from the City, shall be considered permanently abandoned. The City may extend such time with prior written request from the Grantee, such request shall not be unreasonably withheld. Any equipment or facilities of the Grantee that the City allows to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon Grantee's permanent abandonment of the equipment or facilities in place, the equipment or facilities shall become the City's property, and the Grantee shall submit an instrument in writing to the Public Works Director, to be approved by the City Attorney, transferring the ownership of such equipment or facilities to the City.

13. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis or sooner, but the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information purposes. Reservation of Rights.

13.1 Grantee’s operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result of these statutes and other federal law, the City will not impose a franchise fee under the terms of this Franchise. The parties shall, in good faith, negotiate a franchise fee on Grantee if Grantee’s operations as authorized by this Franchise change such that the s prohibitions of RCW 35.21.860 or federal law no longer apply, or if prohibitions on the imposition of such fees are removed. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws and such fee shall be suspended while any such challenge is pending.

14. Unsafe Working Conditions.

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

1. Be in writing;
2. Be given to the person doing the work or posted on the work site;
3. Be sent to Grantee by overnight delivery;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

15. Dangerous Conditions; Authority for City to Abate.

15.1 Whenever construction, installation, or excavation of Grantee's telecommunications facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the City Engineer may reasonably require Grantee, at Grantee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, and utilities. Grantee shall be required to take action immediately and without notice from the City or within a prescribed time indicated in writing from the City.

15.2 In the event that Grantee fails or refuses to promptly take the action as directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, and other City property, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and Grantee shall be liable to the City for the reasonable costs thereof.

16. Safety and Maintenance Standards.

16.1 Grantee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the rights-of-ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Grantee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its facilities. Additionally, Grantee shall keep its facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. By way of illustration and not limitation, Grantee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Grantee, the City reserves the general right to inspect the facilities to evaluate if they are constructed and maintained in a safe condition.

16.2 Additional standards include:

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

16.2.2 Any opening or obstruction in the rights-of-way or other public places made by Grantee in the course of its operations shall be protected by Grantee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

17. Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors are subject to the same restrictions, limitations, and

conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

18. Indemnification; Exclusion of Damages.

18.1 Grantee releases, covenants not to bring suit against, and agrees to indemnify, defend, and hold harmless the City, its officers, officials, employees, agents, volunteers, and representatives from any and all claims, reasonable costs, judgments, awards, or other liability asserted by a third party to the extent related to any injury or death of any person or damage to property caused by or arising out of any negligent, fraudulent, or willful acts or omissions of Grantee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to such claims that are not reduced to a suit and any claims that may be compromised, with Grantee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

18.2 Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance by Grantee of any of its obligations under this Section 18.

18.3 The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City, pursuant to this Section 19. Grantee may choose counsel to defend the City subject to this Section 19.3. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. Grantee may accept defense of a claim or claims under a reservation of rights in which case, a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) determines that such claim or claims were not subject to Grantee's obligations under this Section, City shall promptly reimburse Grantee for all costs and expenses, including attorneys' fees, incurred in the defense of the claim or claims.

18.4 Grantee understands the intent. Grantee is indemnifying and controlling the defense. Nonetheless, it is the City's discretion to engage separate counsel if it deems there is a conflict of interest. Counsel have procedures, and ethical requirements, to deal with conflicts. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the

reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

18.5 Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials, employees, or agents, the obligations of Grantee under the indemnification provisions of this Section 18 and any other indemnification provision herein shall apply. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the indemnification provided constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by the City directly against the Grantee for claims made against the City by Grantee's employees. This waiver has been mutually negotiated by the parties.

18.6 Notwithstanding any other provisions of this Section 18, Grantee assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any solely negligent, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, elected or appointed officials, or contractors.

18.7 The provisions of this Section 188 shall survive the expiration, revocation, or termination of this Franchise.

18.8 NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ATTORNEY FEES OR LOST PROFITS, TIME, SAVINGS, GOODWILL, LOST REVENUES, AND LOSS OF BUSINESS OPPORTUNITY, ARISING FROM OR IN CONNECTION TO THIS AGREEMENT REGARDLESS OF THE CAUSE OF ACTION WHETHER OR NOT THE OTHER PARTY WAS AWARE OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF THESE DAMAGES. Grantee further agrees to indemnify, hold harmless, and defend the City against any third-party claims for damages, including, but not limited to, business interruption damages, lost profits, and consequential damages, brought by or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors.

19. Insurance.

19.1 Grantee shall procure and maintain for so long as Grantee has Facilities in the rights-of-way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the acts or omissions of Grantee. Grantee shall require that every subcontractor maintain substantially the same insurance coverage with substantially the same policy limits as required of Grantee. Grantee shall procure insurance from insurers with a current A.M. Best rating of not less than A:VII. Grantee shall provide a copy of a certificate of insurance

and blanket additional insured endorsement to the City for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of no less than $5,000,000 combined single limit per occurrence for bodily injury and property damage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits of no less than $5,000,000 per occurrence for bodily injury and property damage and $5,000,000 general aggregate including personal and advertising injury, blanket contractual; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU).

(c) Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in the aggregate

(d) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of $1,000,000 each accident/disease/policy limit. Evidence of qualified self-insurance is acceptable.

(e) Excess Umbrella liability policy with limits of no less than $5,000,000 per occurrence and in the aggregate. Grantee may use any combination of primary and excess to meet required total limits.

19.2 Payment of deductible or self-insured retention shall be the sole responsibility of Grantee. Grantee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 19.1. Grantee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

19.3 The required insurance policies, with the exception of Workers' Compensation and Employer's Liability, and Pollution Liability obtained by Grantee shall include the City, its officers, officials, employees, representatives, engineers, consultants, agents, and volunteers ("Additional Insureds"), as an additional insured under this Franchise, with coverage at least as broad as Additional Insured Managers Lessors of Premises ISO form CG 00 01 and/or CG 20 26. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. Grantee shall provide to the City upon acceptance a certificate of insurance and blanket additional insured endorsement. Receipt by the City of any certificate showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements. Grantee's required general and auto liability insurance shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of Grantee's required insurance and shall not contribute with it.

19.4 Upon receipt of notice from its insurer(s) Grantee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy, required pursuant to this Section 19.1. Grantee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 19.1. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 19.1 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 23 below, subject to the applicable cure periods.

19.5 Grantee's maintenance of insurance as required by this Section 19 shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee. If Grantee maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess Umbrella liability maintained by the Grantee, irrespective of whether such limits maintained by the Grantee are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Grantee.

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

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

20. Security Fund and Liquidated Damages.

20.1 At the same time as providing acceptance of this Franchise, Grantee shall establish a permanent security fund in the amount of Fifty Thousand Dollars ($50,000) to guarantee the full and complete performance of the requirements of this Franchise, the requirements of SMC Chapter 12.90, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. The Grantee may provide, in lieu of a cash security deposit to the City, an unconditional letter of credit made out to the City, or bond in the amount of Fifty Thousand Dollars ($50,000) to secure performance under this Franchise. The letter of credit or bond shall be in the form acceptable to the City Attorney.

20.2 If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions

of this Franchise, the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings, pursuant to SMC 12.90.350(C), (2) refuse to grant additional permits, (3) claim liquidated damages of Two Hundred Fifty Dollars ($250.00) per day against the Security Fund, or (4) pursue other remedies to compel or force Grantee to comply with the terms hereof. If liquidated damages are used, then those damages shall be the exclusive monetary remedy for the breach.

20.3 Neither the right to liquidated damages nor the payment of liquidated damages shall bar or otherwise limit the right of the City in a proper case to utilize any other remedies available in equity or law.

20.4 Before any sums are withdrawn from the security fund, the City shall give written notice to the Grantee:

20.4.1 Describing the act, default or failure to be remedied, or the damages, costs or expenses which the City has incurred by reason of Grantee's act or default regarding the installation, maintenance, repair or removal of telecommunications facilities in the rights-of-way, other ways or upon City property or in connection with restoration of the foregoing;

20.4.2 Providing a reasonable opportunity for Grantee to first remedy the existing or ongoing default or failure regarding the installation, maintenance, repair or removal of the Facilities;

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

20.4.4 That Grantee will be given an opportunity to review the act, default or failure described in the notice with the City or his or her designee.

20.5 Grantee shall replenish the security fund within 14 days after written notice from the City that there is a deficiency in the amount of the fund.

20.6 Upon termination or expiration of the Franchise all funds remaining in the Security Fund shall be returned to Grantee within thirty (30) days after removal of Grantee's Telecommunications Facilities within the rights-of-way.

21. Remedies Cumulative. All remedies under SMC Chapter 12.90 and this Franchise are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve Grantee of its obligations to comply with this Franchise. Remedies may be used singly or in combination; in addition, the City may exercise any rights it has at law or equity. Recovery by the City of any amounts under insurance, the performance bond, the security fund or letter of credit, or otherwise, does not limit a Grantee’s duty to indemnify the City in any way; nor shall

such recovery relieve Grantee of its obligations under this Franchise, limit the amounts owed to the City, or in any respect prevent the City from exercising any other right or remedy it may have.

22. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

23. Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in SMC Chapter 12.90 as said Chapter presently exists or is hereafter amended.

24. No Waiver. The failure of the City to insist on timely performance or compliance by Grantee shall not constitute a waiver of the City's right to later insist on timely performance or compliance by Grantee. The failure of the City to enforce any provision of SMC Chapter 12.90 on any occasion shall not operate as a waiver or estoppel of this right to enforce any provision of SMC Chapter 12.90 on any other occasion, nor shall the failure to enforce any prior ordinance, law or contractual provision affecting Grantee's facilities act as a waiver or estoppel against application of SMC Chapter 12.90, this Franchise or any other provision of applicable law.

25. City Ordinances and Regulations. Grantee agrees to comply with all present and future applicable federal, state and local laws, ordinances, rules and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. Neither the granting of this Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time this Franchise is issued or thereafter be obtained. Nothing herein shall be deemed to direct or restrict or expand the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any telecommunications facilities by the Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

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

27. Assignment. This Franchise may not be assigned or transferred except as provided in SMC 12.90.370.

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

City:
City of Sumner
Attn: Mike Dahlem
Public Works Director
1104 Maple St.
Sumner, WA 98390
(253) 299-5702
miked@sumnerwa.gov

Grantee:
Ziply Fiber
Attn: Legal Department
135 Lake Street South, Suite 155
Kirkland, WA 98033
legal@ziply.com

29. Notice of Tariff Changes. If applicable to Grantee, Grantee shall, when making application for any changes in tariffs affecting the provisions of this Franchise, notify the City in writing of the application and provide the City Engineer with a copy of the submitted application within three days of filing with the Washington Utilities and Transportation Commission or other regulatory body. If applicable to Grantee, Grantee shall further provide the City Engineer with a copy of any actual approved tariff change affecting the provisions of this Franchise.

30. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Grantee's Telecommunications Facilities for the fair market value thereof. In determining the value of such Telecommunications Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

31. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to Grantee by reason of such vacation. The City shall notify Grantee in writing not less than sixty (60) days before vacating all or any portion of any such area in which Grantee has Telecommunications Facilities. The City may, after sixty (60) days written notice to Grantee, terminate this Franchise with respect to such vacated area.

32. Condition of Facilities. Grantee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Grantee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services.

33. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the substantially prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

34. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

35. Acceptance. Acceptance shall occur upon Grantee's filing with the City Engineer all of the following: (i) this executed Franchise; (ii) certificate of insurance and additional insured endorsement pursuant to Section 19; and (iii) establishment of the security fund required pursuant to Section 20. The effective date of this Franchise shall be the date upon which Grantee has filed all of the acceptance documents listed in the preceding sentence (the "Effective Date"). Acceptance shall occur within sixty (60) days after the approval of the Franchise by the City Engineer. If an administrative fee pursuant to Section 0 is due, then issuance of any Right-of-Way Use Permit will not occur until receipt of the administrative fee.

36. Governing Law. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

37. Survival. All of the provisions, conditions and requirements of Section 5, 9, 10, 13, 18, 19, 25, and 36 shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its legal representatives, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

38. Miscellaneous.

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

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

38.3 This Franchise may be enforced at both law and equity.

38.4 This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

38.5 Grantee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the premises or Grantee's equipment is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

IN WITNESS WHEREOF, this Franchise is entered into and granted on _____, 20_____, by and between the City of Sumner ("City"), a Washington municipal corporation, and Ziply Fiber Pacific, LLC ("Grantee"). Grantee accepts all of the terms and conditions of this Franchises as of the Effective Date.

CITY OF SUMNER

_____
By:_____
City Engineer

GRANTEE:

_____
By:_____
Title:_____

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By:_____

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3565

SUBJECT: Forestry & Parks Commission Appointment - McCaul **CATEGORY:** Motion

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

ATTACHMENTS:
1. McCaul, Gene Application redacted

STAFF CONTACT: Derek Barry, Community Services Manager

SUMMARY BACKGROUND:
Mayor Hayden is seeking confirmation of Forestry & Parks Commission member, Gene McCaul.

The Sumner Forestry & Parks Commission consists of up to twelve (12) members who are appointed by the Mayor and confirmed by the City Council. The members are to be selected without respect to political affiliations and shall serve a four-year (4) term without compensation.

Gene and his family live in Sumner and enjoy our open space. Gene recently retired from being an instructor at Green River College and looks forward to rejoining the Forestry & Parks Commission. He brings a wealth of knowledge to our commission.

COUNCIL COMMITTEE/STUDY SESSION:
MEETING/STUDY SESSION DATE:
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Confirm appointment of Gene McCaul to the Forestry & Parks Commission to a term expiring April 30, 2027.

From: Sumner Connects
To: Michelle Converse
Subject: Anonymous User completed Commission Application
Date: Friday, July 21, 2023 7:58:08 PM

****EXTERNAL EMAIL****

Anonymous User just submitted the survey Commission Application with the responses below.

I am interested in serving on the following:

Parks & Forestry Commission

Name:

Gene McCaul

Phone Number:

[redacted]

Email Address

[redacted]

Address:

[redacted]

Occupation (if retired, please indicate former occupation or profession):

Retired, was a Forester and an instructor at Green River College.

Education:

BS in Forest management from WSU.

Professional or community involvement:

Served on the parks and forestry commission for about 15 years.

Why are you interested in serving on this commission?

I have retired and have more time available to serve. I dropped off the commission because of my teaching schedule.

Have you previously served on a City of Sumner commission?

Yes

If yes, which one(s):

Parks and forestry

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3492

SUBJECT: Ordinance No. 2860 - Sumner Municipal Code Update 12.60.050 - General Park Hours

CATEGORY: Ordinance

BUDGET IMPACT:

ATTACHMENTS:
1. Ordinance No. 2860 - Sumner Municipal Code Update 12.60.050 - General Park Hours

STAFF CONTACT: Derek Barry, Community Services Manager

SUMMARY BACKGROUND:
The Sumner Trail hours were 6:00am to 10:00pm daily. This was inconsistent with neighboring trail systems and could put unnecessary liability on the city. Staff worked with the Legal Department and got support from the Forestry & Parks Commission to change the hours to 1/2 hour before sunrise and 1/2 hour after sunset.

COUNCIL COMMITTEE/STUDY SESSION: **Community Development Committee**
MEETING/STUDY SESSION DATE: 6/28/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Approve Ordinance No. 2860 amending Sumner Municipal Code 12.60.050, General Park Hours

ORDINANCE 2860
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING SECTIONS OF SMC 12.60.050 GENERAL PARK HOURS.

WHEREAS, the City of Sumner has a trail system that is enjoyed by the community; and

WHEREAS, the City has identified that the hours of use should be the same as neighboring trail systems.

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

Section 1. That Sumner Municipal Code Section 12.60.050 entitled General Park Hours shall be amended as follows:

12.60.050 General park hours.
Unless modified in this chapter, the hours of all parks shall be from 8:00 a.m. until sunset, and trails from ½ hour before sunrise until ½ hour after sunset, and facilities open for public use shall be 6:00 a.m. to 10:00 p.m. daily. (Ord. 2772 § 2, 2021; Ord. 2677 § 1 (part), 2019: Ord. 2569 § 1 (part), 2016: Ord. 2480 § 1 (part), 2014: Ord. 1812 § 5, 1997)

Section 2. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

Section 3. Effective date. This ordinance shall be effective five (5) days from and after its passage approval and publication as provided by law.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this _____ day of _____ 2023.

_____
Mayor Kathy Hayden

ATTEST: APPROVED AS TO FORM:

_____ _____
Michelle Converse, City Clerk City Attorney Andrea Marquez

First Reading:

Date Adopted:
Date of Publication:
Effective Date:

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3491

SUBJECT: Ordinance No. 2861 - Sumner Municipal Code Update - Cemetery - Green Burial

CATEGORY: Ordinance

BUDGET IMPACT:

ATTACHMENTS:
1. Ordinance No. 2861 - Sumner Municipal Code Update - Cemetery - Green Burial

STAFF CONTACT: Derek Barry, Community Services Manager

SUMMARY BACKGROUND:
The City of Sumner is expanding offerings at the Sumner Cemetery by creating a green burial area. The staff has made improvements to the western section of the Sumner Cemetery that will be a great fit for this use.

COUNCIL COMMITTEE/STUDY SESSION: **Community Development Committee**
MEETING/STUDY SESSION DATE: 6/28/2023
COMMITTEE RECOMMENDATION: Do Pass

STAFF RECOMMENDATIONS/MOTION:
Adopt Ordinance No. 2861, amending section 8.04 (Cemetery) and adding 8.04.320 (Green Burials) to the Sumner Municipal Code.

ORDINANCE 2861
CITY OF SUMNER, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON, AMENDING SECTIONS OF SMC 8.04 CEMETERY AND ADOPTING A NEW SECTION 8.04.320 RELATED TO GREEN BURIALS.

WHEREAS, the Sumner Cemetery provides needed and valued services to the community; and

WHEREAS, the City has identified and developed an area of the Sumner Cemetery to provide a green burial option.

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

Section 1. That Sumner Municipal Code Section 8.04.140 entitled Sodding of Graves shall be amended as follows:

All graves, except the green burial section, will be sodded or seeded by the city without charge to the lot owners, when the graves shall have thoroughly settled and been made level with the surface of the surrounding lawn.

Section 2. That Sumner Municipal Code Section 8.04.200 entitled Interment – Position of Grave shall be amended as follows:

When an interment is to be made the person requesting it must show or designate the exact position of the grave, and give the order in person or in writing, except in the at need area of the green burial section.

Section 3. That Sumner Municipal Code Section 8.04.250 entitled "Decoration" shall be amended as follows:

No lot or grave shall be decorated by the owner or other interested therein with any trees, shrubs or plants of permanent nature. This does not, however, exclude the placing of cut flowers upon the graves, which must be placed in receptacles ~~sunk~~ that are level with the ground. Such ground-level receptacles do not obstruct the maintenance work or upkeep ~~or appear unsightly when nonfilled~~non ~~filled as do glass jars, vases, bottles, cans and similar holders~~. The placing of fresh cut flowers upon the graves in the green burial section may be without a receptacles. Vase h~~H~~oles may be bored into the boulder markers in the green burial section. No person shall place artificial flowers or decorations in the green burial section ~~anytime of the year~~at any time. Such artificial décor shall be subject to removal by City staff. A suitable vase for each grave will be furnished and set at a nominal charge upon application to the cemetery ~~administrative manager~~. Floral or other decorations may be removed from lots as soon as they become wilted or unsightly and persons wishing to retain any of the decorations must remove them within 48 hours after interment.

Section 4. That Sumner Municipal Code Section 8.04.270 entitled Monuments and Memorials shall be amended as follows:

A. Each grave may contain one memorial and one official flower vase for each occupant. The memorial shall be of the type and size approved for the specific section of the cemetery. Raised headstones shall not exceed 30 inches in height, except monument sections, and all footstones shall be flush with the turf. Plot owners shall keep all monumental work placed upon their plots in good repair. Vase holes may be bored in the boulder markers.

Section 5. That Sumner Municipal Code Section 8.04.294 entitled Earth Burial, and Scattering of Cremated Remains shall be amended as follows:

An extended land use charge shall be made for earth burial of cremated or composted remains on occupied ~~adult~~ graves and will be charged as listed in the fee schedule. The scattering of human cremated remains in the Sumner Cemetery shall be performed by cemetery staff in designated areas. Composted remains may be used in a traditional burial plot ~~with~~subject to the same ~~costs~~fee schedule as traditional burial. As an alternative, ~~or~~ the composted material may be placed in the green burial section of the cemetery in a plot or in any designated composting ~~of our trees in the~~site within the green burial section. Decedent's name may be inscribed on ~~our~~the City's Boulder in Memoriam

Section 6. That a new section of Sumner Municipal Code, section 8.04.320 entitled Green Burial Section shall be adopted as follows:

8.04.320 Green Burial Section

A. Allow for burial, only decedents that have not been embalmed or those embalmed only with Green Burial Council – approved, nontoxic chemicals shall be permitted to locate in the green burial section.

B. No vault (partial, inverted, or otherwise), a vault lid, concrete box, slab, or partitioned liner is allowed in the green burial ~~plot~~section.

C. All burial containers, shrouds, and other associated products shall be made only of natural, biodegradable materials.

D. Boulder markers shall be made from local field stone material provided ~~through~~by the Sumner cemetery.

Section 7. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance or the validity of its application to other person's circumstances.

Section 8. Effective date. This ordinance shall be effective five (5) days from and after its passage approval and publication as provided by law.

Section 9. Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this _____ day of _____ 2023.

_____
Mayor Kathy Hayden

ATTEST:

_____
Michelle Converse, City Clerk

APPROVED AS TO FORM:

_____
City Attorney Andrea Marquez

First Reading:
Date Adopted:
Date of Publication:
Effective Date:

CITY COUNCIL MEETING
DATE: August 21, 2023
AGENDA BILL: 23-3419

SUBJECT: Ordinance No. 2870 - Delegation Authority for Bond Anticipation Note (BAN) - Public Works Operations Facility

CATEGORY: Ordinance

BUDGET IMPACT:
Expenditure Required: Debt Service per Ordinance

Within Budget Allocation: N/A

ATTACHMENTS:
1. Ordinance No. 2870 LTGO BAN, 2023 (Delegation)

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 supplemental financing for the decant facility. Ordinance No. 2870 delegates authority to staff to coordinate and complete the issuance of a bond anticipation note not to exceed $8.1M, 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 takeout long-term debt financing.

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

STAFF RECOMMENDATIONS/MOTION:
Approve Ordinance No. 2870 delegating authority for staff to issue a bond anticipation note for Phase I of the Public Works Operations Facility.

CITY OF SUMNER, WASHINGTON

LIMITED TAX GENERAL OBLIGATION BOND ANTICIPATION NOTE, 2023

ORDINANCE NO. 2870

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. 2870

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* 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. 2870

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. 2870 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 Designated Representative is authorized to determine and execute a designation, if applicable, of the Note under Section 265(b)(3) of the Code for banks, thrift institutions and other financial institutions.

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:

_____
City Clerk

APPROVED AS TO FORM:

_____
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. 2870 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