

City of Sumas
Request for Council Action

Meeting Date: February 10, 2025

Subject:

Assignment of Operation & Management Agreement (Cable System

Department: Light Department

Prepared By: Michelle Quinn

Agenda Location: ☐ Public Hearing ☒ Old Business ☐ New Business
☐ Staff Reports

Brief Summary:

Assigning a new name from Sound Internet Services to the Declaration Networks Group for the current Operation and Management Agreement with Sound Internet Services, Inc.

This internal restructuring was part of an intercompany merger in order for streaming regulatory compliance and reporting and company's operations.

All services will continue at the same rates, terms and conditions for our residents

Budget Implications: ☐ Current Budget ☐ New Budget Request ☒ Non-Budgetary

Staff Recommendation:

Staff respectfully recommends that the City Council authorize the Mayor to sign the agreement

Reviewed By:

Mayor: Bosch

Finance Director: Mollie Bost

City Clerk: Michelle Quinn

Public Works Director: Sunny Aulakh

**ASSIGNMENT OF OPERATION AND MANAGEMENT AGREEMENT
(CABLE SYSTEM)**

THIS ASSIGNMENT AGREEMENT ("Assignment") is entered into by and between SOUND INTERNET SERVICES, INC., an _____ corporation (as "Assignor"), DECLARATION NETWORKS GROUP, INC., an _____ corporation (as "Assignee"), and the CITY OF SUMAS, a municipal corporation of the State of Washington (the "City"), collectively the "Parties."

WHEREAS, the City and Assignor are parties to that certain Agreement referred to as OPERATION AND MANAGEMENT AGREEMENT, dated December 23, 2019, related to the operation and management of the City's Cable System, a copy of which is attached hereto as Exhibit "A", as well as any addendums or amendments thereto (collectively "Agreement"); and

WHEREAS, certain assets of the Assignor are in the process of being acquired by Assignee pursuant to separate agreement between Assignor and Assignee; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Assignment.** Assignor hereby assigns to Assignee all of Assignor's rights and obligations under the Agreement effective on the closing date of the transaction. Assignor and Assignee shall provide the City with written notice when the transaction is complete.
2. **Assumption.** Assignee hereby assumes from Assignor all of Assignor's rights and obligations under the Agreement effective on the closing date of the transaction. Assignee affirms that it has taken all steps necessary to fully apprise itself of the content and status of the Agreement.
3. **Consent.** The City hereby consents to the assignment and assumption of the Agreement as provided herein.
4. **Insurance.** The assignment provided herein is contingent upon Assignee providing proof of insurance to the City in accordance with the Agreement.
5. **Further Acts.** The Parties agree to cooperate in good faith to take any further acts as are reasonably necessary to effectuate the intent of this Assignment.

EXECUTED this _____ day of _____, 2025 for Assignor, **SOUND INTERNET SERVICES, INC.** by:

Authorized Signature

Printed Name and Title

EXECUTED this _____ day of _____, 2025 for Assignee, **DECLARATION NETWORKS GROUP, INC.** by:

Authorized Signature

Printed Name and Title

EXECUTED this _____ day of _____, 2025 for the **CITY OF SUMAS** by:

Mayor

Attest:

Approved as to Form:

City Clerk

City Attorney

ORIGINAL

OPERATION AND MANAGEMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Sumas, hereinafter referred to as "City" and Sound Internet Services, Inc., hereinafter referred to as the "Operator."

WHEREAS, the City owns a TV/cable system ("Cable System") located in the City of Sumas; and

WHEREAS, the costs of operating the Cable System have continued to increase, including increases in subscriber fees from broadcasters and increased capital costs due to advances in technology requiring upgrades to equipment, including that equipment necessary to receive broadcast signals, as well as other market changes; and

WHEREAS, the City has a limited number of customers subscribing to its Cable System; and

WHEREAS, the limited number of customers are not sufficient to support the independent operation of the Cable System by the City so as to continue to provide the current level of services let alone that level of service expected by today's consumer standards and offered by other tv/cable service providers; and

WHEREAS, the City desires to enter into an agreement with an experienced cable television system operator to provide for the overall management, maintenance, and operation of the Cable System; ensure the highest possible quality of cable television services and related benefits for the public within the available limits of system; and provide a positive revenue stream to the City for maintenance and administration of the Cable System and related facilities; and

WHEREAS, the Operator currently provides tv/cable services to customers of its own system outside the City and has a larger customer base than the City; and

WHEREAS, the Operator also receives its signal through the City's cable head end for purposes of its sale of television and cable services to customers of its own system and has an interest in seeing the City's Cable System continue to operate;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

The following terms shall be defined as follows for the purposes of this Agreement:

1.1 "Actual Gross Revenue" means any and all revenues earned during an

Operating Year attributable to operation of the City's Cable System.

1.2 "Operating Year" shall comprise the period of twelve (12) full calendar months commencing on January 1 and ending on December 31.

1.3 "Cable System" shall mean the TV/cable system owned by the City, and consists of a system by which cable television and programing services are made available to customers in the City of Sumas. A map of the Cable System area is attached as Exhibit A and incorporated by reference.

1.4 "City" shall mean the City of Sumas.

1.5 "Director" shall mean the Public Works Director for the City of Sumas or such other individual(s) designated as such by the mayor for the City of Sumas.

1.6 "Effective Date" shall mean January 1, 2020.

1.7 "Existing Infrastructure" shall mean all tangible property and equipment comprising the Cable System on the Effective Date, and includes receiving and head end equipment including satellite antennas, receivers, amplifiers, approximately 12 miles of cable placed throughout the City, customer drops and other equipment, the right to place and operate the system, and its customer base, and is located at Sumas, WA. Existing Infrastructure shall include all additions, repairs, replacements and upgrades to the Existing Infrastructure as may be required to maintain the functionality of the Existing Infrastructure as existed on the Effective Date.

1.8 "Optional Improvements" shall mean all add-ons, extensions and improvements to the Existing Infrastructure that Operator may elect to install during the Term to enhance and improve the functionality of the Cable System and deliver a better product to consumers. Optional Improvements shall not include equipment added to the Existing Infrastructure as part of Operator's duty to maintain the Cable System's functionality as existed on the Effective Date. The Operator shall own all Optional Improvements.

1.9 "Operator" means Sound Internet Services, Inc.

1.10 "Term" shall have the meaning set forth in Article 4.

2. RETENTION OF OPERATOR

2.1 Cable System. The City hereby retains Operator for the management, maintenance and operation of the Cable System. The Operator will perform all aspects of the operation of the City's Cable System and will provide a level of cable television and programing services available in the City of Sumas equal to, or better, than those currently provided by the City in the operation of its Cable System, and at least equal to those that the Operator provides customers of its' own system.

3. ACCEPTANCE

3.1 Inspection. Prior to the effective date of this Agreement, Operator has made an inspection of the Cable System as identified to Operator by the City, and hereby accepts the condition of it for purposes of this Agreement on an "as is" basis.

4. TERM

4.1 Term of Agreement. The term of this Agreement is 10 years and one month, beginning on the Effective Date and terminating (unless extended by mutual agreement) on January 31, 2030.

4.2 Renewal. This agreement shall automatically renew for an additional 10-year term unless the Operator notifies the City at least 12 months prior to the expiration of the Term that Operator does not wish to renew.

This option is conditioned upon full and faithful performance by the Operator of all the terms contained herein.

4.3 Effect of Termination. In the event of termination at the end of the Term or for any other reason under this Agreement, the Operator shall have ninety (90) days to complete removal of its property, other than the Optional Improvements, from the premises. Removal shall not leave any structure, equipment or other part of the Cable System in a worse condition than at the time of execution of this Agreement; structural improvements comprising the Existing Infrastructure (other than the Optional Improvements) shall not be removed. The City may, but need not, treat any property other than the Optional Improvements remaining upon the premises after expiration of this Agreement, or period for removal of Operator's property, as abandoned by Operator, and may make any disposition of such property as the City deems fitting.

4.4 Right to Continue Using Optional Improvements. Upon termination of this Agreement for any reason, the City agrees to enter into such pole attachment, rights-of-way and other similar agreements as allowed under, and following the procedures of, the Sumas Municipal Code with the Operator as may be required to enable the Operator to continue to use the Optional Improvements following termination of this Agreement. In continuing to use the Optional Improvements, the Operator shall comply with all applicable provisions of the Sumas Municipal Code.

5. OPERATOR'S BASIC SERVICE OBLIGATIONS

5.1 Cable System Services. Operator shall perform all acts necessary to operate and maintain the City's Cable System and provide cable television and programming services to customers in the City of Sumas. The level of services shall be equal to, or better, than those currently provided by the City in the operation of its Cable System, and at least equal to those that the Operator provides to customers of its own

system. Additionally, in operating the Cable System and providing cable television and programming services in the City, the Operator will make good faith efforts satisfactory to the City to maintain and improve the quality of those services so they are on par with industry standards.

It is intended that the Operator will perform all aspects of the operation of the City's Cable System, including, but not limited to: operation, maintenance, repair, replacement, upgrade and improvement of the physical system and its parts, equipment and facilities to the extent required to maintain the Existing Infrastructure in good operating condition and according to its functionality as existed on the Effective Date; arranging channel carriage and obtaining broadcast content including contracts with network signal broadcast providers; system operation and signal broadcast; customer communication and service including maintaining a customer call number and responding customer calls and inquiries; billing and account collection.

5.2 Cable System Maintenance. Operator shall provide year round maintenance services which shall include, but not be limited to, maintenance staff management, environmental compliance, record keeping and reporting and other miscellaneous maintenance for cable system operations.

5.3 Building and Equipment Maintenance. Operator shall keep and maintain the Existing Infrastructure in good, operable, usable and sanitary order and repair and in a good, safe condition throughout the term of this Agreement, providing for such repairs, replacements, rebuilding and restoration as may be required to maintain the functionality of the Existing Infrastructure in compliance with this Agreement.

5.4. Optional Improvements. Any Optional Improvements made by Operator shall be subject to, prior to the commencement of the Optional Improvements work, the Operator's obtaining all applicable permits, and compliance with such terms and conditions as may be imposed by the Director (if any), and as required by any laws, rules, regulations, policies and procedures, including any applicable public works laws and procedures.

5.5 City Ownership. Except for leased equipment and proprietary property of the Operator and the Optional Improvements (which shall be owned by the Operator), the City shall own all parts of the Existing Infrastructure, including all structures, buildings, improvements, furnishings, equipment, constructed or acquired by the City, or Operator on behalf of the City, and all alterations, additions or betterments thereto.

5.6 Inventories. The Operator and the City shall jointly inventory City-owned equipment forming part of the Existing Infrastructure following a mutually agreeable schedule.

5.7 Inspections. The City may conduct both scheduled and unscheduled inspections of the Cable System without interrupting the normal operations. The Operator shall respond to any noted exceptions and findings by the City within fifteen (15) days of

notification, including contemplated courses of action to correct the noted exceptions and findings. After consulting with the Director or designee, the Operator shall take corrective action acceptable to the Director or designee.

5.8 Failure to Perform. Should Operator fail, after thirty (30) days-notice from the City of the need therefor, to perform its obligations under this Article in any material respects, the City may enter upon the premises of the Cable System and perform Operator's obligations. Notwithstanding the preceding sentence, in the event of an emergency, the City may immediately enter upon these premises without notice to Operator to perform emergency repairs and restoration.

6. OPERATING RESPONSIBILITIES

6.1 Annual Reports. Operator shall submit to the City, for its review and approval, on or before May 20th of each Operating Year, an annual report ("Annual Report") for the previous calendar year. Each Annual Report shall include a summary of the financial condition of the Cable System including the Actual Gross Revenue, the total amount of costs and capital expenditures, if any, and the total amount of major maintenance expenditures for the Operating Year described in the Annual Report.

6.2 Compliance with Laws. The parties shall comply with all municipal ordinances and all state and federal laws and regulations applicable to the terms and conditions of this Agreement. The parties shall not knowingly permit any illegal activities to be conducted on or at the premises of the Cable System. If any permits or licenses are required, Operator shall obtain all such required permits or licenses from the appropriate regulatory agency before undertaking the regulated activity.

6.3 Operator's Obligations to Comply with Laws.

A. Nondiscrimination/Equal Protection. Operator agrees not to discriminate against any employee or applicant for employment or any other persons in the performance of this Agreement because of race, religion, creed, color, national origin, marital status, gender, age or handicap, or other circumstances as may be defined by federal, state or local law or ordinance, except for a bona fide occupational qualification. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the OPERATOR setting forth the provisions of this nondiscrimination clause.

B. Other laws and regulations. Operator shall comply with all federal, state and local laws, regulations and ordinances applicable to the work to be done under this Agreement.

C. Violations. Any violation of the provisions of this section shall be considered a violation of a material provision of this Agreement and shall be grounds for cancellation, termination or suspension of the Agreement by the City, in whole or in part, and may result in ineligibility for further work for the City.

6.4 Utilities. Upon commencement of the term of this Agreement, Operator shall be responsible for arranging for the utility services required by the Cable System.

6.5 Safety. Operator shall immediately correct any unsafe conditions to the Cable System, as well as any unsafe practices occurring thereon, that are or become known to Operator.

6.6 Meetings. Representatives of Operator and the Director or designee shall meet at such times as may be required by the City to review Operator's performance under this Agreement and discuss any problems or matters as determined by the City.

6.7 Rate Structure. The Operator, in the exercise of its professional judgment, shall determine all fees, charges and rates to be charged to customers of the Cable System. Those fees, charges and rates shall be reasonable and appropriate to the corresponding services and customers of the Cable System shall not be subject to fees, charges or rates higher than those charged customers of the Operators own system for the same or similar services. The Operator's determined fees, charges and rates shall be provided to the City by September 1 for the next year.

6.8 Business License and Permits. Operator shall obtain all necessary state and local licenses and permits necessary to conduct business.

6.9 Independent Contractor. Operator is and shall be at all times during the term of this Agreement an independent contractor and not an employee of the City. Any and all employees of Operator, while engaged in the performance of any work or services required by the Operator under this Agreement, shall be considered employees of the Operator only and not of the City. Any and all claims that may arise under the Worker's Compensation Act on behalf of said employees, while engaged, and all claims made by the third party as consequence of any negligent act or omission on the part of the Operator's employees, while so engaged on any of the work or services provided or rendered herein, shall not be the obligation of the City.

7. CITY'S RESPONSIBILITIES

7.1 City's Responsibilities. During the term of this Agreement, the City's responsibilities shall include monitoring and evaluating Operator's performance for compliance with terms of this Agreement.

8. COSTS AND EXPENDITURES

8.1 Direct Cost. The normal and ordinary costs of the operation, upkeep, improvement, repair and maintenance of the Cable System ("Direct Costs") shall be paid by Operator. A Direct Cost shall be any cost which is directly related to the normal and ordinary staffing, operations, repair, upkeep, improvement or maintenance of the Cable System including, but not limited to, the following:

- A. All labor and employee salaries, compensation, and benefits.
- B. Purchase, lease and/or rental of equipment.
- E. Repair, replacement and maintenance of equipment or any other part of the Cable System.
- F. Fees and charges for channels and programming.
- G. Operating and other supplies.
- H. Professional services, accounting and audits.
- I. Advertising and marketing expenses.
- L. Telephone, postage and freight.
- M. Fees, Permits and Licenses.
- N. Utilities, including natural gas, water, electric power, telephones, garbage and trash collection, unless paid by the City.
- O. Custodial services.
- P. Insurance Premiums, and, in the event of a claim on the property or liability insurance required by Section 11.1.B, the amount paid up to the deductible.
- Q. Use Tax
- R. Other: All other costs incurred or necessary to operate the City's Cable System and provide cable television and programming services to customers in the City of Sumas and otherwise perform the duties under this Agreement.

8.2 Prevailing Wages

The Operator shall comply with all prevailing wage laws, to the extent they are applicable to the Operator's obligations or performance under this Agreement, including all statutes, codes, rules, notice requirements, filings, regulations, and other requirements of any kind, including those under RCW Chapter 39.12.

The Operator shall keep all necessary records to reflect such wages were paid, which are subject to audit pursuant to Section 11.2 below.

9. OPERATOR COMPENSATION

9.1 The Operator shall retain all fees and charges it collects from customers of the Cable System during the term of the agreement subject to payment to the City of 4% of the gross receipts from the sale of internet services to customers in the City, as its sole compensation. Payment shall be made to the City by the twentieth (20th) day of the month for the preceding month.

9.2 Reimbursement Submittals. The Operator will submit receipts and invoices to the City for any cost or expenses that the City has approved and agreed in writing to reimburse the Operator for. Unless otherwise requested by the City, the reimbursement submittals shall be processed no more than once a month. The City reserves the right to review all reimbursement submittals, seek justification from the Operator and once accepted by the City, issue a reimbursement.

10. FINANCIAL AND ACCOUNTING PROCEDURES

10.1 Quarterly Reports and Transactions. Operator shall provide to the City a quarterly report of the previous four month's transactions and financial status of the Cable System.

A. Within thirty (30) days of the end of each quarter, Operator shall provide the City with a quarterly and year-to-date customer transaction report.

B. After review of the above items, the City may request additional reports that provide additional information or detail previous transactions.

11. BUSINESS RECORDS

11.1 Types of Records. Operator shall maintain a method of accounting for all the revenues in connection with the operation of the Cable System which shall, in accordance with generally accepted accounting principles, correctly and accurately reflect the gross receipts and disbursements received or made by Operator from the operation of the Cable System. Operator shall establish and implement adequate internal controls for this operation. The method of accounting shall include the keeping of the following records and documents:

A. Regular books of account such as general ledgers;

B. Journals including any supporting and underlying documents such as vouchers, checks, tickets, bank statements, etc.; and

C. Any other accounting records that the City, in its sole discretion, deems necessary for proper reporting of receipts.

11.2 Audit of Records. All documents, books and accounting records kept by Operator pursuant to this Article shall be open for inspection by the City at any reasonable time during the term of this Agreement and for at least three (3) years thereafter. In

addition, the City or its authorized representative may, from time to time, conduct an audit of the books of the operation of the Cable System and observe the operation of the business.

11.3 Public Records. All information obtained in connection with the City's inspections of the records or audits may be or become subject to public inspection and/or reproduction as public records.

12. INSURANCE AND INDEMNITY

12.1 Insurance.

A. Minimum Insurance.

1. Commercial General Liability Insurance. Operator shall obtain and keep in full force and effect during the term of this Agreement a Commercial General Liability Insurance Policy with broad form and stop gap (employer's liability) endorsements with minimum limits of \$2,000,000 per occurrence and annual aggregate. Such policy must specifically name the City as an additional insured party thereunder and be primary and non-contributory coverage over any and all insurance coverage the City may carry.

The policy shall include personal injury, contractual liability, products and completed operations liability. The policy shall cover any injury, death, damage, and/or loss of any sort sustained by any person, organization, or corporation (including Operator and any of Operator's employees and/or agents) in connection with any activity upon or use or occupation of the described Premises, and for any activity performed by Operator by virtue of the rights granted pursuant to this Agreement.

2. Workers' Compensation Insurance. Operator shall obtain and keep in full force and effect during the term of this Agreement Workers' Compensation Insurance for all workers employed pursuant to this Agreement as required by Title 51 RCW and any applicable Federal statute.

B. Other Provisions.

1. Said insurance policies must be maintained in full force and effect throughout the entire term of this Agreement and, such policies or endorsements thereto must contain the following provisions:

A. The City of Sumas, its officials, employees and volunteers must be named as an additional insured on the Operator's Commercial General Liability Policy and as a Loss Payee or Third Party Beneficiary on the Operator's Commercial Crime Insurance Policy.

B. The coverage provided by these policies to the City or any other

named insured shall not be terminated, reduced or otherwise changed in any respect without providing at least sixty (60) days written notice to the City.

2. Said insurance policies must be satisfactory to the City as to form and coverage. Insurance shall be placed with insurers with a rating acceptable to the City.

3. The City may review said insurance policies annually to determine the adequacy of liability limits, and it may raise the minimum policy limits if such increase is necessary to adequately protect the City.

C. Verification of Coverage. Operator shall furnish the City with certificates of insurance and endorsements for insurance coverage required by this section. The certificates are to be received and approved by the City before Operator begins any work under this Agreement. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

D. Subcontractors. Operator shall require subcontractors to provide coverage which complies with the requirements stated herein but for the requirements for a Commercial Crime policy.

E. Failure to Comply. Notwithstanding any other provisions of this Agreement, the failure of Operator to comply with the above provisions of this section following the thirty (30) day notice period described in Section 15.5 shall subject this Agreement to immediate termination without notice to any party in order to protect the public interest.

12.2 Indemnification.

A. The Operator shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent or intentional acts or omissions of the Operator. The Operator 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, the Operator, by mutual negotiation, 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 attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Operator.

B. In the event of suit against the City for which Operator may reasonably be anticipated to have an indemnification obligation pursuant to Section 12.2A, Operator agrees to appear and defend the same with counsel reasonably acceptable to the City, provided Operator is notified in writing, within thirty (30) days of the suit. In the event judgment is rendered against the City, the Operator will cause the same to be satisfied within ninety (90) days after a final determination thereof (after all appeals have been exhausted).

C. Except as described above, the City, its employees and agents, should not be liable for any injury or death to any person(s) or for damage to any property, regardless of how such injury, death or damage be caused, sustained, or alleged to have been sustained by the Operator or others as a result of any of the following:

1. Any condition including existing or future defects in the Premises, excluding latent defect in the Premises;

2. Any occurrence whatsoever arising from or related in any way to the Premises, Operator's use and occupancy of the Premises, or Operator's use of property adjacent thereto.

D. The indemnification set forth in this Article 12 shall survive the termination of this Agreement.

12.3 Unusability. In the event that the Cable System, or a substantial portion thereof, is rendered unusable by fire, earthquake, act of war or other extraordinary casualty destroying or damaging the Cable System, the Operator may terminate this Agreement by giving notice to the City within thirty (30) days after such conditions are discovered. Neither party shall be required to restore or reconstruct the Cable System.

13. REPRESENTATIONS AND WARRANTIES

13.1 Organization and Authority. As of the date of this Agreement and thereafter, Operator hereby represents and warrants that (a) it is a Corporation duly organized, validly existing and in good standing under the laws of the State of Washington and is qualified to do business in all other states where necessary in light of its business or properties and has all requisite power and authority to conduct its business and own its properties, (b) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement, (c) the execution, delivery and performance by Operator under this Agreement has been duly authorized by all necessary action and this Agreement has been duly and validly executed and delivered by Operator, and (d) this Agreement constitutes the legal, valid and binding obligation of Operator and is enforceable against Operator in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or moratorium or other similar laws relating to the rights of creditors generally.

13.2 No Conflict. As of the Effective Date and thereafter for the term of this Agreement, Operator hereby represents and warrants that the execution, delivery and performance by Operator of this Agreement does not and will not (a) conflict with or violate any provision of its articles of incorporation or bylaws, (b) result in a material breach or violation of any term or provision of, or constitute a material default under, any material agreement or instrument to which Operator is a party or by which Operator or any of its assets are bound, or (c) contravene or constitute a material default under any provision of applicable law or regulation.

13.3 Accuracy of Representations and Warranties. The representations and warranties contained in this Agreement do not contain any untrue statement of a material fact or omit any material fact necessary that would make the statements contained herein misleading or incomplete.

13.4 Survival of Representations and Warranties. The representations and warranties set forth by Operator in this Article 13 shall survive the date of this Agreement and shall terminate only upon the fifth anniversary of the date of termination of this Agreement.

14. NOTICE

14.1 Notice. All notices, requests, demands, consents and other communications required or permitted to be given by this Agreement shall be in writing and personally delivered or placed in the United States mail, properly addressed and with full postage prepaid, certified and return receipt requested and confirmed via email to the email addresses set forth below. Such notices shall be deemed received at the earlier of (a) the date actually received, or (b) 5 business days after such mailing. Such notices shall be sent to the parties at the following addresses, unless other addresses are furnished by appropriate notice:

If to the City, to:
City of Sumas
433 Cherry Street
P.O. Box 9
Sumas, WA 98295
Email: jbell@cityofsumas.com

If to Operator, to:
Sound Internet Services, Inc.
Attention: Timothy Dyck
PO Box 974
Lynden, WA 98264
Email: tim@pogozone.com

15. MISCELLANEOUS

15.1 Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement among the parties with respect to the subject matter hereof and supersede any prior agreement or understanding among the parties with respect to such subject matter.

15.2 Severability. If any provision of this Agreement or the application of such

provision to any party or circumstance shall be invalid, the remainder of this Agreement or the application of such provision to other parties or circumstances shall not be affected thereby.

15.3 Liens and Encumbrances. Operator shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the City's request, Operator shall furnish the City written proof of payment of any item which would or might constitute the basis for such a lien on the Premises, if not paid.

15.4 Termination. If Operator defaults by failing to perform any of the its obligations under this Agreement in any material respect, and fails to cure such default within thirty (30) days of receiving the City's written request to do so, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the City may, by depositing written notice to Operator in the U.S. mail, postage prepaid, terminate this Agreement, and at the City's option, obtain performance of the work elsewhere. If this Agreement is terminated for default, the Operator shall not be entitled to receive any further payments under this Agreement until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Operator. The Operator shall bear any extra expenses incurred by the City in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

15.5 Waiver. No action other than a written document from the City so stating shall constitute a waiver by the City of any breach or default by Operator nor shall such a document waive the concessionaire's Operator's full compliance with the terms and conditions of this Agreement, irrespective of any knowledge the City may have of such breach, default, or noncompliance. The City's failure to insist upon full performance of any provision of this Agreement shall not be deemed consent to or acceptance of such incomplete performance in the future.

No waiver of any breach or default shall constitute or be construed as a waiver of any subsequent like breach or default.

15.6 Mediation. Whenever the City and Operator have a dispute as to any of the terms of this Agreement or whether an event of default has occurred, and whenever the City or Operator have a dispute as to whether the requirements of this Agreement are being reasonably performed, the City or Operator may request that the issue be mediated. In that event, the parties will agree on a choice of mediator and if they are unable to agree, they shall request the presiding judge of the Whatcom County Superior Court to appoint a mediator for them.

Nothing in this paragraph shall be deemed to limit or impair any legal remedies otherwise available to the parties.

15.7 Time. If the last day for performance of any of the provisions of this Agreement, during a stated period of days, shall fall upon a Saturday, Sunday or holiday observed by either party, the final day for performance shall be the following weekday on which both parties would normally be open for the conduct of business.

15.8 Assignment of Agreement. Operator shall not assign or transfer this Agreement nor otherwise convey any right or privilege granted hereunder or any part of the Premises unless the written consent of the City be first obtained. Neither this Agreement nor any right, privilege or interest therein or thereunder shall transferable by operation of law or by any process or proceeding of any court.

15.9 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall constitute one in the same instrument.

15.10 Headings. The article and section headings in this Agreement are for convenience of reference only, and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

15.11 Construction. This Agreement shall be construed and enforced according to the laws of the State of Washington without regard to any otherwise governing principals of conflicts of laws. This Agreement shall be construed neutrally and not in favor or against any party.

15.12 Amendment. This Agreement shall not be modified or amended except by a written agreement executed by both of the parties.

15.13 Further Actions. Each party shall execute and deliver such other certificates, agreements and documents, and take such other actions, as may reasonably be required to carry out the provisions or the intent of this Agreement.

15.14 Governing Law; Forum. The Agreement will be governed by the laws of Washington and its choice of law rules. Operator irrevocably consents to the exclusive personal jurisdiction and venue of the federal and state courts located in Whatcom County, Washington, with respect to any dispute arising out of or in connection with the Agreement, and agrees not to commence or prosecute any action or proceeding arising out of or in connection with the Agreement other than in the aforementioned courts.

15.15 Severability. If any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provision will continue in full force without being impaired or invalidated in any way. The City and Operator agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

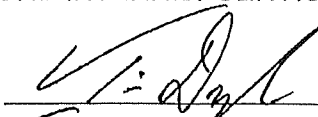
15.16 Nonwaiver. Any failure by the City to enforce strict performance of any provision of the Agreement will not constitute a waiver of the City's right to subsequently enforce such provision or any other provision of the Agreement.

15.17 Legal Fees. In any lawsuit between the parties with respect to the matters covered by the Agreement, the prevailing party will be entitled to receive its reasonable attorney's fees and costs incurred in the lawsuit, in addition to any other relief it may be awarded.

DATED this 23rd day of December, 2019.

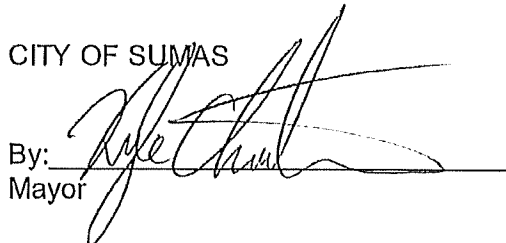
SOUND INTERNET SERVICES, INC.

By: _____
Its: _____

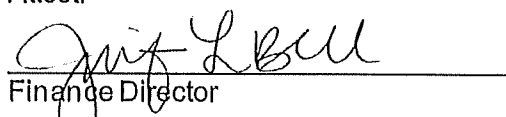

Treasurer

CITY OF SUMAS

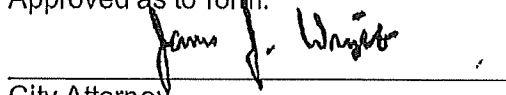
By: _____
Mayor



Attest:


Finance Director

Approved as to form:


City Attorney