

- Meetings may be viewed on the [City of Anacortes website](#), on the City of Anacortes [YouTube](#) Channel, or on TV [Channel 10](#).
- The public may also watch, listen to, or participate in the meeting live by visiting <https://us02web.zoom.us/j/89255646791> or by telephoning 1-253-215-8782 and entering Meeting ID 892 5564 6791.
- The public is encouraged to comment via email to cityclerk@cityofanacortes.org or via written comment addressed to City Clerk, P.O. Box 547, Anacortes, WA 98221. Public comments received by the [City Clerk](#) prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
- Complete guidelines for virtual participation in Anacortes City Council meetings are available [here](#). View the quick video example for connecting to the meeting [here](#).



Anacortes City Council
Municipal Building Council Chambers
904 6th Street

May 8, 2023
6:00 PM

PRELIMINARY AGENDA
[Packet Materials](#) / [Watch Meeting](#)

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Announcements and Committee Reports**
 - a. Planning Committee (Report)
 - b. Public Safety Committee (Report)
 - c. Confirmation of John Coleman as Planning, Community, and Economic Development Director (Action)
 - d. Solarize Skagit Presentation (Discussion)
4. **Public Comment**
5. **Consent Agenda**
 - a. Minutes of May 1, 2023 (Action)
 - b. Approval of claims in the amount of \$1,022,102.81 (Action)
 - c. Contract Award: Multi-Function Grader Purchase #23-148-ERR-001 (Action)
 - d. Contract Award: Wastewater Treatment Plant (WWTP) Aeration Basin Mixer Replacement #23-139-SEW-001 (Action)
6. **Other Business**
 - a. Contract Award: Dedicated Internet Access (DIA) Service #23-121-FBR-001 (Discussion/Action)
7. **Adjournment**

Per Resolution 3051, citizens wishing to comment on items not on the agenda may do so under Public Comment. Citizens wishing to comment on items indicated with an asterisk () may do so as those items are considered by Council during the course of the meeting.*

The City of Anacortes is committed to making public meetings available and accessible to all members of the community. For assistance with special needs, please contact the City Clerk at 360-299-1960 in advance of the meeting.



City Council Agenda Bill

Meeting Date: May 8, 2023 **Agenda Item:** 3.d.

Agenda Item Title: Solarize Skagit Presentation

Staff Contact(s): MATT MILLER

Approved for Submittal to Council by **Action Type**

Jennifer Tottenham

Presentation

MATT MILLER

Item Summary: Guest presenters Mary Wohleb, Greg Whiting, and Bob Raymond will introduce the Skagit Valley Clean Energy Co-operative, [Olympia Community Solar](#), and the Solarize Skagit program to promote more rapid adoption of solar energy and battery storage, as well as other sustainability practices and electrification in general.

Budget Impact:

Previous Action:

Recommended Motion:

Alternative Actions:

Attachments (listed in order presented):

1. Solarize Skagit - Anacortes presentation 05.08.2023
2. Skagit Solar Jam Flyer



Skagit County 2023

Skagit Valley Clean Energy Cooperative

- Who we are
 - Not-for-profit
 - Incorporated in 2022
 - Our Mission
 - Why a co-op?
 - Benefits of membership
- What we do
 - Solarize Campaign
 - Grants for public buildings
 - Support clean energy legislation
 - Educate the public about clean energy



Skagit Valley Clean Energy Cooperative

Future projects

- Community solar projects
- Explore energy storage options
- EVs and charging stations
- Microgrids





Our Partner: Olympia Community Solar

501c(3) non-profit

**Mission: an equitable and
accessible transition to
clean energy.**



Successful Solarize Projects in WA



Solarize Queen Anne

2012 - 56 Installations

237 kW



Solarize Mercer Island

2014 - 47 Installations

320 kW



Solarize Whatcom

2016 - 48 Installations

340kW



What we will cover:

What is the Solarize Campaign?

Timeline & Enrollment

Benefits of participating in Solarize

How Net Metering works

How jurisdictions can support!



What is a Solarize Campaign?

SVCEC and Olympia Community Solars' Roles

- 1 Negotiate special pricing with contractors, secure partnerships with municipalities
- 2 Provide educational materials and answer questions
- 3 Host the enrollment process, communicate with partners, and evaluate performance



Solarize Skagit Campaign Timeline →



**We will support 50 homes
and/or businesses to install
solar in Skagit County**

February 2023

Secure group purchasing contracts

- Fire Mountain Solar
- Blossom
- Truly Electric

March 2023

Campaign Launch

March - July 4th 2023

Outreach & Enrollment

March 2023 - Dec 31, 2023

Installation



What are the benefits of Solarize?



Affordability



Simplicity

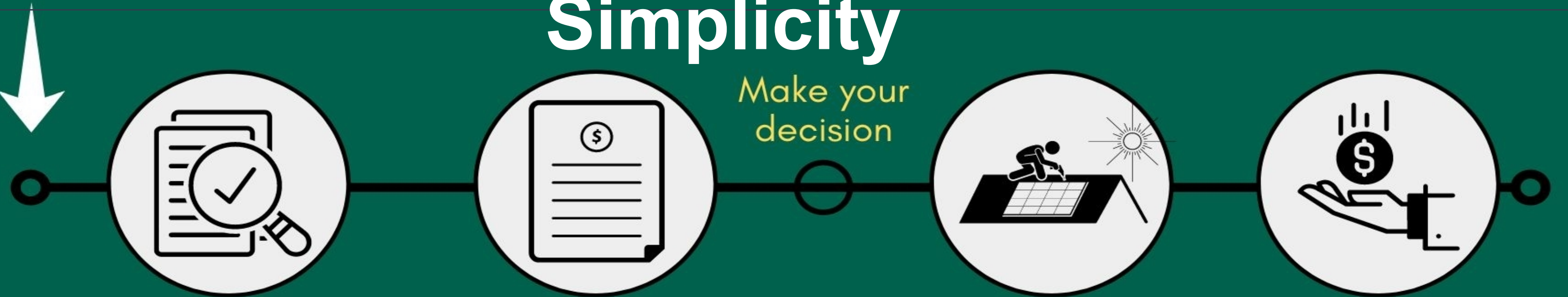


Community

Sign up
online

We assist clients from beginning the process to completion

Simplicity



Assessment

Your installer will schedule a solar assessment. Be sure to have a copy of your energy bill available.

Quote

Your installer will send a quote that includes payback period & total savings.

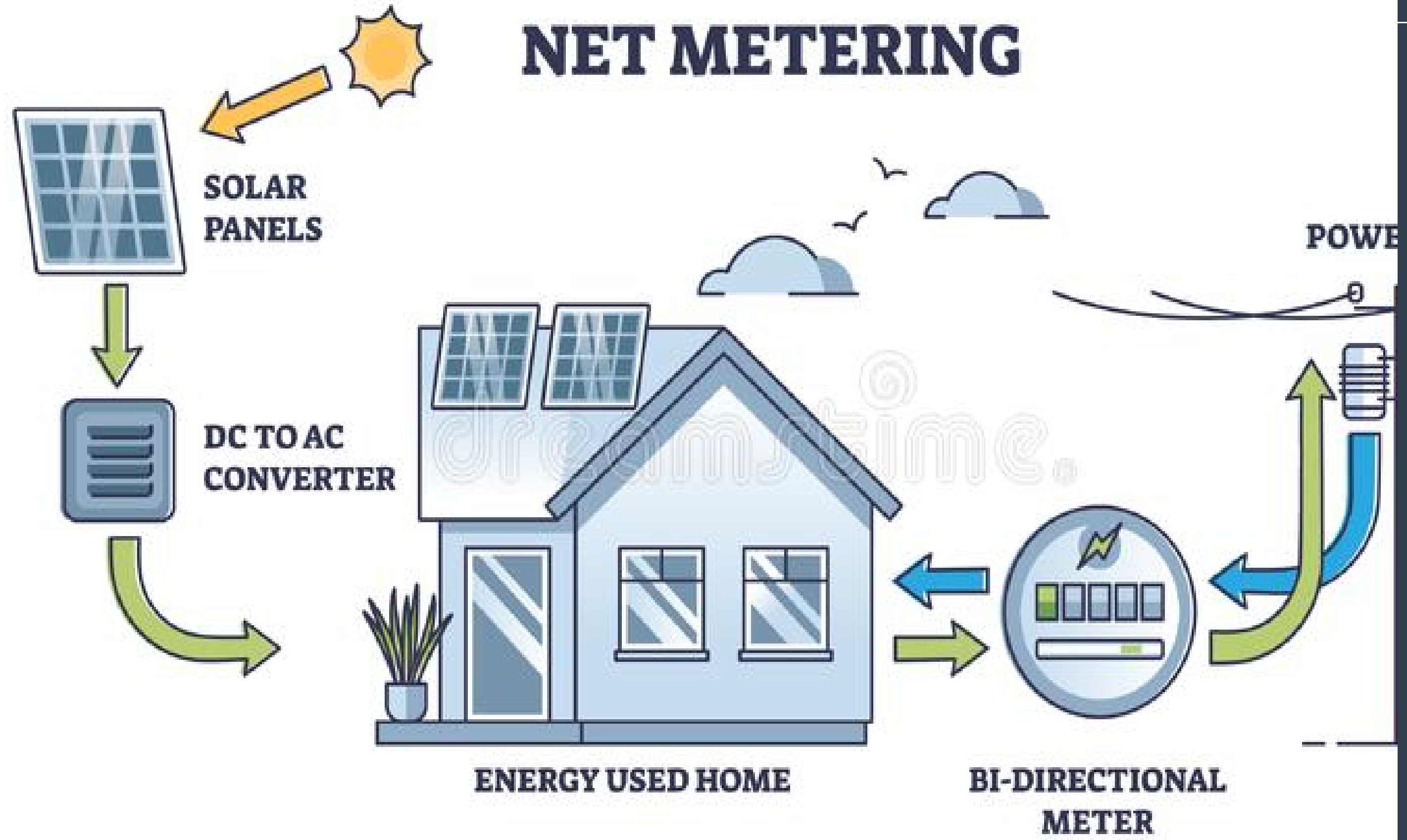
Installation

Installation date will be scheduled. Some installers have several months of queued work.

Generation

Start generating clean energy savings!

Enroll via our online form @ www.skagitvce.coop or <https://olysol.org/solarize/>





Affordability



Qualify for a 30% Federal Tax Credit

No WA state sales tax

Limited Time Group Purchase Rate. \$2.81/watt



In Summary

- ✓ Rigorous process to vet and select qualified installers.
- ✓ Free energy assessment and quotes by the installer
- ✓ Special group-purchasing prices.
- ✓ 30% Federal tax credit and no WA sales tax.
- ✓ Reduced monthly electric bills.



Additional Services



- **Battery Backup**
- **Level 2 Electric Vehicle Charger (240 volt)**
- **Home Energy Audit**
 - **Community Energy Challenge**
 - **Opportunity Council and Sustainable Connections**



Partner With Us

- **Help us promote this program on social media**
- **Help get the word out through other communications like webpage, newsletters, insert in utility bill, etc.**

SOLARIZE SKAGIT



Contact Us

Enroll today!

<https://olysol.org/solarize/>

Skagit Valley Clean Energy Cooperative

Skagitvce.coop

(360) 399-6059

Olympia Community Solar

olysol.org

info@olysol.org

(360) 481-4020

Skagit Solar Jam

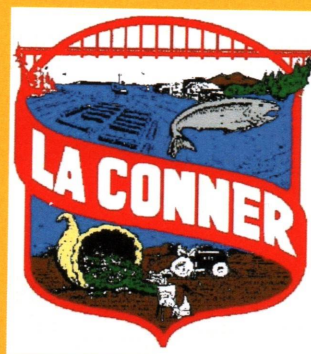
A recurring community gathering organized by:
Skagit Valley Clean Energy Cooperative

Saturday May 13th, Maple Hall, LaConner

- Learn about the Solarize Skagit Campaign; speak with local installers; enjoy food drinks, live music & dancing.
- 4PM-Solar educational presentations
- 5PM: Solo performance by Nick Vigarino
- 6PM-9PM: Live music & dance by the A-Town Big Band



\$10
Suggested donation
For Music
\$8 Students



Olympia
Community Solar

From: noreply@civicclerk.com
To: [CityClerk; mbnihart@comcast.net](mailto:mbnihart@comcast.net)
Subject: Public Comment Submission
Date: Thursday, May 4, 2023 4:14:37 PM

***** This email is from outside the City of Anacortes network. Please use caution when clicking on links, opening attachments, or replying. *****

Submitted by: Mark Nihart
Email Address: mbnihart@comcast.net

Commented on event: <https://anacorteswa.portal.civicclerk.com/event/1055/overview>
If you are having trouble viewing the URL above, cut and paste the string into your browser window.

User comment: Regarding 2 Stroke Motorcycles in the ACFL I support stock 4 stroke Dual Sport Motorcycles 250 cc and under with an exception for the stock 4 stroke Dual Sport 650 cc motorcycles. No motorcycles in-between the 250 cc and the 650 cc motorcycles. In addition, the motorcycles need to carry insurance, have current license tabs and the riders must have a current valid State driver's license. I do not support youth 4 stroke motorcycles of any size or type. I would consider stock 2 stroke Dual Sport Motorcycles 250 cc and under with an exception for the stock 2 stroke Dual Sport Motorcycles 650 cc motorcycles. No motorcycles in-between the 250 cc and the 650 cc motorcycles. IF, the 2 stroke Dual Sport Motorcycles meet the same noise and emission standards as the 4 stroke Dual Sport Motorcycles. In addition, the motorcycles need to carry insurance, have current license tabs and the riders must have a current valid State driver's license. I do not support youth 2 stroke motorcycles of any size or type. I do not consider one rider of a 2 stroke motorcycle of any type riding randomly in the ACFL for some temporary period as a beta test as an adequate test for noise and emissions. A literature review of manufactures specifications of noise decibels and exhaust emission needs to be conducted. In addition, a noise test needs to be conducted by the City in which the motorcycle is, under load, going up a steep hill at 10, 15 and 20 miles an hour. The results can be evaluated against like sized 4 stroke Dual Sport motorcycles. I support the current seasonal motorcycle restrictions. I support the current trail restrictions for motorcycles with potentially tighter restrictions on available trails if Parks finds trails are being degraded and if flora, fauna and wildlife are affected by motorcycle use. I do not support any off-trail, motocross, enduro and the like motorcycles styles in the ACFL. They belong in an Off the Road (ORV) park such as Walker Valley ORV Park. I support the establishment of a local, separate from the ACFL, ORV park if it can be located where the local community is not impacted.

Question One: As a taxpayer I would like to know what is the City's financial liability exposure if an accident occurs between a motorcycle and another user: hiker, biker, horse? It is probable that an accident will occur eventually, potentially a serious accident with a motorcycle. A horse and motorcycle accident would potentially be serious. Who pays?

Question Two: What is the plan, What is the Budget and Who will monitor the approved use of motorcycles in the ACFL? Question Three: What is the cost of repairing trails degraded by motorcycle use on trails approved for use by motorcycles (also used by other groups) and trails not approved for motorcycle use.

Anacortes City Council Minutes - May 1, 2023

Call to Order

Mayor Matt Miller called to order the Anacortes City Council meeting of May 1, 2023 at 6:00 p.m. Councilmembers Ryan Walters, Anthony Young, Christine Cleland-McGrath, Carolyn Moulton, Bruce McDougall and Amanda Hubik were present. Councilmember Jeremy Carter participated in the meeting remotely via Zoom.

Pledge of Allegiance

The assembly joined in the Pledge of Allegiance.

Announcements and Committee Reports

Mayor Miller thanked several groups for attending a tree planting at Causland Park in commemoration of Arbor Day. He also discussed the passing of the Special Levy by 62% of voters in favor of the measure, the Wastewater Treatment Plant receiving a 2022 top performance award for the second year in a row, the Federal Emergency Management Agency emergency management course that many department staff attended the prior week that was presented through a grant obtained by the Fire department, and thanked Naval Air Station Whidbey Island for assistance with an injured hiker off Mount Erie the prior weekend.

Fiber Committee

Mr. McDougall reported from the Fiber Committee meeting held the previous Friday. The topics discussed included the number of customers in service, and take rates in various areas currently in service. He also explained a brief service outage that occurred last week, discussed next steps for the Economic Development Administration grant buildout area and procurement of additional IP addresses.

Finance Committee

The Finance Committee was cancelled last week, so no report was given.

Public Works Committee

Ms. Moulton reported from the Committee meeting held at 5:00 PM directly before the Council Meeting. The topics discussed included the Kansas Avenue connection off of 12th Street. She also discussed the Cartegraph contract extension to the Sewer utility which was the contract being considered on the Consent Agenda tonight. She also discussed downtown traffic and the concept of increasing pedestrian opportunities in the future by closing 4th Street between Commercial Avenue and O Avenue.

Mr. Young asked about an additional item discussed, which was a major cleanup on Fidalgo Bay Road, where 20 yards of debris were removed by city staff left by people who were encamped along the road and beach.

Planning Committee

Mr. Walters reported that the Planning Committee met on an ad hoc basis earlier in the day to discuss the Arts Festival concept of a potential lease for an Arts center. They are very focused on their space at Buxton's for the time being, and are taking a momentary step back from working on an agreement with the City. The Planning Committee will meet again in 2 weeks for a further update on the Arts Festival plan.

Public Comment

Mayor Miller invited the public to comment on any item not on the agenda. No one present wished to address the Council on any topic not already on the agenda.

Consent Agenda

Mr. McDougall moved, seconded by Ms. Moulton, to approve the Consent Agenda as presented. The motion carried unanimously by voice vote.

a. Minutes of April 24, 2023

b. Approval of claims in the amount of \$213,700.15

The following vouchers/checks were approved for payment:

EFT numbers: 106140 through 106174, total \$191,555.45

Check numbers: 106175 through 106816, total \$8,287.84

Wire transfer numbers: 322018 through 323536, total \$13,856.86

c. Contract Modification: 2023-2025 Cartegraph Solutions and Subscription Agreement #23-006-IDS-001

Other Business

Ordinance 4049: Interfund Loan - Equipment Rental Fund to General Fund

Finance Director, Steve Hoglund, presented ordinance number 4049 to authorize an interfund loan for \$1,857,773 between the Equipment Rental fund and the General fund to provide bridge funding to cover the cost of the Molly Lane building purchase. A 5-year term was approved, and an interest rate of 3.63%, which was the 5 year treasury rate at the time the ordinance was written. Mr. Hoglund explained that May 8, 2023 was the date used in the draft ordinance to abide by the two-read rule.

RYAN WALTERS moved, seconded by AMANDA HUBIK, to waive the two-read rule to allow the ordinance to be adopted at the present meeting. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed

RYAN WALTERS moved, seconded by CHRISTINE CLELAND-MCGRATH, to adopt Ordinance 4049 authorizing the interfund loan. Vote: Ayes - JEREMY CARTER, ANTHONY YOUNG, RYAN WALTERS, CHRISTINE CLELAND-MCGRATH, CAROLYN MOULTON, BRUCE MCDOUGALL, AMANDA HUBIK. Nays - None. Result: Passed

Adjournment

There being no further business, at approximately 6:24 PM the Anacortes City Council meeting of May 1, 2023 was adjourned.

The following claims against the City of Anacortes have been preaudited and certified by the Clerk-Treasurer as ready for City Council approval at the May 8, 2023 City Council meeting:
[Download this file in OpenDocument spreadsheet format.](#)

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
323932	12/30/2022	2022-7050	EDASC	2022 EDASC SERVICES	\$ 7,500.00	plan
323906	1/27/2023	12161	SKAGIT SHOOTING SPORTS, INC.	SIG SAUER MAGS	\$ 49.57	apd
323957	2/8/2023	RE-31C-LA8855FINAL	WASHINGTON STATE DEPARTMENT	SHIP HARBOR BLVD AND SR 20 SPUR INTERSECTION - ADMINISTRATIVE REVIEW	\$ 8,662.37	pw1
323841	3/14/2023	ReimbLindquist	LINDQUIST, THAD	REIMBURSE MEDICAL COPAY, LEOFF1 RETIREE	\$ 51.99	hr
323578	3/28/2023	ReimbGold	GOLD, ERIN	WWTP EXAM	\$ 104.00	dwwtp
323956	3/31/2023	11184	DALTON, OLMSTED & FUGLEVAND	WWTP OUTFALL PRE-DESIGN - FEBRUARY 2023	\$ 3,593.65	pw1
323960	3/31/2023	21308 - 1	H W LOCHNER, INC	KANSAS AVENUE STORM WATER QUALITY REPORT - 3/20/23-3/31/23	\$ 1,367.04	pw1
323361	3/31/2023	22-009-02	HLN ENGINEERING	WASHINGTON PARK RESTROOM: DESIGN - MARCH 2023	\$ 5,625.00	parks1
323955	3/31/2023	2165	SKAGIT CONSERVATION DISTRICT	NPDES II OUTREACH & EDUCATION - MARCH 2023	\$ 1,656.12	pw1
323794	3/31/2023	2389	SKAGIT COUNCIL OF GOVERNMENTS	STAFFING SERVICES FOR GROWTH MANAGEMENT ACT SUPPORT IN SK CO - 1/1/23-3/31/23	\$ 520.47	plan
323925	4/1/2023	4/1/2023	ANACORTES FAMILY CENTER	SOCIAL WORKER AGREEMENT - APRIL 2023	\$ 4,166.67	apd
323943	4/3/2023	1672	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2022 - LIBRARY - FALL 2022	\$ 2,277.18	pw1
323946	4/3/2023	1675	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - LIBRARY - JANUARY 2023	\$ 3,456.73	pw1
323951	4/3/2023	1676	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - PUBLIC SAFETY - JANUARY 2023	\$ 2,568.71	pw1
323952	4/3/2023	1677	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - INTAKE STATION - MARCH 2023	\$ 292.67	pw1

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
323953	4/3/2023	1678	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - WWTP - SPRING 2023	\$ 988.12	pw1
323954	4/3/2023	1679	BLYTHE MECHANICAL, INC	HVAC ANNUAL PREVENTIVE MAINTENANCE 2023 - MAINTENANCE SHOP - SPRING 2023	\$ 16,498.43	pw1
323719	4/3/2023	04/03/2023	NORTHWEST PARKING EQUIPMENT	WA PARK PAY STATION MAINTENANCE	\$ 489.60	parks1
323834	4/4/2023	IN1856401	MUNICIPAL EMERGENCY SERVICES	SCBA REPAIR	\$ 335.32	medic
323583	4/6/2023	0541	FIDALGO CLEANING	CLEANING	\$ 180.00	museum
323582	4/6/2023	0542	FIDALGO CLEANING	CLEANING	\$ 120.00	museum
323901	4/6/2023	12394	PARTNER CONSTRUCTION PRODUCTS	RENTAL EQUIPMENT / ROAD REPAIRS	\$ 17,369.92	dshop
323363	4/7/2023	103317	MCCULLOUGH HILL PLLC	70312-0001 - CITY OF ANACORTES - WATER TREATMENT PLANT	\$ 115.00	legal
323939	4/12/2023	27185	C.E.T. FIRE PUMPS MFG	PUMP SKID FOR LIGHT RESCUE TRUCK	\$ 19,037.46	pw1
323823	4/12/2023	9331662841	GRAYBAR ELECTRIC COMPANY, INC	INDOOR / OUTDOOR CABLES	\$ 3,536.84	fiber
323840	4/14/2023	ReimbLindquist	LINDQUIST, THAD	REIMBURSE TRANSAMERICA COPAY	\$ 1,379.50	hr
323911	4/17/2023	17092 - 26	H W LOCHNER, INC	R AVENUE LONG-TERM IMPROVEMENT PROJECT - ENGINEERING - THRU 03/25/23	\$ 1,316.24	pw1
323805	4/17/2023	3710577	ZOLL MEDICAL CORPORATION	FLOW SENSOR CONNECTOR, DISPLAY PROTECTOR	\$ 422.28	medic
323576	4/18/2023	337863A	BAY CITY SUPPLY	FACILITY SUPPLY ITEMS	\$ 438.25	pwfac
323581	4/18/2023	199 800 0000 4	CASCADE NATURAL GAS CORP.	703 R AVE 3/21-4/17/23	\$ 277.04	museum
323658	4/18/2023	304 713 4234 2	CASCADE NATURAL GAS CORP.	607 R AVE 3/21-4/17/23	\$ 15.17	parks1
323657	4/18/2023	538 000 0000 1	CASCADE NATURAL GAS CORP.	411 HILLCREST DR 3/21-4/17/23	\$ 62.04	parks1
323580	4/18/2023	912 800 0000 0	CASCADE NATURAL GAS CORP.	CARNEGIE 3/21-4/17/23	\$ 332.18	museum
323656	4/18/2023	917 600 0000 9	CASCADE NATURAL GAS CORP.	1915 13TH ST 3/21-4/17/23	\$ 113.59	parks1
323579	4/18/2023	17305	HOW IT WORKS, INC	EXHIBIT EXPENSES	\$ 220.25	museum
323897	4/18/2023	0267886	SIRENNET.COM	SIREN SPEAKER #210	\$ 228.46	dshop
323654	4/18/2023	540598598	UNITED STATES POSTAL SERVICE	USPS- ATOWN BULK MAILING POSTAGE	\$ 2,863.29	finance
323928	4/19/2023	INV00010661	OPENGOV, INC	OPENGOV BUDGET MODULE - 4/19/2023-4/18/2024	\$ 46,069.19	finance

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
323792	4/20/2023	52506	KRIEG CONSTRUCTION, INC	ASPHALT & CONCRETE DISPOSAL-STREET DEPT	\$ 104.60	dshop
323842	4/20/2023	ReimbLindquist	LINDQUIST, THAD	REIMBURSE PHARMACY COPAY, LEOFF1 RETIREE	\$ 80.79	hr
323720	4/20/2023	04/20/2023	NORTHWEST PARKING EQUIPMENT	WA PARK PAY STATION SUPPLIES	\$ 317.91	parks1
323587	4/20/2023	2ND QTR JUDICIAL	SKAGIT COUNTY DISTRICT COURT	2ND QTR JUDICIAL SERVICES	\$ 22,566.00	court
323829	4/20/2023	44300614	TWO RIVERS TERMINAL, LLC	PUMP STATION CHEMICALS	\$ 11,181.37	dwwtp
323830	4/20/2023	9933013031	VERIZON WIRELESS	SCADA COMMUNICATIONS - 3/21 - 4/20/23	\$ 1,221.36	dwwtp
323788	4/21/2023	804584	BLADE CHEVROLET, INC	KEY- #044	\$ 109.08	dshop
323912	4/21/2023	1790899037	CASCADE DENTAL, LLC	DENTAL SERVICES, I JOHNSON, LEOFF1 RETIREE	\$ 235.00	hr
323940	4/21/2023	7388-0	THE SHERWIN WILLIAMS CO	GRACO LINELAZER PAINT SPRAYER	\$ 31,487.33	pw1
323815	4/21/2023	2023-0647	THE WATERSHED COMPANY	SHORELINE MASTER PROGRAM (SMP) USER GUIDE & WEBSITE PROJECT - THRU 03/31/23	\$ 1,516.25	plan
323816	4/21/2023	2023-0648	THE WATERSHED COMPANY	SHORELINE PERMIT MONITORING PROJECT - THRU 03/31/23	\$ 2,750.00	plan
323659	4/21/2023	50396	VALLEY ATHLETICS	BASEBALL FIELD MAINTENANCE SUPPLIES	\$ 487.87	parks1
323922	4/21/2023	20INV000357766	WASTEQUIP, LLC	DUMPSTER ORDER: 2 YARD, 3 YARD, 8 YARD	\$ 13,483.10	pw1
323923	4/21/2023	20INV000357768	WASTEQUIP, LLC	3 YARD DUMPSTER ORDER	\$ 9,462.96	pw1
323503	4/23/2023	INV82272664	FIT SUPPLY, LLC	2 TREADMILLS FOR FIRE DEPARTMENT	\$ 12,392.50	medic
323938	4/24/2023	13263	BUD CLARY CHEVROLET, INC.	COMMUNITY PARAMEDIC SUV CHEVY TRAVERSE PURCHASE	\$ 37,327.26	pw1
323836	4/24/2023	19198	TRANSPORTATION SOLUTIONS INC	32ND AND M INTERSECTION - DESIGN - 03/16 - 04/15/2023	\$ 1,605.28	pw1
323804	4/24/2023	3716209	ZOLL MEDICAL CORPORATION	ECG LEAD CABLES	\$ 281.98	medic
323827	4/25/2023	SI445962	AMERICAN REGISTRY FOR	IP ADDRESS TRANSFER FEE	\$ 375.00	fiber
323574	4/25/2023	338124	BAY CITY SUPPLY	FACILITY SUPPLIES	\$ 491.43	pwfac
323575	4/25/2023	49064	CORRECT EQUIPMENT, INC	MAINTENANCE SUPPLIES - FERRY TERMINAL	\$ 166.00	dwwtp
323802	4/25/2023	1313244	LIFE ASSIST, INC	HOT PACKS	\$ 23.76	medic
323905	4/25/2023	12173	SKAGIT SHOOTING SPORTS, INC.	DUTY GUN GRIPS (LARGE AND SMALL)	\$ 86.86	apd
323824	4/26/2023	AN 856055	CENTRAL WELDING SUPPLY CO, INC	O2 FOR AMBULANCE	\$ 72.59	medic

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
323915	4/26/2023	5155753346	CINTAS CORPORATION	FIRST AID SUPPLIES - VARIOUS DEPTS	\$ 677.88	hr
323899	4/26/2023	0300424-IN	REISNER DISTRIBUTOR INC	HYDRAULIC FLUID #706	\$ 251.88	dshop
323817	4/27/2023	11252	DALTON, OLMSTED & FUGLEVAND	WATER TREATMENT PLANT SINKHOLE MONITORING - 01/01 - 03/31/23	\$ 12,676.86	pw1
323838	4/27/2023	10701594	NAVIA BENEFIT SOLUTIONS, INC	APRIL FLEXIBLE SPENDING PARTICIPANT FEE	\$ 132.80	hr
323803	4/27/2023	112928	WALTON BEVERAGE COMPANY, INC	15 LBS COFFEE 4/27	\$ 210.00	medic
323787	4/27/2023	112929	WALTON BEVERAGE COMPANY, INC	OPS: BREAKROOM SUPPLIES	\$ 158.50	dshop
323837	4/28/2023	IN1868745	MUNICIPAL EMERGENCY SERVICES	SCBA REPAIR	\$ 72.41	medic
323791	4/28/2023	IN950534	NOANET	MUNICIPAL FIBER NETWORK COORDINATED SERVICES - APRIL 2023	\$ 2,349.00	fiber
323797	4/28/2023	220015149234	PUGET SOUND ENERGY INC	8147 S MARCHS PT RD ST LIGHTS 03/31-04/28/23	\$ 148.39	dshop
323937	4/28/2023	Pay App 1	RAW LAND CONSTRUCTION LLC	2023 WATERLINE REPLACEMENTS	\$ 475,619.20	pw1
323908	4/28/2023	360-293-4900-0912865	ZIPLY FIBER	APD BAC LINE 4/28-5/27/28	\$ 94.11	apd
323800	4/28/2023	360-293-6427-0218975	ZIPLY FIBER	CITY HALL 911 4/28-5/27/23	\$ 87.69	finance
323831	4/28/2023	360-299-0973-1017915	ZIPLY FIBER	WWTP 4/28-5/27/23	\$ 488.77	dwwtp
323930	4/28/2023	360-299-2484-0726025	ZIPLY FIBER	LIBRARY PHONE 4/28-5/27/23	\$ 65.21	publib
323900	4/28/2023	360-299-3674-0214175	ZIPLY FIBER	OPS PHONE LINE 4/28- 5/27/23	\$ 78.69	dshop
323907	4/28/2023	360-299-6615-0615165	ZIPLY FIBER	APD 911 LINE 4/28-5/27/28	\$ 81.50	apd
323944	4/30/2023	75745951	INGRAM LIBRARY SERVICES, LLC	INGRAM ADULT BOOKS	\$ 198.84	publib
323950	4/30/2023	75745952	INGRAM LIBRARY SERVICES, LLC	INGRAM JUVENILE AND TEEN BOOKS	\$ 76.64	publib
323795	4/30/2023	0423	NELSON, BONNIE	AGING MASTERY PROGRAM ADMINISTRATION - APRIL 2023	\$ 675.00	pkrec
323942	4/30/2023	Pay App 5	SUMMITX CONTRACTORS, INC	ACCESS ANACORTES FIBER INTERNET GUEMES VIEW AREA UNDERGROUND CONSTRUCTION	\$ 77,243.02	fiber
323903	4/30/2023	3040120	UTILITIES UNDERGROUND LOCATION	APRIL LOCATE TICKETS	\$ 246.39	dshop

Invoice Doc #	Invoice Date	Invoice #	Vendor Full Name	Description	Total Amount	Approval Queue
323796	5/1/2023	May 2023	COMMUNITY ACTION OF SKAGIT CTY	ANACORTES COMMUNITY ACTION OFFICE & CARE SPECIALIST - MAY 2023	\$ 5,454.55	admsrv
323814	5/1/2023	1911	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 900.00	pubdef
323806	5/1/2023	1912	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 104.00	pubdef
323807	5/1/2023	1913	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 120.00	pubdef
323808	5/1/2023	1914	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 90.00	pubdef
323809	5/1/2023	1915	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 90.00	pubdef
323810	5/1/2023	1916	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 75.00	pubdef
323811	5/1/2023	1917	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 412.50	pubdef
323812	5/1/2023	1918	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 82.50	pubdef
323813	5/1/2023	1919	LAW OFFICE OF CARA LORENZO	PUB DEF CONFL	\$ 82.50	pubdef
323828	5/1/2023	2732	OAB ENGINEERING, LLC	STA 3 INTERNET SERVICE: MAY	\$ 150.00	medic
323935	5/1/2023	5067243365	RICOH USA, INC	S/N C86111692 ENG 2/1-4/30/23	\$ 59.27	finance
323945	5/1/2023	5067243476	RICOH USA, INC	S/N C86152062 HR COPIES 4/1-4/30/23	\$ 7.25	hr
323839	5/1/2023	0542005-001	UNUM LIFE INS CO OF AMERICA	MAY UNUM LONG TERM CARE INSURANCE	\$ 1,247.70	hr
323904	5/1/2023	23006091	WASHINGTON STATE PATROL	BACKGROUND CHECKS; APRIL 2023	\$ 225.25	apd
323801	5/1/2023	23006435	WASHINGTON STATE PATROL	REC PROGRAM BACKGROUND CHECKS	\$ 22.00	pkrec
323948	5/2/2023	21-043-FIN-001	ANACORTES FAMILY CENTER	AFFORDABLE HOUSING TAX PAYMENT	\$ 25,107.05	finance
323949	5/2/2023	21-247-FIN-001	ANACORTES HOUSING AUTHORITY	AFFORDABLE HOUSING TAX PAYMENT	\$ 25,107.05	finance
323933	5/2/2023	5067243083	RICOH USA, INC	S/N C86078711 LIBRARY FL1 STAFF COPIER 2/1-4/30/23	\$ 600.96	publib
323947	5/2/2023	03188	SKAGIT COUNTY SHERIFF'S OFFICE	JAIL TAX PAYMENT PER CONTRACT	\$ 74,133.00	finance
323920	5/2/2023	2376	THE CLEAN TEAM	THE CLEAN TEAM: JANITORIAL SERVICES PUBLIC RESTROOMS APRIL 2023	\$ 3,550.00	plan
323941	5/2/2023	39388-104	THE SALVATION ARMY	CDBG-CV SALVATION ARMY COLD WEATHER SHELTER	\$ 5,280.00	plan
323961	5/2/2023	RACEWEEK 1	WHIDBEY ISLAND RACE WEEK LLC	LTAC WHIDBEY ISLAND RACE WEEK	\$ 5,442.83	plan
	Total				\$ 1,022,102.81	



City Council Agenda Bill

Meeting Date: May 8, 2023 **Agenda Item:** 5.c.

Agenda Item Title: Contract Award: Multi-Function Grader Purchase #23-148-ERR-001

Staff Contact(s): Henry Hash, WIL LUDEMANN

<u>Approved for Submittal to Council by</u>	<u>Action Type</u>
TIFFANY MATSON	Contract Award
TIFFANY MATSON	

Item Summary: City staff seeks City Council consent to award a contract in the amount of \$172,904.96 to Calder Brothers Corporation for the Multi-Function Grader Purchase. The contract piggybacks on HGAC contract #SM10-20.

Background:

1. History: This is a replacement of our 33 year old grader that is 8 years past its replacement cycle and was better suited for us when we had more large dirt roads and open spaces. This new unit is more compact and versatile. This is funded by the ER replacement fund. We have several replacement items in the budget that won't be arriving this year so we will be shifting those units to next year's budget and using a portion of this year's budget for this purchase.

2. Key Terms:

- Total contract price of \$172,904.96 which includes \$13,984.96 in sales tax.

3. Competitive Bidding: The City has a cooperative purchasing agreement with HGACBuy and is procuring this purchase through contract [SM10-20](#).

Budget Impact:

Vender	Calder Brothers Corporation
Contract Amount	\$172,904.96
BARS #	501.790.594.48.60

Budget Amendment Required?	No
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Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-148-ERR-001 with Calder Brothers Corporation in the amount of \$172,904.96 for the Multi-Function Grader Purchase.

Alternative Actions:

Attachments (listed in order presented):

1. 23-148-ERR-001
2. M415XT-Literature-1



City of Anacortes
Accounts Payable
PO Box 547
Anacortes, WA 98221

PURCHASE ORDER 23-148-ERR-001 MULTI-FUNCTION GRADER PURCHASE

VENDOR: Calder Brothers Corporation
Royal Cole
450 East Warehouse Court
Taylors, SC 29687

Email: rcole@calderbrothers.com
Phone: 864-244-4800 EXT 4810

Date: May 8, 2023

Contact: WiL Ludemann
Department: Public Works Department
Equipment Rental
(360) 293-1921
ludemannw@cityofanacortes.org

Item	Qty	DESCRIPTION	U/M	Unit Price	Amount
1	1	2022 Mauldin M415X Maintainer with 158 hours	EA	\$186,640.00	\$186,640.00
2	1	PDA	EA	\$1,080.00	\$1,080.00
3	1	Trade in - Cat 120G S/N 87V08943	EA	-\$30,000.00	-\$30,000.00
This Purchase Order is subject to: - Exhibit A Special Provisions - Exhibit B, HGAC contract #SM10-20 Both Exhibits are hereby incorporated by reference and made a part hereof.					
Sum Total					\$157,720.00
Freight					\$1,200.00
Sales Tax @ 8.8%					\$13,984.96
Total Price					\$172,904.96

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

CALDER BROTHERS CORPORATION

CITY OF ANACORTES

Matt Miller, Mayor

Date

Date



**PURCHASE ORDER # 23-148-ERR-001
SPECIAL PROVISIONS
EXHIBIT A**

1. **Delivery.** Advance coordination of the work shall be made with the Project Manager Wil Ludemann, (360) 299-1515.

2. **Supplier Bears Risk.** The risk of loss or damage shall be borne by Supplier at all times until the Acceptance of the Goods or Services by City. Delivery of items specified on the PO to the designated delivery point must be as Freight-On-Board (FOB) Destination, Freight Prepaid.

3. **Taxes.** The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Supplier must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Supplier's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

4. **Invoicing.** All invoices shall include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, PO Number and Price, or Amended Price. Supplier shall allow 30 days for payment. Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Suppliers may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution.

The City shall notify the Supplier within fifteen (15) calendar days from receipt of invoice if there are any objections or disputes with the invoice. The Supplier shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

5. **Withholding Payment.** In the event the City determines that the Supplier has failed to perform any obligation under this PO within the times set forth in this PO, then the City may withhold from amounts otherwise due and payable to Supplier the amount determined by the City as necessary to cure the default, until the City Attorney determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Supplier to terminate or damages, provided that the City promptly gives notice in writing to the Supplier of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Supplier of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Supplier acts within the times and in strict accord with the provisions of the Disputes clause of this PO. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the PO, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Supplier, (3) to set off any amount so paid or incurred from amounts due to become due the Supplier. In the event the Supplier obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Supplier by reason of good faith withholding by the City under this clause.

6. **Final Payment: Waiver of Claim** the Supplier's acceptance of final payment shall constitute a waiver of claims, except those previously and properly made and identified by the Supplier as unsettled at the time request for final payment is made.

7. Inspection.

A. Of the Work

All materials furnished and work done shall be subject to inspection. The City Project Manager administering the PO shall at all times have access to the work wherever it is in progress or being performed, and the Supplier shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Supplier of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the PO. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority

The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Supplier may appeal to the City Attorney whose decision shall be final. The PO shall be carried out under the general control of the representative of the City administering the PO, who may exercise such control over the conduct of the work as may be necessary, in his or her opinion, to safeguard the interest of the City. The Supplier shall comply with any and all orders and instructions given by the representative of the particular Department administering the PO in accordance with the terms of the PO. Nothing herein contained, however, shall be taken to relieve the Supplier of their obligations or responsibilities under the PO.

8. **Warranty.** All warranty requirements of H-GAC Contract SM10-20 shall apply to this purchase. In addition, the Supplier shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Supplier's work comply with the requirements of the Contract or any other legal rights or remedies of the City.

9. **Defense and Indemnity Agreement.** The Supplier 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.

10. **Insurance Requirements**

A. Insurance Term: The Supplier 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 products and materials supplied to the City.

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

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

Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. **The City of Anacortes shall be named as an additional insured** under the Supplier's Commercial General Liability insurance policy using ISO Additional Insured-Vendors Endorsement CG 20 15 04 13 or a substitute endorsement providing at least as broad coverage.

D. Minimum Amounts of Insurance: The Supplier shall maintain Commercial General Liability insurance that shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products liability aggregate limit.

E. Other Insurance Provision: The Supplier's Commercial General Liability insurance policy or 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 Supplier's insurance and shall not contribute with it.

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

A.G. Verification of Coverage: The Supplier 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 Supplier before goods, materials or supplies will be accepted by the City. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Supplier's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

H. Notice of Cancellation: The Supplier shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

I. Failure to Maintain Insurance: Failure on the part of the Supplier 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 Supplier 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 Supplier from the City.

J. City Full Availability of Supplier Limits: If the Supplier 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 Supplier, irrespective of whether such limits maintained by the Supplier 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 Supplier.

11. **Standard Title VI / Non-Discrimination Assurances.** During the performance of this contract, the Supplier, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

12. **Supplier is an Independent Supplier.** The parties intend that an independent Supplier relationship will be created by this PO. No agent, employee or representative of the Supplier shall be deemed to be an agent, employee or representative of the City for any purpose. Supplier shall be solely responsible for all acts of its agents, employees, representatives and Sub-Suppliers during the performance of this PO.

13. **Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against City on account of any alleged patent or copyright infringement arising out of the performance of this PO or out of the use of any material furnished or work or services performed hereunder, Supplier shall defend City against any such suit or claim and hold City harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.

14. **The City's Right to Terminate PO.**

A. **Termination for Default:** If the Supplier defaults by failing to perform any of the obligations of the PO 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 the Supplier in the U.S. mail, postage prepaid, terminate the PO, and at the City's option, obtain performance of the work elsewhere. If the PO is terminated for default, the Supplier shall not be entitled to receive any further payments under the PO until the Scope of Services under this PO 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 Supplier. The Supplier 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. If a notice of termination for default has been issued and it is later determined for any reason that the Supplier was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. **Termination for Public Convenience:** The City may terminate the PO in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the PO is terminated in accordance with this paragraph, the Supplier shall be entitled to payment for actual work performed at unit PO prices for completed items of work through the date of termination. An equitable adjustment in the PO price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this PO by the City at any time during the term, whether for default or convenience, shall not constitute a breach of PO by the City.

15. **Changes/Additional Work.** The City may engage Supplier to perform services in addition to those listed in this PO, and Supplier will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this PO. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Supplier to render or the City to pay for services rendered in excess of the Scope of Services unless or until a modification to this PO is approved in writing by both parties.

16. **Non-waiver.** Waiver by the City of any provision of this PO or any time limitation provided for in this PO shall not constitute a waiver of any other provision.

17. **Covenant Against Contingent Fees.** The Supplier warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Supplier, to solicit or secure this PO, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Supplier, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this PO. For breach or violation of this warranty, the City shall have the right to annul this PO without liability or, in its discretion to deduct from the PO price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

18. **Disputes**

A. **General:** Differences between the Supplier and the City, arising under and by virtue of this PO shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this PO.

B. **Notice of Potential Claims:** The Supplier shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Supplier has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The

written Notice of Potential Claim shall set forth the reasons for which the Supplier believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Supplier shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

B. Detailed Claim: The Supplier shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Supplier has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. Dispute Resolution: In the event of a dispute between the City and the Supplier arising out of this PO, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Supplier to have oversight over the administration of this PO. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

19. Force Majeure. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Supplier shall have no recourse against the City.

20. Governing Law. This PO shall be governed by and construed under the laws of the State of Washington. Any action brought under the PO or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

21. Compliance with Laws. The Supplier in the performance of this PO shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the PO to assure quality of services.

22. Severability. If any term or condition of this PO or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this PO are declared severable.

23. Survival of PO Termination. The provisions of the following paragraphs and the liability of the Supplier for default during the term of the PO shall survive, notwithstanding the termination or invalidity of this PO for any reason: The City's Right to Terminate PO; Governing Law; Disputes; Defense & Indemnity.

24. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

SUPPLIER:

Calder Brothers Corporation
Royal Cole
450 East Warehouse Court
Taylors, SC 29687

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

M415XT MAINTAINER

- 10 ft. Moldboard, 3/4 yd³ Front Bucket and 84 in. Ripper
- 127 HP Cummins 3.8L Tier 4 Final Engine
- All-Wheel Drive with Solid Axles and Limited Slip
- Universal Quick-Attaches both Front and Rear
- Hi Flow Auxiliary Hydraulics with Case Drain
- Joy Stick Control System
- 4 Wheel Steer for Small Turning Radius



**Machine shown may include optional equipment.*

M415XT Maintainer - Big Power - Small



The **MAULDIN** M415XT Maintainer is the most versatile and maneuverable small grader on the market. The M415XT is a true investment in productivity, your operators and your business. Experience it today.

Solid Live Axle Drive

Get the most torque and traction to the ground with all new hydrostatic driven dual live axle front and rear with limited slip and 4 wheel steering.

Joystick Control

The New M415XT features a single joystick control for all hydraulic implement functions for simple ease of use. Also new is a 7in color interactive display to monitor real time parameters.

Moldboard

The 10 foot moldboard features sideshift, angle, tilt and float enabling the operator to handle many different work requirements. **MAULDIN's** exclusive rear mounted A-frame design generates as much Blade Down Pressure as machines twice its size.

Front Bucket

Rated at 3/4 cubic yards , the front bucket is a very capable asset of the M415XT. Its 10 foot dump height allows for loading of tandem axle trucks with sideboards. Boom float gives operators the ability to back-drag those tight corners found in many of today's parking lots and driveways.

Attachments

Standard 35 GPM high flow auxiliary hydraulics @ 4000 psi along with the standard front and rear universal quick-attach allow the M415XT to use many different work tools. These quickattaches allow the M415XT to use work tools such as brooms, augers, pallet forks, snow blowers, rollers, tillers, cold planers, rotary cutters, etc.



Versatility and Productivity. The M415XT is a highly utilized piece of equipment. From applications such as sweeping to get ready for tack to minimizing material costs on jobsites by using available machine automation, the M415XT is both versatile and productive.



Package



Masters of the Mat



If productivity, versatility and low maintenance are your requirements in a motor grader...
MAULDIN's M415XT is the Answer!



The M415XT's small footprint makes it the perfect choice for working in tight areas like this alley.



Single Joystick controls all moldboard, bucket, and scarifier functions. 7in color display shows engine parameters and control options.

Calder Brothers Corporation is a leading manufacturer in asphalt related products including commercial pavers, asphalt rollers, tack-coat sprayers, maintainers, motor graders, and asphalt distributors. Building a quality product based on sound engineering practices and using field tested, time proven components is our focus.

CBC demands performance and reliability out of each machine we manufacture. These same demands are expected from our partners as well, helping us insure quality product with unmatched service and support.

M415XT MAINTAINER

WEIGHTS		Model M415	TRANSMISSION	
Operating		15,000 lbs / 6,803 kg	Type	Tandem Hydrostatic Pump, All Wheel Drive, Limited Slip
Front Axle		6500 lbs / 2,950 kg		Drive System with Power Steering, Instant Fwd & Rev,
Rear Axle		8,500 lbs / 3,855 kg		Foot Actuated Speed & Direction, Planetary Reduction Drive
MOLDBOARD			Brakes	Dynamic Hydrostatic w/ Spring App. Hydraulic Release Parking
Length x Height		10' x 19" / 305 cm x 48 cm	ENGINE	
Ground Clearance		11" / 28 cm	Manufacturer	Cummins - Turbocharged & Aftercooled
Hydraulic Side Shift		36" / 91 cm Outside Standard Tires L and R	Fuel Type	Diesel
Hydraulic Tilt		Infinitely Variable from 0° to 45°	HP	Rated HP 120 @ 2500 RPM Max HP 127 @ 2300 RPM
Hydraulic Angle		39° L and R	Torque	Peak Torque 360 Ft Lb @ 1600 RPM
Float Position		Standard	Type and Cooling	4 Cylinder, Water
LOADER ASSEMBLY & SCARIFIER			Electrical System	12 volt with Heavy Duty Alternator
Bucket Capacity		¾ yd³ / .57 m³	TIRES AND WHEELS	
Bucket Width		84" / 213 cm	Tires	15-19.5 NHS 14 Ply Standard
Hinge Pin Dump Height		120" / 305 cm	Wheels	8 lug 19.5 x 15
Loader Lift Capacity		2,200 lbs / 998 kg	Front Axle Oscillation	15°
Scarifier Width		84" / 213 cm	Ground Speed	0-8 mph / 13 kph Low Range 0-17 mph / 27 kph High Range
Scarifier Shanks		7	CAPACITIES AND DIMENSIONS	
Scarifier Penetration		8" / 20 cm	Fuel	40 gal / 151 lit with Fuel Filter/Water Separator
Scarifier Lift		24" / 61 cm	Hydraulic	20 gal / 76 lit
			Overall Length w/ Scarifier	252" / 640 cm
			Width Over Standard Tires	82" / 208 cm
			Transport Width (10" Blade)	97" / 246 cm
			Overall Height	106.5" / 271 cm
			Wheel Base	126" / 320 cm
			Blade Base	69" / 175 cm
OPTIONAL EQUIPMENT			Turning Radius	8' / 244 cm Inside Tires 5' / 152 cm Inside Moldboard
A/C, Heat, Blade Automation, Angle Broom, Pallet Forks, Roller, Auger, etc.			Auxiliary Hydraulics	35 GPM @ 4000 PSI

Apr-22

Calder Brothers Corporation reserves the right to make changes in engineering, design and specifications; add improvements; or discontinue manufacture at any time without notice or obligation.

Sold & Serviced by:



Calder Brothers Corporation
450 E. Warehouse Ct.
Tailors, SC 29687
Phone (864) 244-4800
www.4aMauldin.com



City Council Agenda Bill

Meeting Date: May 8, 2023 **Agenda Item:** 5.d.

Agenda Item Title: Contract Award: Wastewater Treatment Plant (WWTP) Aeration Basin Mixer Replacement #23-139-SEW-001

Staff Contact(s): Henry Hash, Brian Walker

Approved for Submittal to Council by **Action Type**
TIFFANY MATSON Contract Award

Item Summary: City staff seeks City Council consent to award a contract in the amount of \$106,184.45 to Whitney Equipment Company, Inc to replace two aeration basin mixers at the WWTP.

Background:

1. **History:** The existing mixers are obsolete and need to be replaced. They are over 30 years old and are parts are longer available. With new treatment regulations the Wastewater treatment Plant will be using the mixers 24/7 as part of the treatment process. The Flygt mixer is an adaptive mixer which allows for greater control of the mixing performance and efficiency.
2. **Key Terms:**
 - Contract is for a fixed price of \$106,184.45.
 - The Contractor shall complete the work by December 31, 2023.
3. **Competitive Bidding:** In accordance with competitive bid requirements set forth under RCW 35.23.352 the project cost is under the competitive requirements and thus the Project Manager evaluated contractors and chose to contract with Whitney Equipment Company, Inc

Budget Impact:

Contractor	Whitney Equipment Company, Inc
Contract Amount	\$106,184.45
Earmarked Funds	90K for materials 110K For Annual O&M, Equipment Upgrades and Rehabilitation

BARS #	440.750.535.83.48 – 10% 440.750.535.83.31 – 90%
Budget Amendment Required?	No
Start Date	Notice to Proceed
End Date	12/31/23

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign contract 23-139-SEW-001 with Whitney Equipment Company, Inc in the amount of \$106,184.45 to perform the WWTP Aeration Basin Mixer Replacement.

Alternative Actions: Not award the contract.

Attachments (listed in order presented):

1. 23-139-SEW-001



CONTRACT 23-139-SEW-001
AGREEMENT WITH
WHITNEY EQUIPMENT COMPANY, INC.

This Contract is between the City of Anacortes, Washington, a Municipal Corporation (herein after referred to as "City") and Whitney Equipment Company, Inc, a private contractor at 16120 Woodinville-Redmond Road NE, Suite 3, Woodinville, WA 98072 (herein after referred to as "Contractor").

PROJECT
WWTP AERATION BASIN MIXER REPLACEMENT

1. **Scope of Work:** Contractor shall furnish all materials, equipment and labor to replace two aeration basin mixers at the Anacortes Wastewater Treatment Plant (WWTP), 500 T Ave, Anacortes, WA 98221. Work and equipment includes:

- a. Labor to remove two old aeration basin mixers and install the two new ones.
- b. Labor to adapt existing ABS brackets to Flygt Mixers (12 hours).
- c. 1 day start up and training.
- d. Quantity 2: Flygt 4320.091 Submersible Mixers including:
 - i. 7.5HP Explosion Proof Motors
 - ii. 55" 3 blade propellers
 - iii. 65ft Submersible shielded cables for 460V,
 - iv. 3ph power
 - v. Cable handling Kit
- e. Quantity 1: 24" x 24" Composite Control enclosure NEMA 4X including:
 - i. (2) Gateways
 - ii. (1) Touch Screen HMI
 - iii. (1) 120V AC to 24V DC power supply with (2) batteries
 - iv. Surge protectors

2. **Contract Price:** The Contractor will perform the scope of work above for a firm fixed price of **One Hundred Six Thousand One Hundred Eighty-Four Dollars and Forty-Five Cents (\$106,184.45)**, which includes \$8,588.45 sales tax at an 8.8% rate. This includes all mobilization, demobilization, labor, materials, standard freight, and administrative overhead for the project. Before any payment is made by the City of Anacortes of sums under this contract, the contractor must provide a copy of the statement of *Intent to Pay Prevailing Wage* approved by the Department of Labor and Industries. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the contractor will be retained.

3. **Bonds:** Pursuant to RCW 39.08.010, the Contractor shall provide the City a performance bond and payment bond for the full contract amount to be in effect as detailed in the incorporated General Provisions. The City may at its option release the bonds once all the conditions of RCW 39.08.010-1a have been discharged.

4. **Time of Completion:** The Contractor shall complete the work by December 31, 2023.

5. **Project Management:** Coordination and scheduling of the work, materials, and equipment shall be made with the Project Manager Steve Doeblner (360) 299-1504.

6. **Contract Requirements:** As detailed in the General Provisions, Contractor must have a valid contractor license number, insurance, and City of Anacortes business license. **Prevailing Wage Law Applies.** Forms Needed: 1) Proof of Insurance with Additional Insured Endorsements; 2) Intent to Pay Prevailing Wage; 3) Affidavit of Wages Paid; 4) Performance Bond; 5) Payment Bond; 6) Certification of Compliance with Wage Payment Statutes.

7. **Contract Documents:** The attached General Provisions are included in this Contract Agreement.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

Owner:

City of Anacortes

Mayor

Date

Contractor:

Whitney Equipment Company, Inc

Date

Contractor License #

1. WASHINGTON STATE PREVAILING WAGES: Washington State Prevailing Wages apply to all Work. The Contractor and any of its Subcontractors are required to pay their laborers and mechanics minimum wage in compliance with Washington State Prevailing Wage Laws. Before any payment is made by the City of Anacortes of any sums under this contract, the contractor and each subcontractor must provide the City with a copy of the statement of *Intent to Pay Prevailing Wages* approved by the Washington State Department of Labor and Industries (L&I) (*ONE (1) filed per contractor and each subcontractor per contract*). Following contract completion, the City will not release any funds retained, according to the provisions of RCW 60.28.010, until the contractor and each subcontractor has provided the City a copy of the *Affidavit of Wages Paid* approved by L&I (*ONE (1) filed per contractor and each subcontractor per contract*). L&I provides the wage forms. ***All costs associated with such fees shall be included in the Contract price as part of the fixed costs of overhead for this Contract, including any anticipated subcontractor filing fees. Any change in the fee by L&I will not be grounds for revision in the Contract Amount. The City will only pay for the actual cost charged by L&I for the filing of the intent and affidavit.***

For contracts in excess of \$10,000, the contractor must post in a conspicuous place at the job site, a copy of the statement of *Intent to Pay Prevailing Wages* approved by L&I and the address and phone number of the Industrial Statistician where complaints or inquiries may be made. The City will refer any dispute regarding the prevailing rate of wage to L&I for arbitration.

The State of Washington prevailing wage rates applicable for this public works project, which is located in Skagit County, may be found at the following website address of the Department of Labor and Industries: <https://secure.lni.wa.gov/wagelookup/>. The prevailing wage schedule in effect for the work under the contract will be the one in effect upon the date of execution of the contract. A copy of the applicable prevailing wage rates are also available for viewing at the office of the City, located at 904 6th Street, Anacortes, WA. Upon request, the City will mail a hard copy of the applicable prevailing wages for this project.

At least once a month Contractor must file weekly certified payroll reports online with the Washington Department of Labor and Industries as required by RCW 39.12.120.

2. Performance and Payment Bonds. The City is required by RCW 39.08.010, with limited exceptions, to obtain both a Performance and a Payment bond for each public works project. The City requires separate Performance and Payment bonds for 100% of the contract amount furnished on bond forms standardized by the City Attorney's office. The bonds must meet the following provisions:

- Be for the full amount of the project, including tax.
- Name City of Anacortes as the obligee.
- List the correct Project Name and Project Number.
- Be signed by both the surety (the Attorney in Fact) and the Contractor.
- Be issued by a surety authorized to do business in the State of Washington (listed on the Insurance Commissioners website) and which meets the AM Best Rating required in the Contract Documents. If no requirement exists, a minimum of AM Best Rating A-7 or better will be required.

Release of Bonds - Bonds will not be released until the project has been completed and finally accepted.

Performance Bonds – Performance Bonds will be released at the end of the warranty period or twelve months after the date of final acceptance, whichever is later. The City may at its option release the bond once all the conditions of RCW 39.08.010-1a have been discharged.

Payment Bonds – Payment Bonds will be released either 45 days after final acceptance of the project or upon receipt of releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries, whichever is later. Release is contingent on the fact that no claims against the bond have been filed prior to the 45 day mark. If claims have been filed against the bond, it will not be released until the claims have been resolved.

Exceptions – On projects \$150,000 and under, the Contractor can, in lieu of providing a performance and payment bond, request to have the City withhold 10% of monies earned on the project for a period of 30 days after final acceptance of the completed work or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later. This exception is dependent on pre-approval by the City Attorney, and the City reserves the right to reject requests to waive the bond requirements.

3. Retainage. Pursuant to RCW Chapter 60.28, a sum of five percent (5%) of the monies earned by the Contractor will be retained. The Contractor may elect to execute a Retainage Bond. The bond must be furnished on a bond form standardized by the City Attorney's office and issued by a surety currently authorized by the State Insurance Commissioner to do business in Washington State. Retainage will be released 45 days after Final Acceptance, provided that the following has occurred:

- a. All liens placed against the project have been released.
- b. For projects over \$35,000, releases from the Washington Department of Revenue, Washington Employment Security Department, and the Washington Department of Labor and Industries have been received.

Note: If the City has approved the Contractor's request to waive the bond requirements, the City will withhold a total of 10% of the monies earned for a period of 30 days after Final Acceptance of the completed work, or until receipt of all necessary releases from the Washington Department of Revenue, Washington Employment Securities Department, and the Washington Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

4. Final Acceptance. Final Acceptance is defined as the date on which the City accepts the Work as complete, as indicated by notice issued by the City. For the purposes of the retainage statute (RCW 60.28.011), "completion of all contract work" is the same as the date of Final Acceptance. The following events must occur before the City will issue Final Acceptance:

- a. The physical Work on the project must be complete and accepted by the Project Manager; and
- b. The Contractor must submit to the City, and secure City approval of, all documentation required by the Contract and required by law, including but not limited to:
 - i. Invoices for all Work;
 - ii. Copies of the "Affidavit of Prevailing Wages Paid" as approved by L&I for the Contractor and all Subcontractors; and
 - iii. Any additional documentation required by the Contract.

5. Penalties for Noncompliance. If Contractor does not provide "Affidavit of Prevailing Wages Paid" to the City, the City may withhold any or all payments until required documentation is received. In addition, failure to provide "Intent to Pay Prevailing Wage" or "Affidavit of Wages Paid" may result in other sanctions as provided by State laws (RCW 39.12.050) and/or Federal regulations (29 CFR 5.12).

6. Subcontracts. The Contractor shall not subcontract the Scope of Work ("Work") unless the Project Manager approves in writing. If the Project Manager requests, the Contractor shall provide proof that the Subcontractor has the experience, ability, and equipment the Work requires. "Subcontractor" means an individual, partnership, firm, corporation, or joint venture who is sublet part of the Contract by the Contractor. Each request to subcontract shall include the following information (i) a description of the supplies or services to be subcontracted, (ii) identification of the type of subcontract to be used (iii) identification of the proposed subcontractor, (iv) proposed subcontract price, (v) identification of the percentage of work to be performed by subcontract. Approval of subcontract shall not:

- a. Relieve the Contractor of any responsibility to carry out the Contract,
- b. Relieve the Contractor of any obligations or liability under the Contract and the Contractor's bond,
- c. Create any contract between the City and the Subcontractor, or
- d. Convey to the Subcontractor any rights against the City.

As required by RCW 39.06.020, the Contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification is to include that, at the time of subcontract execution, each subcontractor meets the responsibility criteria listed in RCW 39.04.350(1) and additionally - if applicable - possesses an electrical contractor license or an elevator contractor license. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier. Contractor remains fully responsible for obligations, services, and functions performed by its subcontractors to the same extent as if such obligations, services, and functions were performed by Contractor's employees, and for purposes of the Agreement such work will be deemed work performed by Contractor. The Contractor shall give immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the City.

If dissatisfied with any part of the subcontracted Work, the Project Manager may request in writing that the Subcontractor be removed. The Contractor shall comply with this request at once and shall not employ the Subcontractor for any further Work under the Contract.

7. Job Safety & COVID-19 Safety Requirements Compliance. The Contractor, and its subcontractors of any tier, shall comply with all Washington Dept. of Labor & Industries safety standards, as well as comply with all current and future COVID-19 proclamations, regulations, requirements and/or related guidance issued by the Office of the Governor of Washington State and Office of the Mayor of the City of Anacortes as it may relate to City of Anacortes projects.

8. Taxes. The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax. Where applicable the City shall furnish a Federal Excise Tax Exemption certificate.

9. Invoicing. All invoices shall at a minimum include: Company Name, Invoice Date, Due Date (30 days), Invoice Number, **Agreement Number**, and Price. The Contractor must allow 30 calendar days from receipt of the invoice for payment. **If requested by the City the Contractor shall provide a cost breakdown of charges.** Invoices may be sent by US mail to City of Anacortes, Accounts Payable, PO Box 547, Anacortes, WA 98221, or by email to accountspayable@cityofanacortes.org. Contractors may complete a City furnished ACH/EFT form to receive electronic payments directly to their financial institution. The City shall notify the Contractor within fifteen (15) calendar days from

receipt of invoice if there are any objections or disputes with the invoice. The Contractor shall then resubmit a new invoice less the disputed amount and payment shall be made within 30 calendar days. Any disputed amounts may be submitted under the Disputes clause contained herein.

10. Withholding Payment. In the event the City determines that the Contractor has failed to perform any obligation under this Contract within the times set forth in this Contract, then the City may withhold from amounts otherwise due and payable to Contractor the amount determined by the City as necessary to cure the default, until the Contracting Officer determines that such failure to perform has been cured. Withholding under this clause shall not be deemed a breach entitling Contractor to terminate or damages, provided that the City promptly gives notice in writing to the Contractor of the nature of the default or failure to perform, and in no case more than 8 days after it determines to withhold amounts otherwise due. A determination of the City Attorney set forth in such notice to the Contractor of the action required and/or the amount required to cure any alleged failure to perform shall be deemed conclusive, except to the extent that the Contractor acts within the times and in strict accord with the provisions of the Disputes clause of this Contract. The City may act in accordance with any determination of the City Attorney which has become conclusive under this clause, without prejudice to any other remedy under the Contract, to take all or any of the following actions: (1) cure any failure or default, (2) to pay any amount so required to be paid and to charge the same to the account of the Contractor, (3) to set off any amount so paid or incurred from amounts due to become due the Contractor. In the event the Contractor obtains relief upon a claim under the Disputes clause, no penalty or damages shall accrue to Contractor by reason of good faith withholding by the City under this clause.

11. Final Payment: Waiver of Claim. The contractor's acceptance of final payment (excluding withheld retainage) shall constitute a waiver of claims, except those previously and properly made and identified by the contractor as unsettled at the time request for final payment is made.

12. Inspection.

A. Of the Work: All materials furnished and work done shall be subject to inspection. The City Project Manager administering the Contract shall at all times have access to the work wherever it is in progress or being performed, and the Contractor shall provide proper facilities for such access and inspection. Such inspection shall not relieve the Contractor of the responsibility of performing the work correctly, utilizing the best labor and materials in strict accordance with the Specifications of the Contract. All material or work approved and later found to be defective shall be replaced without cost to the City.

B. Project Manager's Authority: The Project Manager shall have power to reject materials or workmanship which do not fulfill the requirements of these Specifications, but in case of dispute the Contractor may appeal to the City Attorney whose decision shall be final. The Contract shall be carried out under the general control of the representative of the City administering the Contract, who may exercise such control over the conduct of the work as may be necessary, in their opinion, to safeguard the interest of the City. The Contractor shall comply with any and all orders and instructions given by the representative of the particular Department administering the Contract in accordance with the terms of the Contract. Nothing herein contained, however, shall be taken to relieve the Contractor of their obligations or responsibilities under the Contract.

13. New and Unused. All units, equipment, parts and material shall be new, unused, manufacturer's current model year and in current production and shall meet any current applicable regulations and/or codes. All materials shall have physical and chemical properties to withstand the intended purpose. Equipment design shall have sufficient excess capacity for durability and safety.

14. Warranty. The Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work, including any necessary labor and materials. The Contractor shall start work to remedy any such defects within 7 calendar days of receiving City's written notice of a defect, and shall complete such work within the time stated in the City's notice. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by the City's own forces or another contractor, in which case the cost of corrections shall be paid by the Contractor. In the event the Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by the Contractor. For one year after acceptance of any corrections by the City the Contractor shall be responsible for correcting all defects in workmanship and materials in the corrected work. In addition, the Contractor shall obtain and submit to the City any necessary documentation to secure any extended manufacturer's warranty and warranty terms. This guarantee is supplemental to and does not limit or affect the requirements that the Contractor's work comply with the requirements of the Contract or impact any other legal rights or remedies of the City.

15. 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. However, 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.

16. Insurance.

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: The 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: The Contractor's 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 as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. **The City of Anacortes and its officers, elected officials, employees, agents, and volunteers 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. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance: The Contractor shall maintain the following insurance limits:

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 \$2,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

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

H. Verification of Coverage: The 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 **within 10 days of contract execution and before scheduling 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. Failure of the City to demand such verification of coverage with these insurance requirements or failure of the City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Verification of coverage shall include:

1. An ACORD certificate or a form determined by the City to be equivalent.
2. Copies of all endorsements naming the City as additional insured, showing the policy number. The Contractor may submit a copy of any blanket additional insured clause from its policies instead of a separate endorsement.
3. Any other amendatory endorsements to show the coverage required herein.
4. **A notation of coverage enhancements on the Certificate of Insurance shall not satisfy these requirements – actual endorsements must be submitted.**

I. 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 CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

J. 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 (2) business days of their receipt of such notice.

K. 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.

17. Acceptance. Contractor acknowledges and agrees that these General Provisions are incorporated in, and are a part of, each purchase order or other agreement relating to the provision of goods and/or related services by Contractor. These General Provisions supersede all conflicting or additional terms pre-printed on any purchase order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.

18. Registered or Licensed Contractor. The City is prohibited by RCW 39.06.010 from executing an Agreement with a Contractor who is not registered or licensed as required by the laws of the state. In addition, Anacortes Municipal Code requires that every person engaging in business within the city limits of Anacortes register their business with the state and include a City of Anacortes Endorsement. Businesses from outside city limits with a gross annual income of \$2,000 in Anacortes are also required to obtain a city endorsement. Business licenses and city endorsements can be obtained through the State of Washington Department of Revenue (DOR) Business Licensing Service (BLS) at bls.dor.wa.gov.

19. Standard Title VI / Non-Discrimination Assurances. During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest agrees to the clauses in "Appendix A" and "Appendix E" of the Standard Title VI Assurances (USDOT1050.2A), which are hereby incorporated by reference and made a part hereof.

20. Contractor is an Independent Contractor. The parties intend that an independent Contractor relationship will be created by this Agreement. No agent, employee or representative of the Contractor shall be deemed to be an agent, employee or representative of the City for any purpose. Contractor shall be solely responsible for all acts of its agents, employees, representatives and Subcontractors during the performance of this Agreement.

21. No Third-Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Third Party any interest or rights (including, without limitation, any Third-Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except as otherwise expressly provided for in this Agreement.

22. The City's Right to Terminate Agreement.

A. Termination for Default: If the Contractor defaults by failing to perform any of the obligations of the Agreement 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 the Contractor in the U.S. mail, postage prepaid, terminate the Agreement, and at the City's option, obtain performance of the work elsewhere. If the Agreement is terminated for default, the Contractor shall not be entitled to receive any further payments under the Agreement until the Scope of Services under this Agreement 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 Contractor. The Contractor 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. If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

B. Termination for Public Convenience: The City may terminate the Agreement in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the Agreement is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit Agreement prices for completed items of work through the date of termination. If the City exercises its option under this Paragraph, the City shall not be responsible for payment for loss of anticipated profit on deleted or uncompleted work. Termination of this Agreement by the City at any time during the term, whether for default or convenience, shall not constitute a breach of Agreement by the City.

23. Changes/Additional Work. The City may engage Contractor to perform services in addition to those listed in this Agreement, and Contractor will be entitled to additional compensation for authorized additional services or materials. The City shall not be liable for additional compensation until and unless any and all additional work and compensation is approved in advance in writing and signed by both parties to this Agreement. If conditions are encountered which are not anticipated in the Scope of Services, the City understands that a revision to the Scope of Services and fees may be required. Provided, however, that nothing in this paragraph shall be interpreted to obligate the Contractor to render or the

City to pay for services rendered in excess of the Scope of Services unless or until a modification to this Agreement is approved in writing by both parties.

24. Non-waiver. Waiver by the City of any provision of this Agreement or any time limitation provided for in this Agreement shall not constitute a waiver of any other provision.

25. Covenant Against Contingent Fees. The Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that they have not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award of making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

26. Disputes

A. **General:** Differences between the Contractor and the City, arising under and by virtue of this Agreement shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. The provisions of this Clause shall survive the expiration or termination of this Agreement.

B. **Notice of Potential Claims:** The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, labor and all costs and additional time claimed to be additional.

C. **Detailed Claim:** The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

D. **Dispute Resolution:** In the event of a dispute between the City and the Contractor arising out of this Agreement, or any obligation hereunder the dispute shall first be referred to the representatives designated by the City and the Contractor to have oversight over the administration of this Agreement. Said representatives shall meet within thirty (30) calendar days of receipt of detailed claim, and the parties shall make a good faith effort to achieve a resolution of the dispute. In the event the parties are unable to resolve the dispute under the procedure set forth above, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

27. Force Majeure. Neither party shall be liable to the other or deemed in breach or default for any failure or delay in performance under this Agreement during the time and to the extent its performance is prevented by reasons of Force Majeure. For the purposes of this Agreement, Force Majeure means an occurrence that is beyond the reasonable control of and without fault or negligence of the party claiming force majeure and which, by exercise of due diligence of such party, could not have been prevented or overcome. Force Majeure shall include natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; freight embargoes; epidemics; pandemics; quarantine restrictions; labor strikes; boycotts; terrorist acts; riots; insurrections; explosions; and nuclear accidents. A party claiming suspension or termination of its obligations due to force majeure shall give the other party prompt written notice of the impediment and its effect on the ability to perform, with such notice to be provided no more than two (2) working days after the force majeure event or reasonable discovery of the event's impact on performance. Failure to provide such notice shall preclude recovery under this provision. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Agreement modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Agreement. Rights Reserved: The City reserves the right to cancel the Agreement and/or purchase materials, equipment or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the City.

28. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Washington. Any action brought under the Agreement or relating to the Project shall be brought in the Superior Court of the State of Washington in Skagit County Washington.

29. Compliance with Laws. The Contractor in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities,

programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services. Contractor will follow all applicable laws and requirements for excavation and disposal of material.

30. Severability. If any term or condition of this Agreement or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

31. Survival of Contract Termination. The provisions of the following paragraphs, the provisions of the non collusion affidavit, and the liability of the Contractor for default during the term of the Contract shall survive, notwithstanding the termination or invalidity of this Contract for any reason: Taxes; Warranty; The City's Right to Terminate Contract; Governing Law; Indemnification / Hold Harmless; Disputes.

32. Notices. Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mail, with proper postage and properly addressed. Notices shall be sent to the following addresses:

CITY:

City of Anacortes
Tiffany Matson
904 6th Street
PO Box 547
Anacortes, WA 98221

CONTRACTOR:

Whitney Equipment Company, Inc
Laura Haggard
16120 Woodinville-Redmond Road NE, Suite 3
Woodinville, WA 98072

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Washington State Department of Transportation, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Washington State Department of Transportation to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Washington State Department of Transportation, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Washington State Department of Transportation may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Washington State Department of Transportation may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).



City Council Agenda Bill

Meeting Date: May 8, 2023 **Agenda Item:** 6.a.

Agenda Item Title: Contract Award: Dedicated Internet Access (DIA) Service #23-121-FBR-001

Staff Contact(s): JAMES LEMBERG , Emily Schuh

Approved for Submittal to Council by **Action Type**
TIFFANY MATSON Contract Award

Item Summary: City staff seeks City Council consent to award a contract to Cogent Communications, Inc. to provide Dedicated Internet Access (DIA) Service for the City-managed ISP service. The City is committing to a 36 month term with a monthly cost of \$3,461.00, after which we may opt to continue the agreement on a month-to-month basis. The contract also contains a \$3,250.00 one-time installation charge.

Background:

1. **History:** The City has established a municipally owned ISP providing affordable high-speed Internet, dark fiber, and Metro Ethernet services throughout the City of Anacortes over our community-owned fiber optic infrastructure. The City requires Dedicated Internet Access (DIA) as we are establishing a City-managed ISP service. This contract provides 10 Gbps symmetrical service on a 10 Gbps physical port. This contract will allow the City to provide internet access to our subscribers.
2. **Key Terms:**
 - The City is committing to a 36 month term with a monthly cost of \$3,461.00, after which we may opt to continue the agreement on a month-to-month basis at the same monthly rate.
 - The City would pay a one-time \$3,250.00 installation charge.
3. **Competitive Bidding:** This work is considered a Personal Service and as such the City made an informal request for proposals. Cogent's monthly price for 10 Gbps DIA is slightly more than Wave's price for one-half the bandwidth. City staff consider Cogent's ability to transport Internet traffic both faster and more reliable than Wave's ability.

Budget Impact:

Vendor	Cogent Communications, Inc.
Contract Amount	\$127,846.00 for 36 months
Earmarked Funds	\$262,592.00
BARS #	001.260.532.10.41
Budget Amendment Required?	No
Start Date	Inception
End Date	36 months

Previous Action: N/A

Recommended Motion: I move that City Council authorize the Mayor to sign a contract with Cogent Communications, Inc. in the amount of \$3,461.00 per month and a one-time \$3,250.00 installation charge for the Direct Internet Access (DIA) Service.

Alternative Actions: Not award the contract

Attachments (listed in order presented):

1. 23-121-FBR-001

CUSTOMER ORDER FORM Dedicated Internet Access

NORTH AMERICA - US - Cogent Communications, Inc.

2450 N Street, NW

Washington, DC 20037

**Customer and Order Information****City of Anacortes**

Customer Description	Corporate / Retail
Order Date	26-Apr-2023
Customer Requested Service Date*	01-Sep-2023

* This date is the earliest Service Date requested by Customer. Billing starts on the Service Date. Installation of the Service is subject to the SLA and Product Rider. While COGENT may install the Service on the Requested Service Date, COGENT does not guarantee that the Service will be installed on that date.

Resell Customer (Name)	No
Agent Deal (Name)	No
Legacy Orders Termination*	No

* For all Legacy Orders listed in the SERVICE INFORMATION section below, CUSTOMER elects 1 of 3 options:
 1) Immediate Termination.
 2) Delayed Termination (up to 30 days).
 3) No Termination – Month-to-Month (more than 30-day overlap), i.e., legacy orders will renew for successive Renewal Terms of one (1) month until terminated by Customer.

Service Information

Quoted Currency	USD	US Dollar
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Service Parameters

Order ID	Order Type	Legacy Order(s)	Node ID	Service Interface	CDR (Mbps)	Initial Term (in months)	On/Off-Net	Billing Model	Burst Fee (per Mbps)	Installation Fee	Monthly Fee
3-001399221	New		4292066-563	10GE	10000	36	Off-Net	Flat	0.00000	3250.00	3411.00

Service Options

Note: IP Addresses Allocation, BGP, VLAN and LAG option orders always have an Initial Term of one (1) month.

IP Addresses Allocation Note: IPQ (and IARM Rider for Provider Independent resources) needs to be submitted w/ Order Form	No	Order ID	Order Type	Legacy Order(s)	Block Size - Total IPs		IP Version	Installation Fee	Monthly Fee
									0.00
BGP Routing Note: LOA(s) issued by owners of Secondary ASN(s) need(s) to be submitted with Order Form.	Yes	Order ID	Order Type	Legacy Order(s)	ASN Owner	ASN	IP Version		
		3-001399222	New		City of Anacortes	397332	IPv4		50.00
VLAN(s) w/ static routing Note: LOA(s) issued by owners of Secondary IP(s) need(s) to be submitted with Order Form.	No	Order ID	Order Type	Legacy Order(s)	Comments		Port Order		
									0.00
Link Aggregation (LAG) (As described in Product Rider)	No	Order ID	Order Type	Legacy Order(s)	Services involved in LAG-bundle				
								0.00	
Expedite Delivery	No	As described in Product Rider						0.00	
Billing Options (As described in Product Rider)	No	Billing Method		Master Service		Other Involved Services			
Cabling (As described in Product Rider)	No	Order ID	Product	Legacy Order(s)	Comments		Port Order		
								0.00	0.00
Equipment (As described in Product Rider)	No	Order ID	Product	Legacy Order(s)	Comments		Port Order		
								0.00	0.00

Total Fees

Total Fees	Installation Fee	Monthly Fee
Total Fees including Options	3250.00	3461.00

**If Customer has elected to be billed in a currency other than the currency used for the Quoted Price, the Quoted Price will be converted into the Billing Currency selected above on the date this Order is validated by COGENT. In performing the currency conversion on such date, COGENT will use the currency conversion rate as of the close of business for the previous day as set forth at www.oanda.com.

Billing Currency**	USD	United States - Dollar
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Customer Initials:

CUSTOMER ORDER FORM Dedicated Internet Access

NORTH AMERICA - US - Cogent Communications, Inc.

2450 N Street, NW

Washington, DC 20037

**Customer Service Delivery Information**

Tenant/Datacenter Name	City of Anacortes
Node ID	4292066-563
Service Address	1220 10TH STREET
Suite / Floor	
City, State, Province	ANACORTES, WA
Postal Code	98221
Country	US

* Service delivery always takes place at Cogent Demarcation Point as defined in the attached Product Rider.

Delivery Contact Name	Dawson Almer
Telephone	360-298-8763
Cellphone	
Fax	
Email	dawsona@cityofanacortes.org

Customer Contracting & Billing Information

Company Name	City of Anacortes
Billing Address	PO Box 547
Suite / Floor	
City, State, Province	Anacortes, WA
Postal Code	98221
Country	US
Company Registr. Nr.	
Tax / VAT ID Number	
Request for consolidated billing (one account / invoice for multiple ports in the same country)*	No

* Consolidated billing requests must be reviewed and approved by Cogent.

Billing Contact Name	Accounts Payable
Telephone	360-299-1962
Cellphone	
Fax	
Email	accountspayable@cityofanacortes.org

Cogent Contact Information

Sales Office	Location	San Francisco Sales Office - SF1
	Address	HQ: 2450 N Street, NW Washington, DC 20037
	Phone	1-877-9COGENT
	Fax	202-338-8798
Service Provisioning		sd@cogentco.com
Customer Care		support@cogentco.com

Sales Account Manager	Name	John Murphy
	Phone	+14158366789
	Email	jfmurphy@cogentco.com
Sales		sales@cogentco.com
Billing		billing@cogentco.com
Termination		terms@cogentco.com

Contract Documents

The entire Customer Subscriber Agreement (CSA), entered into between Customer and COGENT, is made up of the documents listed here. Capitalized terms are defined in the text of the Terms or Definition section of the Terms. All prior agreements, proposals, representations, statements, or understandings, whether written or oral, concerning such Services, are superseded. Customer certifies that the documents constituting the CSA are the documents and forms that have been supplied to Customer by Cogent and that Customer has made no changes to them.

- (1) Order Form
- (2) Terms, as attached (initialed by Customer) (For current customers, if Terms are not attached, the current Terms remain in force)
- (3) SLA (http://www.cogentco.com/files/ps_internet/SLA_on_internet.pdf)
- (4) Product Rider(s), as attached (signed by Customer)
- (5) Any other Rider or Addendum, as attached (signed by Customer)

Notes

Customer acknowledges that COGENT has informed it that the installation of the Service ordered hereunder will be longer than the timeframe specified in the SLA, and Customer accepts such longer time frame and waives the installation guarantee set forth in the SLA with respect to the Service ordered hereunder.

Notwithstanding Section 1.2 of the Terms, at the end of the Initial Term, the Service ordered hereunder will renew on the same price, terms and conditions for successive month-to-month Renewal Terms unless and until terminated or amended as provided in the CSA.

SIGNATURES

By signing below, Customer affirms and acknowledges that it has read the entire CSA and agrees to be bound by the provisions thereof.

For Customer

Signature
Printed Name **Matt Miller**
Title **Mayor**
Date

For Cogent Communications, Inc.

Signature
Printed Name
Title
Date



NETWORK SERVICES TERMS & CONDITIONS NORTH AMERICA BETWEEN COGENT AND CITY OF ANACORTES, WA

1. SERVICES AND TERM.

1.1. Pursuant to the CSA, Cogent will provide the Services to Customer for the Service charges. Customer's signature on the Order Form constitutes its acknowledgement and agreement to be bound by the CSA. Capitalized terms are defined at the end of these Terms.

1.2. Each Service's Initial Term is indicated on the applicable Order Form and the Initial Term will begin as of the Service Date. Customer will be deemed to have accepted the Service as of the Service Date. At the end of the Initial Term, each Service ordered hereunder will renew for successive Renewal Terms equal in length to the Initial Term unless and until terminated as provided herein.

1.3. Each Service will be provided to the Service Location specified on the Order Form only. Any relocation of a Service shall be an amendment of such Service requiring the consent of both Parties. Customer may order additional Services or locations in North America through additional Order Forms, which will be governed by this CSA. Customer's account must be current in order to make changes to Services or order additional Services.

2. SERVICE CHARGES AND BILLING.

2.1. Service charges are on the Order Form and do not include applicable Taxes unless so indicated. New services, upgrades of existing Services or relocations of an existing Service will result in additional fees and/or charges. If a prior Service location remains installed after a new Service location is installed, Customer will be responsible for Service charges for both Service locations until terminated as provided for each Service.

2.2. Invoices are sent monthly in advance. Customer agrees to pay all charges and applicable Taxes for the Service within thirty (30) days of the invoice date without counterclaim, set-off or deduction. A late charge shall be added to Customer's past due balance of the lesser of 1.5% per month or the maximum legal rate. COGENT may change the specifications, Terms or charges for the Service for any upcoming Renewal Term by providing Customer at least sixty (60) days advance written notice. Customer agrees that its obligation to pay service charges and Taxes under this CSA shall survive the termination of the CSA.

2.3. Customers claiming tax exemption must provide COGENT with a properly executed exemption form.

3. SERVICE USE AND INTERRUPTION.

3.1. Customer's use of COGENT's Services or Network may only be for lawful purposes and must comply with COGENT's AUP. Transmission of any material in violation of any law, regulation or the AUP is strictly prohibited. Access to other networks connected to COGENT's Network must comply with such other networks' rules. Customers whose service location (as set forth on the Order Form) is a COGENT-owned or carrier neutral data center may resell COGENT's Dedicated Internet Access Service ordered in that location but not any other Service offered in such location. Customers located in any other service location may not resell their Service, in whole or in part. Notwithstanding the foregoing, COGENT expressly understands and agrees that Customer is a municipal broadband network provider and intends to re-sell the Services provided pursuant to this CSA to the subscribers of said municipal broadband network. COGENT expressly consents to this re-selling of Services.

3.2. COGENT's obligations and Customer's exclusive remedies for a delayed or failed installation of a Service or the failure of COGENT's Network or any Service are stated in the COGENT SLA.

4. TERMINATION, RESTRICTION OR SUSPENSION.

4.1. Prior to the Service Date, COGENT may terminate the CSA if not approved by COGENT corporate management (including credit check). COGENT also may restrict, suspend or terminate the CSA, Customer's use

of or access to any Service, or both, at any time if (a) Customer is in material breach of the CSA (including but not limited to the AUP) and, in COGENT's sole judgment, an immediate restriction or suspension is necessary to protect the COGENT Network or COGENT's ability to provide services to other customers; or (b) Customer's account is unpaid sixty (60) days after date of invoice; or (c) COGENT facilities at Customer's location are unavailable, (i.e., no connectivity and building access).

4.2. Either Party may terminate the CSA: (a) at the end of an Initial Term or at the end of a Renewal Term by providing the other Party with at least thirty (30) days prior written notice (notices provided during a monthly Renewal Term will not be effective until the end of the next month (i.e., notice received April 20th is effective June 1st); or (b) except as otherwise stated herein, during an Initial Term or Renewal Term if the other Party breaches any material term or condition of this CSA and fails to cure such breach within thirty (30) days after receipt of written notice of the same. All termination notices by Customer must be sent separately for each Service (including terminating one Service location after a Service is switched to a new Service location) and must be sent to terms@cogentco.com.

4.3. If a Service is terminated prior to the Service Date, Customer shall pay COGENT for all Initial Costs for such Service. If the Service is terminated after the Service Date, Customer shall pay COGENT (a) for the Service up through the date of termination; and (b) except in the case of termination by Customer as provided in [Section 4.2](#) above, or by COGENT due to loss of connectivity or building access at Customer's building(s) under [Section 4.1\(c\)](#) above, the Initial Costs (unless already paid) and the Termination Charge. Customer acknowledges that because actual damages to COGENT caused by early termination of a Service order are uncertain and would be difficult to determine, the Termination Charge is a reasonable liquidated damage and is not a penalty. Any reconnections of the Service shall result in additional reconnection charges to Customer at COGENT's then-prevailing rates.

4.4. If Customer defaults in any of its payment obligations under the CSA, Customer agrees to pay COGENT's reasonable expenses, including but not limited to legal and collection agency fees, incurred by COGENT in enforcing its rights.

5. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY.

5.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN OR IN THE SLA, THE SERVICES ARE PROVIDED "AS IS," AND NEITHER COGENT NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SERVICES OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES, UNDER THIS CSA OR OTHERWISE. THE SERVICES ARE PURCHASED WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. COGENT DOES NOT MONITOR, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR, THE CONTENT OF ANY COMMUNICATION TRANSMITTED BY CUSTOMER OR OTHERS, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SERVICES.

5.2. WITHOUT PREJUDICE TO OR LIMITING OF COGENT'S RIGHT TO RECEIVE PAYMENT FOR SERVICES, COGENT'S ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THIS AGREEMENT AND ALL OTHERS BETWEEN CUSTOMER AND COGENT, AND THE PROVISION BY COGENT OF FACILITIES, TRANSMISSION, DATA, SERVICES OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL/PERSONAL PROPERTY, SHALL NOT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) IN TOTAL; PROVIDED, HOWEVER, THAT

THE FOREGOING LIMITATIONS SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY COGENT, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

5.3. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO COGENT'S CONTROL. CUSTOMER AGREES THAT COGENT SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SERVICES ARE TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO COGENT'S CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS. COGENT SHALL HAVE NO LIABILITY HEREUNDER FOR DAMAGES INCURRED OR SUMS PAID DUE TO ANY FAULT OF CUSTOMER OR ANY THIRD PARTY, OR BY ANY HARMFUL COMPONENTS (SUCH AS COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, AND 'DENIAL OF SERVICE' ATTACKS). COGENT IS NOT LIABLE FOR ANY BREACH OF SECURITY ON THE CUSTOMER'S NETWORK, REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THIS CSA FAILS OF ITS ESSENTIAL PURPOSE. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT IT WILL NOT HOLD COGENT RESPONSIBLE FOR (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) LOSS OF OR DAMAGE TO CUSTOMER'S RECORDS OR DATA OR THOSE OF ANY THIRD PARTY, OR (C) LOSS OR DAMAGE TO CUSTOMER ASSOCIATED WITH THE INOPERABILITY OF CUSTOMER'S EQUIPMENT OR APPLICATIONS WITH ANY COMPONENT OF THE SERVICES OR THE COGENT NETWORK. CUSTOMER AGREES TO MAKE ALL CLAIMS RELATED TO THE SERVICES DIRECTLY AGAINST COGENT, AND WAIVES ANY RIGHT TO RECOVER DAMAGES (DIRECTLY OR BY INDEMNITY) RELATED TO THE SERVICES BY CLAIMING AGAINST OR THROUGH A THIRD PARTY TO THIS CSA.

5.4. NEITHER COGENT NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SERVICES) OR SUPPORTING THE SERVICES SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

6. INDEMNITY.

6.1. Customer will indemnify, defend and hold harmless COGENT and its directors, officers, employees, affiliates, and its agents and subcontractors from and against any claims, suits, actions, and proceedings from any and all third parties, and for payment of any Losses, to the extent such Losses arise (a) as a result of Customer's or Customer's customers or other third party end users of the Service violation of the AUP or any applicable law or regulation; (b) from any and all claims by any of Customer's customers or other third party end users in connection with a Service (including, without limitation, any claims regarding content transmitted using a Service or violation of data protection legislation), regardless of the form of action, whether in contract, tort, warranty, or strict liability; provided, however, that Customer will have no obligation to indemnify and defend COGENT against claims for damages for bodily injury or death caused by COGENT's alleged negligence or willful misconduct; or (c) from claims of copyright infringement and all manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of infringement of data protection legislation, to the extent such Losses are based upon (i) the content of any information transmitted by Customer or by any of Customer's customers or authorized end users, (ii) the use and/or publication of any and all communications or information transmitted by Customer or by any of Customer's customers or authorized end users, or (iii) the use of Service(s) by Customer in any manner

inconsistent with the terms of this CSA, including without limitation the AUP.

7. ADDITIONAL PROVISIONS.

7.1. Except as to payment obligations of Customer, neither Party shall have any claim or right against the other Party for any failure of performance due to Force Majeure.

7.2. Neither Party is the agent or legal representative of the other Party, and this CSA does not create a partnership, joint venture or fiduciary relationship between COGENT and Customer. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This CSA confers no rights, remedies, or claims of any kind upon any third party, including, without limitation, Customer's subscribers or end-users.

7.3. This CSA for Service is made pursuant to and shall be construed and enforced in accordance with the laws of the District of Columbia without regard to its choice of law principles. Any action arising out of or related to this CSA shall be brought in the District or Federal courts located in the District of Columbia, and Customer consents to the jurisdiction and venue of such courts.

7.4. Notices, if required, must be sent in writing by e-mail, courier or first class mail (postage prepaid) to the appropriate contact point listed on the Order Form, and are considered made when received at that address; provided, that termination notices to COGENT must be sent in accordance with Section 4.2 above. In the event of an emergency, COGENT may only be able to provide verbal notice first; such verbal notice will be followed by written notice. Customer is responsible for accuracy of its information on the Order Form, including points of contact.

7.5. Customer may not assign this CSA without COGENT's prior written consent, which consent shall not unreasonably be withheld. Any such assignment without COGENT's prior written consent shall be void.

7.6. Without limiting any other obligation which expressly survives the expiration or prior termination of the term of the CSA, the expiration or prior termination of the term of the CSA shall relieve both Parties of any further obligations hereunder, except with respect to the Sections 2, 3, 4.3, 4.4 and 5 through 7, which shall survive any expiration or termination of these Terms.

7.7. If (but only if) required by COGENT's or Customer's agreement with Customer's Landlord: (a) any cessation or interruption in COGENT's Service does not constitute a default or constructive eviction by Customer's Landlord, and (b) Customer agrees to waive and release Landlord and its related parties from any liability in connection with any damages whatsoever incurred by Customer, including lost revenues, which arise, or are alleged to arise, out of any interruption of or defect in the COGENT Service, **REGARDLESS OF WHETHER SUCH INTERRUPTION OR DEFECT IS CAUSED BY THE ORDINARY NEGLIGENCE (BUT NOT THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF A RELEASED PARTY.**

7.8. The COGENT Network is owned by COGENT, or its licensors, and is protected by copyright and other intellectual property laws. Customer agrees that title to and ownership of the Services, in any form, shall at all times and in any event be held exclusively by COGENT. Customer shall be entitled to only such rights with respect to the Services as are specifically granted herein.

7.9. This CSA and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Customer and COGENT and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated into this CSA. No purchase order or similar document provided by Customer to COGENT shall be of any force and effect. Amendments to the CSA or any Service shall be in writing and signed by both Parties.

7.10. This CSA and any Addendum thereto may be executed in one or more counterparts all of which taken together shall constitute one and the same instrument.

DEFINITIONS

AUP	COGENT's Acceptable Use Policy as posted by COGENT at www.cogentco.com . COGENT reserves the right to amend its AUP at any time, effective upon posting on the COGENT website.
COGENT	Cogent Communications, Inc. or its subsidiaries or affiliates.
COGENT Network	The telecommunications network and network components owned, operated or controlled by COGENT, including COGENT's fiber backbone, metropolitan fiber networks, any equipment connected to such fiber, and the software, data and know-how used by COGENT to provide the Services. Where COGENT services a building through its own facilities, the COGENT Network includes those facilities. The COGENT Network does not include customer premises equipment, customer-ordered telephony circuits, and any networks or network equipment not operated and controlled by COGENT.
Customer	Customer identified in the attached Order Form.
CSA	The entire Customer Subscriber Agreement between COGENT and Customer for provision of the Service, consisting of, in order of priority, the Order Form, any addendum between the Parties, the Terms, the applicable product rider and the SLA.
Equipment	Customer's equipment, if any.
Force Majeure	Causes beyond a Party's control, including but not limited to: acts of God; fire; explosion; vandalism; cable cut; storm; flood or other similar occurrences; any law, order, regulation, direction, action or request of any government, including federal, state, provincial, municipal and local governments claiming jurisdiction over a Party or the Service, or of any department, agency, commission, bureau, corporation, or other instrumentality of any such government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots, terrorist acts or wars (declared/undeclared); or strikes, lock-outs, work stoppages, or other labor difficulties, supplier failures, shortages, breaches or delays.
Initial Costs	Greater of (a) installation fees (if not paid); or (b) all third-party costs and charges incurred by or charged to COGENT on behalf of Customer for the Service, including but not limited to local loop fees, cross-connect charges, and wiring fees.
Initial Term	Initial length of term for the Services as indicated on the Order Form.
Landlord	Customer's landlord, building owner or property/telecom manager.
Losses	Costs, fees, liabilities, losses, damages or penalties, including reasonable legal fees.
Order Form	Cover form to which these Terms are attached, identifying the specific Service(s) to be delivered.
Party or Parties	COGENT and/or Customer.
Renewal Term	Subsequent length of term for the Services after completion of the Initial Term.
Service(s)	Bandwidth services provided by COGENT under the Customer Subscriber Agreement.
Service Date	Earlier of date on which (a) COGENT notifies Customer that the Service is available for Customer's use at either the COGENT-defined demarcation point or last-available test point; or (b) Customer first uses the Service or the COGENT Network. The Requested Service Date on the Order Form is the earliest date on which Customer is willing to accept COGENT Service. COGENT does not guarantee that the Service will be installed on the Requested Service Date.
SLA	The Service Level Agreement as posted by COGENT at www.cogentco.com for Customer's Service(s). COGENT reserves the right to amend the SLA at any time, effective upon posting on the COGENT website.
Space	Rented rack space from COGENT, if any.
Tax or Taxes	All taxes arising in any jurisdiction, including without limitation all: sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for co-location customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on COGENT or for which COGENT is permitted to invoice Customer in connection with COGENT's performance under the CSA. Taxes do not include COGENT's income taxes.
Termination Charge	Single payment equal to the total remaining dollar value of the applicable Service order through the Initial Term or Renewal Term, as applicable.
Terms	Terms and conditions that apply to the Services COGENT provides to Customer.

The parties acknowledge that there has been an opportunity to negotiate the terms and conditions of this Agreement and agree to each bind itself, its partners, successors, assigns, and legal representatives to the other party hereto, in respect of all covenants, agreements, and obligations contained in the Contract Documents. Each of the persons signing below on behalf of any party hereby represents and warrants that they are signing with full and complete authority to bind the party on whose behalf of whom they are signing, to each and every term of this Agreement.

City of Anacortes

Mayor_____
Date

COGENT

By _____

Date



PRODUCT RIDER – DEDICATED INTERNET ACCESS GLOBAL

This product rider (Rider) amends the CSA entered into between Customer and COGENT for the Services specified therein. Unless otherwise defined herein, capitalized or defined terms in the CSA have the same meaning in this Rider. In the event of a conflict between forms, the following will be the order of priority: First, the Order Form; Second, any Addendum entered into by the Parties; Third, the Terms; Fourth, this Rider; and Fifth, the SLA.

1. Service and Options

Within the scope of the Dedicated Internet Access Service, COGENT transmits IP-packets between the COGENT Network and associated networks of its Customers as well as to and from the global Internet using COGENT's settlement-free peering agreements with other networks.

Subject to their availability, Customer may select one or more options associated with the Service such as listed in the Order Form, in which case Customer agrees to pay the related fees such as indicated in the Order Form:

IP Address Allocation: COGENT will allocate an IPv4/29 and IPv6/112 free of charge to Dedicated Internet Access customers as part of each port order. If Customer desires a larger IP address space allocation, Customer shall submit an application to COGENT for the larger allocation, using COGENT's "IP Questionnaire" form. If COGENT approves the application, Customer will be required to place an order for the larger IP allocation. Each larger allocation for IPv4 address space will be subject to an additional Monthly Fee. Larger allocations for IPv6 address space will be free of charge. COGENT makes no guarantees that any subsequent allocations will be contiguous to any of Customer's existing allocations. IP address space allocations are subject to the AUP and will be terminated and reclaimed when Customer's Dedicated Internet Access Services with COGENT are terminated.

BGP routing: Customer may connect to COGENT's network using the BGP protocol (Border Gateway Protocol). Customer will be required to place an order and a BGP session will be established with Customer's own assigned ASN (the Primary ASN). If Customer wishes to connect with multiple BGP sessions over a single port (or LAG bundle) with the Primary ASN and ASNs from third parties represented by Customer (the Secondary ASNs), then Customer will be required to provide COGENT with a Letter of Authorization ("LOA") issued by the third parties having registered the Secondary ASNs in order to activate such Service, and all interactions, being during provisioning or operations, related to BGP-sessions set up between COGENT's network and Secondary ASNs will be handled exclusively between COGENT and Customer. The fact that a BGP session is being set up between COGENT and other parties represented by Customer does not constitute a contractual relationship between COGENT and the other parties, this interaction is ruled by the contractual relationship established between COGENT and the Customer. COGENT will charge an additional Monthly Fee for each ASN connected, including the Primary ASN.

Static routing / VLAN: Customers connecting to COGENT's network with static routing (i.e., non-BGP) may require a VLAN (Virtual Local Area Network) structured port. Customer must place an order to have a VLAN configured on Customer's port, in order to support static routing of Customer's own assigned IP address space (the Primary IPs). If Customer wishes to connect with Primary IPs and IP addresses from third parties represented by Customer (the Secondary IPs), over one or more VLANs on a single port, then Customer will be required to provide COGENT with a Letter of Authorization ("LOA") issued by the third parties having registered the Secondary IPs in order to activate such Service, and all interactions, being during provisioning or operations, related to static routing (and, as the case may be, VLANs) set up between COGENT's network and Secondary IPs will be handled exclusively between COGENT and Customer. The fact that static routing is (and, as the case may be, VLANs are) being set up between COGENT and other parties represented by Customer does not constitute a contractual relationship between COGENT and the other parties, this interaction is ruled by the contractual relationship established between COGENT and the Customer. Each VLAN will receive the same IP address space allocation as a port order at the same location. COGENT will charge an additional Monthly Fee for each VLAN connected.

Link Aggregation (LAG): In certain Service Locations, Customer may elect to aggregate multiple 10 Gigabit Ethernet Services in such Service Location into a Link Aggregation bundle (a "LAG-bundle"). Under such option, COGENT will configure the LAG-bundle in such a way that, in case of an outage of some (but not all) Services involved in the LAG-bundle, unaffected Services in such LAG-bundle will continue to pass traffic. Link Aggregation is the technical combination of ports and is independent from billing options: COGENT will bill burstable Services involved in a LAG-bundle independently from each other, unless Customer elects to combine them using the "Summed Burst Billing" or "Aggregate Burst Billing" options described in section 2 below.

Equipment: COGENT may, at its sole discretion and if available, provide equipment for certain Services. The fees for such equipment as agreed in the Order Form will be added to Customer's invoice. COGENT does not guarantee and is not responsible for any specific type of equipment, or any equipment at all, to be made available to Customer, and such equipment will belong to Customer upon receipt. Customer will provide its own technical support to install, maintain, and integrate equipment. COGENT will not provide on-site technical support. Customer will be responsible for applicable replacement costs if the equipment is subject to any damage, unauthorized alteration/modification/repair, abnormal use, misuse, neglect, abuse, accident, improper installation, or other acts caused by Customer, its employees, contractors, or any other person. Such action or inaction may void any manufacturer warranties. Customer further agrees to indemnify and hold harmless COGENT for any third party claim based on Customer's unauthorized alteration or modification of the equipment. COGENT is not responsible for Service disruptions caused by any request by Customer to relocate equipment.

Expedite Delivery: COGENT's installation guarantee is strictly limited to the installation guarantee stated in the SLA. However, Customer may request in the Order Form an expedited delivery for his Service. COGENT will use commercially reasonable efforts to accommodate Customer's request; provided, however, that COGENT does not guarantee that any such request will be fulfilled (and any such guarantees given either orally or in writing are hereby disclaimed) nor does COGENT guarantee that the Service will be delivered on a specific date, such as the Requested Service Date indicated on the Order Form.

2. Burstable Service

If Customer is purchasing COGENT's burstable Service, Customer will have a minimum bandwidth commitment assigned for a given port (the Bandwidth Commitment or Committed Data Rate, "CDR"). The Bandwidth Commitment is agreed upon in the Order Form and is the minimum amount of bandwidth that will be charged to Customer each month at the base Service price, even if not fully used by Customer during a given month. Customer may burst up to the maximum bandwidth that can be carried on a given port, e.g. 1,000 Mbps for a Gig-Ethernet port, subject to availability of bandwidth within the COGENT network.

If Customer exceeds the Bandwidth Commitment on any burstable port in any given calendar month, Customer agrees to pay the additional per Mbps charge for excess bandwidth usage over the Bandwidth Commitment as indicated in the Order Form. Such excess bandwidth usage is calculated by COGENT as the difference between total bandwidth usage and Bandwidth Commitment, where total bandwidth usage is determined by collecting bandwidth usage samples every 5 minutes throughout the month for each port (a sample is based upon the average usage across the 5-minute segment) and determining the appropriate percentile (90th or 95th) of usage as indicated in the Order Form. Only one sample is captured for each 5-minute period, even though two samples are collected - one for inbound utilization and one for outbound utilization. The higher of the two samples is retained. For partial months, the total number of samples for the calendar month is used; for samples where there is no usage, 0 is the recognized value. For example, in a 30-day billing period, 8,640 samples are collected (12 samples/hour x 24 hours/day x 30 days) and listed from highest to lowest. In case of 95th percentile billing, the highest 5% or 432 samples are discarded (representing the top 5% of usage levels). The highest remaining sample (sample 433 in this example) is used to determine total bandwidth usage. For 90th percentile billing, the highest 10% or 864 samples are discarded (representing the top 10% of usage levels). The highest remaining sample (sample 865 in this example) is used to determine total bandwidth usage.

Under the "Summed Burst Billing" option available in conjunction with 90th percentile burst billing, COGENT calculates excess usage as the difference between the sum of total bandwidth usage and the sum of Bandwidth Commitment across all summed ports. For example, if Summed Burst Billing is applied over three ports with a Bandwidth Commitment of 200 Mbps on each (i.e., a total Bandwidth Commitment of 600 Mbps) and the individual 90th percentile total bandwidth usage amounts were 70 Mbps, 150 Mbps and 500 Mbps, the excess bandwidth usage would be 120 Mbps (70 + 150 + 500 - 600).

Under the "Aggregate Burst Billing" option available in conjunction with 95th percentile burst billing, excess bandwidth usage is calculated by COGENT as the difference between total aggregated bandwidth usage and the summed Bandwidth Commitment across all aggregated ports, where total aggregated bandwidth usage is determined by adding usage samples every 5 minutes across all aggregated ports. In the event the aggregated ports are located in more than one time zone, usage samples taken at the same local time will be added together, e.g., usage samples taken at 9 p.m. local time in London will be added to usage samples taken at 9 p.m. local time in New York City. For example, if there are three aggregated ports, every 5 minutes three inbound samples and three outbound samples are collected, added up to one bandwidth usage value per direction, and the higher of the two values is retained. In a 30-day billing period, the final 8,640 retained bandwidth usage values reflect the aggregated usage across all ports. These values are listed from highest to lowest. The highest 5% or 432 values are discarded (representing the top 5% of usage levels). The highest remaining value (value 433 in this example) is used to determine total aggregated bandwidth usage.

Under both "Summed Burst Billing" and "Aggregate Burst Billing" options, a Master Service is defined in the Order Form, and all other Services involved in a Summed or Aggregate calculation are listed. Excess bandwidth usage (burst usage) calculated across the listed ports will be billed on the Master Service account. The relevant data (additional per Mbps charge for excess bandwidth usage and Billing Currency) pertaining to the Master Service will be used for calculating excess bandwidth usage fees across Master Service and all other involved Services. For example, if a customer orders ports in the UK, US, and Canada and defines the US port as the Master, all excess bandwidth usage will be billed on the US invoice in US dollars, at the burst fee indicated on the US port order form.

These billing options are independent from the Link Aggregation (LAG) option: COGENT will not combine Services involved in "Summed Burst Billing" or "Aggregate Burst Billing" into a LAG-bundle, unless Customer elects to combine them using the Link Aggregation (LAG) option described in section 1 above. Furthermore, if Customer wishes that COGENT bills Services part of a LAG-bundle according to the "Summed Burst Billing" or "Aggregate Burst Billing" option, then Customer must elect these options for such Services, in addition to the election of the LAG Option.

3. Customer's Duties to Cooperate

Customer or its representative must cooperate with COGENT in the installation process, which includes accurate completion of an Order Form containing detailed demarcation information and other onsite contact listings, and of the necessary technical questionnaires (IP Questionnaire, BGP Questionnaire, etc.) as provided by COGENT. Customer or its representative must be physically present at the time of installation. During installation and at all other times, the Customer will allow access and if necessary provide escort, for COGENT's or its representatives' necessary personnel to perform the installation and maintenance of the Service, to the designated building's phone closet(s) or telecommunications room or to the Customer's premises for the purposes of survey, installation, operations and maintenance of the Service, after prior arrangement between the parties. Customer's failure to cooperate shall release COGENT from its obligations pertaining to the Installation Guarantee included in the SLA but shall not suspend the Service Date or billing start date.

In the event of technical problems relating to the Service, the Customer will ensure that COGENT's or its representatives' service engineers have unrestricted access to the designated building's phone closet(s) or telecommunications room or to the customer premises equipment. Customer's failure to provide access shall release COGENT from its obligations pertaining to the Network Availability part of the SLA.

4. Demarcation Point

Within a COGENT data center: If Service delivery takes place within a COGENT data center, COGENT will deliver the Service at a demarcation point situated on the COGENT equipment. COGENT will provide, maintain and operate the necessary wiring ("Cross-Connect") for Customer to connect to COGENT's service at the indicated demarcation point. COGENT will provide such Cross-Connect for the Cabling fee set forth on the Order Form.

Within a third-party data center: If Service delivery takes place within a third party data center (i.e. that is not owned and/or operated by COGENT), COGENT will deliver the Service at a demarcation point situated on the COGENT equipment. Unless otherwise agreed, Customer will at its own cost provide, maintain and operate the necessary wiring ("Cross-Connect") to connect to COGENT's service at the indicated demarcation point. If Customer and COGENT agree that COGENT shall provide such Cross-Connect, then COGENT will provide such Cross-Connect against Cabling fees such as indicated on the Order Form and the

Service demarcation point will remain on the COGENT equipment. COGENT may increase Cross-Connect fees at any time to the extent COGENT's third party costs directly associated with providing the service (including, but not limited to, third party data center rates) are increased by the third party.

Within an On-Net corporate building: If Service delivery takes place within an On-Net corporate building, COGENT will deliver the Service at a demarcation point situated on the COGENT equipment within the Customer's suite. COGENT will provide, maintain and operate the necessary wiring ("Riser") between the building entry and the indicated demarcation point.

At an Off-Net Customer Location: Off-Net Services are being delivered to the Customer Location indicated in the Order Form through a third-party local loop to be provisioned by COGENT on behalf of Customer. As such, the Customer and COGENT agree that the charges set forth in the Order Form for such Service assumes that such Service will be terminated at a pre-established demarcation point or minimum point of entry (MPOE) in the building housing the Customer Location, as determined by the local access provider. COGENT may charge Customer additional nonrecurring charges not otherwise set forth herein for such Service where the Customer or local access provider determines that it is necessary to extend the demarcation point or MPOE through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach the Customer Location. It shall be the Customer's responsibility to allow access to the facility for the local access provider, as well as to facilitate or coordinate with the property owner at the Customer Location, all additional space and electricity determined by the local access provider to be necessary to provide the Service. COGENT will notify Customer of any additional non-recurring charges, if any, as soon as practicable after COGENT is notified by the local access provider of the amount of such charges. From time to time, COGENT may provide, and Customer may accept, budgetary estimates for the extension of the demarcation point to the Customer Location along with the initial Order Form. These estimated costs may be based on certain known costs or typical installations that do not require extraordinary efforts by the provider to extend the service. In the event actual costs exceed the budgetary estimate, Cogent will notify the Customer as outlined above.

In addition, the charges and the Term set forth in the Order Form for the Service assumes that such Service can be provisioned by COGENT through the local access provider selected by COGENT (and/or Customer) for the stated Term. In the event COGENT is unable to provision such Service through the selected local access provider or the selected local access provider requires a higher cost or longer Service Term than that set forth in the Order Form, COGENT reserves the right, regardless of whether COGENT has accepted the Order Form, to suspend provisioning of the Service hereunder and notify Customer in writing of any additional non-recurring charges, monthly recurring charges and/or Term that may apply, or to cancel the Service set forth on the Order Form. Upon receipt of such notice, Customer will have five (5) business days to accept or reject such changes. If Customer does not respond to COGENT within the five (5) business day period, such changes will be deemed rejected by Customer. In the event Customer rejects the changes (whether affirmatively or through the expiration of the five (5) business day period) or if COGENT elects to cancel the Service ordered herein, the affected Service will be cancelled without cancellation or termination liability of either party.

COGENT may also increase Off-Net Service fees at any time to the extent COGENT's third party costs directly associated with providing such Off-Net Services (including, but not limited to, loop provider or third party data center rates) are increased by the third party.



NETWORK SERVICES SERVICE LEVEL AGREEMENT GLOBAL

This Service Level Agreement (SLA) is a part of the customer subscriber agreement (CSA or Agreement) between Customer and COGENT. Capitalized terms used herein that are not defined in this SLA shall have the meaning attributed to them in the CSA.

1. SERVICE COMMITMENT.

COGENT is committed to providing a reliable, high-quality network to support its high-speed network services (Service). As part of this commitment, COGENT is pleased to offer eligible Customers the following guarantees as concerns the Service in North America, Latin America, Europe, Africa, Asia and Oceania:

- Installation Guarantee
- Network Availability and Notification Guarantee
- Network Latency Guarantee
- Packet Delivery Guarantee

Ethernet “Off-Net Basic” Services Customers are not eligible for any of the guarantees under the SLA. The Notification Guarantee, Latency Guarantee and Packet Delivery Guarantee apply to Cogent Dedicated Internet Access Customers only. If COGENT fails to meet any of these guarantees, it will provide eligible Customers with a Service Credit, as set forth below in this Service Level Agreement.

2. GUARANTEES.

A. INSTALLATION GUARANTEE.

For each of the Services listed below, Cogent guarantees connectivity for Customers will be installed within the corresponding timeframe, as measured from the date an order has been validated and entered into Cogent’s provisioning system by its Account Coordination team.

- On-Net: 17 business days
- Colo: 17 business days
- Off-Net: 90 business days
- Waves: 90 business days

An order will not be validated until a signed Order Form and CSA and any other required documentation specified by COGENT, has been received, validated, approved and entered into COGENT’s provisioning system by its Account Coordination team. Additional required documentation may include a completed credit application and a completed questionnaire for IP Allocation as well as completed questionnaires for BGP, SMTP and DNS configurations when requested by the customer on the IP Allocation Questionnaire.

The Installation guarantee for Cogent colocation services does not apply to third-party data centers. For Ethernet services, the port with the longest install time governs the entire order, e.g., if one port is On-Net and another port is Off-Net, the longer install time corresponding to the Off-Net port applies to both orders.

If COGENT fails to meet these commitments, Customer will receive, at Customer’s request, one (1) month Service Credit. Customer may obtain no more than one (1) month Service Credit for any given month. COGENT’s Installation Guarantee is subject to the following conditions:

- Customer or its representative must cooperate with COGENT in the installation process, which includes accurate completion of an Order Form containing detailed demarcation information and other onsite contact listings. Changes in an Order Form made by or on behalf of Customer or the occurrence of events outside the reasonable control of COGENT, such as Force Majeure (as defined in the CSA), may result in delays for which COGENT is not responsible hereunder.
- Customer or its representative must be physically present at the time of installation and must provide access to the designated building’s phone closet(s) on the date(s) agreed to by COGENT’s Installation Coordination Department. Such building access and escort must also be provided to other necessary personnel to perform the installation of the connection.
- This Installation Guarantee applies to the interval between the original order date and original Installation Guarantee date. If Customer requests a change to an order date during implementation of Service, the Installation Guarantee date shall, at COGENT’s sole discretion, begin again upon change acceptance.
- The Service Credit for failure to meet the Installation Guarantee is not available to Customers for whom installation charges have been waived or reduced.

B. NETWORK AVAILABILITY AND NOTIFICATION GUARANTEE.

COGENT's network is designed for 100% availability.

On-Net Service. If Customer experiences Network Unavailability for an On-Net Service for more than 15 consecutive minutes, Customer will receive, at Customer's request, one (1) day Service Credit for each cumulative hour of Network Unavailability in any calendar month. Provided the COGENT Network experiences at least one (1) hour of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 2.25 days Service Credits.) Customer may obtain no more than one (1) month Service Credit for any given month.

Off-Net and Wave Services. If Customer experiences Network Unavailability for an Off-Net or Wave Service for more than 15 consecutive minutes, Customer will receive, at Customer's request, one (1) hour Service Credit for each cumulative hour of Network Unavailability in such calendar month. Provided the COGENT Network experiences at least two (2) hours of Network Unavailability in any given calendar month, additional Network Unavailability of less than one (1) hour will result in a proportional Service Credit. (Example: 2 hours, 15 minutes of Network Unavailability will result in 2.25 hours Service Credits.) Customer may obtain no more than one (1) month Service Credit for any given month.

COGENT's Outage Notification Guarantee is to proactively notify a Dedicated Internet Access Customer within 15 minutes after COGENT determines that Customer's Service is unavailable. COGENT's standard procedure is to ping the Customer's router every minute. If Customer's router does not respond after ten consecutive ping cycles, COGENT will deem the Service unavailable and will contact Customer's designated point of contact by a method elected by COGENT (telephone, email, fax, or pager).

If COGENT fails to meet this Outage Notification Guarantee, Customer will receive, at Customer's request, one (1) day Service Credit for the Service with respect to which this Guarantee has not been met. Customer may obtain no more than one day Service Credit per day, regardless of how often in that day COGENT failed to meet the Customer Reporting Guarantee. Customer may obtain no more than one (1) month Service Credit for any given month.

If a Dedicated Internet Access Customer elects to bundle several Services using the Link Aggregation (LAG) option, then such LAG-bundle shall be deemed to represent one single Service for the purpose of the Network Availability and Outage Notification Guarantee. Consequently, Customer shall be eligible to receive Service Credits under this Section 2B if and only if Customer experiences Network Unavailability for all of the Services bundled in the LAG-bundle. The unavailability of any subset of the Services bundled in the LAG-bundle shall not constitute Network Unavailability and Customer shall not be eligible for any Service Credits with respect to such unavailability. Customer may choose to administratively configure the LAG-bundle to drop if any individual Service within LAG-bundle becomes unavailable; however, this will not constitute Network Unavailability unless all Services included in the LAG-bundle experience Network Unavailability.

C. NETWORK LATENCY GUARANTEE.

For Dedicated Internet Access customers only, the monthly average Network Latency for packets carried over the COGENT Network between Backbone Hubs for the following regions is as specified below:

Intra-North America:	45 milliseconds or less
Intra-Europe:	35 milliseconds or less
New York to London (Transatlantic):	85 milliseconds or less
Los Angeles to Tokyo (Transpacific):	140 milliseconds or less

Network Latency (or Round trip time) is defined as the average time taken for an IP packet to make a round trip between Backbone Hubs within the regions specified above on the COGENT Network. COGENT monitors aggregate latency within the COGENT Network by monitoring round-trip times between a sample of Backbone Hubs on an ongoing basis.

After being notified by Customer of Network Latency in excess of the rates specified above, COGENT will use commercially reasonable efforts to determine the source of such excess Network Latency and to correct such problem to the extent that the source of the problem is on the COGENT Network.

If COGENT fails to remedy such Network Latency within two (2) hours of being notified of any excess Network Latency and average Network Latency for the preceding 30 days has exceeded the rates specified above, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Network Latency for the preceding 30 days is less than the rates specified above. Customer may obtain no more than one (1) month Service Credit for any given month.

D. PACKET DELIVERY GUARANTEE.

For Dedicated Internet Access customers only, the COGENT Network has an average monthly Packet Loss no greater than 0.1% (or successful delivery of 99.9% of packets). Packet Loss is defined as the percentage of packets that are dropped between Backbone Hubs on the COGENT Network. COGENT monitors this aggregate packet loss on an ongoing basis, and compiles the collected data into a monthly average packet loss measurement for the COGENT Network.

After being notified by Customer of Packet Loss in excess of 0.1%, COGENT will use commercially reasonable efforts to determine the source of such excess Packet Loss and to correct such problem to the extent that the source of the problem is on the COGENT Network.

If COGENT fails to remedy such excess Packet Loss within two (2) hours of being notified of any excess Packet Loss on the COGENT Network and average Packet Loss for the preceding 30 days exceeds 0.1%, Customer will receive, at Customer's request, a Service Credit for the period from the time of notification by the Customer until the average Packet Loss for the preceding 30 days is less than 0.1%. Customer may obtain no more than one (1) month Service Credit for any given month.

3. ADDITIONAL DEFINITIONS.

Dedicated Internet Access or Internet Transit refers to Cogent's Layer 3 service that provides customers access to the public Internet.

Backbone Hub means a major network facility owned, operated, or controlled by COGENT which is directly connected to the COGENT fiber backbone network and which contains at least one core router. In larger metropolitan markets containing more than one such facility, one facility in that market will be designated as a Backbone Hub for the purpose of calculating the monthly average Network Latency and Packet Loss statistics.

Off-Net means buildings that are directly connected to the COGENT Network using other carriers' facilities and services to provide the last mile portion of the link from the Service Location to the COGENT Network.

On-Net means buildings that are directly connected to the COGENT Network and, as such, do not require COGENT to lease a third-party local loop in order to provide connectivity.

COGENT Network means the telecommunications/data communications network and network components owned, operated or controlled by COGENT, including COGENT's national fiber backbone, its metropolitan fiber networks, any equipment connected to such fiber, and the software, data and know-how used by COGENT in the provision of the Services. Where COGENT provides Service to a building through its own facilities, the COGENT Network includes those facilities. The COGENT Network does not include customer premises equipment, customer-ordered telephony circuits, and any networks or network equipment not operated and controlled by COGENT.

Monthly Recurring Charge means the fixed, recurring charge invoiced by COGENT to Customer on a monthly basis for the Service, exclusive of any variable charges based upon Customer usage. In case of bundled Services using the Link Aggregation (LAG) option, then the Monthly Recurring Charge of such LAG-bundle means the sum of the Monthly Recurring Charges of all Services involved in such LAG-bundle.

Network Unavailability means the number of minutes that the COGENT Network was not available to Customer, including the number of minutes that the COGENT Network was not available associated with any non-Scheduled Maintenance to the COGENT Network. Network Unavailability will not include Scheduled Maintenance, or any unavailability resulting from: (a) problems with or maintenance on Customer's applications, equipment or facilities; (b) acts or omissions of Customer or an authorized user; (c) unavailability caused by companies other than COGENT, except COGENT-ordered third-party local loops; or (d) Force Majeure.

North America means the continental United States (excluding Hawaii), Canada and Mexico.

Scheduled Maintenance means any maintenance of the COGENT Network (or portion thereof) to which Customer's router is connected that is performed during a standard maintenance window from 00:00am to 06:00am (local time of the COGENT Hub to which Customer's circuit is connected). Customers will be notified via Email at least two (2) business days in advance of any scheduled maintenance that is likely to affect their service. In most cases, maintenance performed will not take the full configuration window, however, COGENT will inform Customer as to anticipated duration in the maintenance notification E-mail.

Service Credit means

- *One (1) day Service Credit* = 1/30th of Customer's Monthly Recurring Charges.
- *One (1) week Service Credit* = 7/30^{ths} of Customer's Monthly Recurring Charges.
- *One (1) month Service Credit* = Full amount of Customer's Monthly Recurring Charges.

If COGENT approves a claim for Service Credit for failure to comply with the Installation Guarantee, Service Credit shall mean the Monthly Recurring Charge for Customer's first full month of the Service, not including installation charges or other start-up fees.

Waves or Wave services refer to Cogent's Optical Wavelength Layer 1 transport services.

4. SERVICE CREDIT CLAIM PROCESS.

In order to initiate a claim for Service Credit, Customer must contact COGENT's customer service group within seven (7) business days after the end of the month for which credit is requested. The Service Credit request must provide: (a) the Customer name and contact information; (b) the date and beginning/end time of the claimed outage or failed metric; and (c) a brief description of the characteristics of the claimed outage or failed metric.

Customer will be notified via e-mail upon resolution of the request. If rejected, the notification will specify the basis for rejection. If approved, COGENT will issue Service Credit to Customer's account, appearing on the next invoice issued. Multiple Service Credits will not be given for the same period of time, i.e., failure to meet multiple criteria during a period of time generates only a single Service Credit. The total number of all Service Credits for all failures to meet Guarantees occurring in a given month may not exceed the total Monthly Recurring charge actually paid by Customer for Service during that month. Service Credits will be credited against a Customer's monthly payment for Monthly Recurring Charges and may not be received in the form of a refund.

The Guarantees and Service Credits provided for in this SLA assume compliance by Customer with the terms and conditions of its CSA with COGENT, and the failure of Customer to comply with those terms and conditions may invalidate COGENT's guarantees provided herein. No credit is available for a Customer (a) that is blocking COGENT from monitoring Customer's premises router; (b) that does not provide the necessary access to personnel and facilities at the Customer's premises to enable COGENT to perform comprehensive troubleshooting; or (c) whose account is not in good financial standing with COGENT. COGENT is not liable for failure to fulfill its obligations hereunder if such failure is due to Customer's use of bandwidth in excess of the maximum amount specified in Customer's CSA, Customer's tampering with any equipment, or acts beyond COGENT's reasonable control, such as Force Majeure.

Cogent Communications, Inc.

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See website for full contact information by country

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