

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. March 9, 2017

CALL TO ORDER:

Mayor Sexton
Council Members: Aslett, Bieche, J. DeGloria, R. DeGloria, Edmundson, Loving and Montgomery
Staff: Berner, Blaine, Bloodgood, Dempsey, Erickson, Harrison, Hawes, Brad Johnson, Brittany Johnson, L. Johnson, Moser, Pulst, Schwetz, Sherwood, Sinclair, Van Wieringen, Ward, Yengoyan

MINUTES:

City Council Meeting February 23, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION:

OFFICERS REPORTS:

TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

NEW BUSINESS:

- 1) Professional Fiber Services Agreement with Diversified Northwest
- 2) Bid Award: Septage Receiving Unit at Waste Water Treatment Plant
- 3) Procurement of a 1-Ton Truck for the Street Department – Budgeted in 2017
- 4) Indigent Defense Contracts: 1. Public Defense Auditor 2. Addendum to Public Defense Supervisor 3. Mountain Law, PLLC

FUTURE WORKSHOP:

EXECUTIVE SESSION:

- An Executive Session may be held to discuss Personnel, Litigation, and/or Land Acquisition.

ADJOURNMENT:

MEETINGS:

- | | |
|--|--|
| 1) <u>PARKS & RECREATION ADVISORY BOARD:</u> | Tuesday <u>March 6, 2017</u> 5:30 p.m.
Parks & Recreation, 900 E Fairhaven Ave |
| 2) <u>LIBRARY BOARD:</u> | Tuesday <u>March 7, 2017</u> 6:00 p.m.
Burlington Public Library, 820 E Washington Ave |
| 3) <u>AUDIT & FINANCE COMMITTEE:</u> | Thursday <u>March 9, 2017</u> 4:00 p.m.
City Hall, 833 S Spruce Street |
| 4) <u>PUBLIC SAFETY COMMITTEE:</u> | Tuesday <u>March 14, 2017</u> 4:00 p.m.
Public Safety Building, 311 Cedar St |
| 5) <u>SKAGIT TRANSIT BOARD:</u> | Wednesday <u>March 15, 2017</u> 1:00 p.m.
Council Chambers, 833 S Spruce St |
| 6) <u>PLANNING COMMISSION:</u> | Wednesday <u>March 15, 2017</u> 7:00 p.m.
Council Chambers, 833 S Spruce St |

March 2017

March 2017

April 2017

Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	1	2	3	4
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30						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Feb 26	27	28	Mar 1	2	3	4
5	6	7	8	9	10	11
	5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)		4:00pm Audit & Finance Committee (City Hall) 7:00pm Council Meeting		
12	13	14	15	16	17	18
		4:00pm Public Safety Committee (Public Safety Building)	1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Council Chambers)			
19	20	21	22	23	24	25
		4:00pm Public Works Committee (Engineering Conf Room)	9:00am 10:00am Downtown Burlington Association (Visitor Information Center/Chamber of	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
26	27	28	29	30	31	Apr 1
Mar 26 - Apr 1						

Feb 26 - Mar 4

Mar 5 - 11

Mar 12 - 18

Mar 19 - 25

Mar 26 - Apr 1

April 2017

April 2017							May 2017						
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30							29	30	31				

Sunday		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Mar 26	27	28	29	30	31	Apr 1	
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30	May 1	2	3	4	5	6	

3/26 - 31

4/2 - 7

4/9 - 14

4/16 - 21

4/23 - 28

4/30 - 5/5

February 23, 2017

CALL TO ORDER:

Mayor Pro Tem Rick DeGloria called the meeting to order at 7:00 p.m., with the Pledge of Allegiance. Council members present: Bill Aslett, Joe DeGloria, Rick DeGloria, Edie Edmundson, Chris Loving, and Ted Montgomery. Staff present: Jennifer Berner, Bryan Harrison, Brittany Johnson, Leif Johnson, Tom Moser, Marv Pulst, Renee Sinclair, and Bill Van Wieringen.

A motion was made to excuse **Councilors Bieche** by **Councilors Loving/Montgomery**. All in favor; motion carried.

MINUTES:

A motion was made to approve the minutes of the February 9, 2017 council meeting by **Councilors Edmundson/Aslett**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors J. DeGloria/Aslett** to approve Accounts Payable checks numbered 35523 – 35651 in the amount of \$321,540.65; and February 15th payroll checks numbered 35500 - 35522 in the amount of \$367,712.70. All in favor; motion carried.

PUBLIC COMMENTS:

There were no public comments.

COUNCIL COMMENTS:

Councilor Edmundson updated council on the Historic Preservation Board and the current historical reconnaissance survey that is currently underway. **Edmundson** discussed potential grants and desired council for their input on future grant opportunities.

SPECIAL PRESENTATIONS:

Skagit Valley Tulip Festival – Cindy Verge & Rebecca Murray – presented the 2017 Skagit Valley Tulip Festival poster to the City of Burlington. The 2017 artist is Trish Harding from Bellingham, Washington.

John Abenroth – LID & Stormwater Presentation – discussed the details of LID and requirements determined by the EPA and Department of Ecology that the City is responsible to comply with. **Abenroth** reviewed LID projects completed in 2016 and the details of the completed projects, including details of the archaeologist's finds.

February 23, 2017

OFFICER'S REPORTS:

City Administrator Bryan Harrison introduced the City's new Parks & Recreation Director Jennifer Berner to council and stated that the City is excited to have her as part of the staff. **Harrison** discussed the YMCA presentation and asked council for recommendations in reviewing the YMCA's request and asked council if any additional information was needed for them to make a decision. **Harrison** discussed the Maiben Park project and reviewed the process and asked council if any additional information is needed. Council stated they would like a public meeting held to discuss the Maiben Park project.

NEW BUSINESS:

HISTORICAL BOARD APPOINTMENTS

City Administrator Bryan Harrison stated that the Historical Board has recommended three individuals to fill the three vacant positions to **Mayor Sexton** and confirmation by City Council. Christine Cooper would serve a three year term as a representative of the Genealogical Society, Muriel Neely would serve a three year term as a representative of the Skagit County Historical Museum, and Larry Gilbert would serve a three year term as the Citizen At-Large. **Councilor Edmundson** added that Janet Berger would be filling a position for a one year term as Citizen At-Large.

A motion was made to confirm the appointments of Christine Cooper, Muriel Neely, Larry Gilbert, and Janet Berger to the Historical Board as recommended by the Historical Board and **Mayor Sexton** by **Councilors Aslett/J. DeGloria**. All in favor; motion carried.

AGREEMENT WITH GRAY & OSBORNE FOR ENGINEERING SERVICES

Public Works Director Marv Pulst discussed the details of the contract and the engineering services that will be provided for the replacement of sewer pump station #10, located on Ovenell Road. The contract amount is for \$40,054.00 and is for construction management duties.

A motion was made to approve the agreement with Gray & Osborne for construction management services for the replacement of sewer pump station #10 by **Councilors Aslett/Montgomery**. All in favor; motion carried.

AGREEMENT AMENDMENT WITH CONTRACT LAND STAFF (FORMERLY ROLAND RESOURCES) FOR LAND ACQUISITION SERVICES

Public Works Director Marv Pulst stated this agreement is for real estate and right of way acquisition services and will provide the necessary expertise in order to acquire

February 23, 2017

property for various engineering projects. This amendment extends the expiration date and provides an additional \$20,000 to their existing agreement.

A motion was made to approve the agreement amendment with Contract Land Staff for land acquisition services and authorize the Mayor's signature by **Councilors Loving/Edmundson**. All in favor; motion carried.

**ADDENDUM TO CONTRACT WITH ROBERT W. DROLL, LANDSCAPE ARCHITECT, PS:
MAIBEN PARK MASTER CONCEPT PLAN**

City Administrator Bryan Harrison discussed the details of the current contract and explained that the addendum to the contract was in reference to the expiration date. The original contract's expiration date was August 31, 2016; the addendum extends the expiration date to March 31, 2017.

A motion was made to approve the proposed addendum to Contract No. 2016-26 with Robert W. Droll, Landscape Architect, P.S. thereby extending the contract expiration date to March 31, 2017 and authorizing the Mayor's signature by **Councilors Aslett/Loving**. All in favor; motion carried.

**COUNCIL WARD RECONFIGURATION DISCUSSION: POTENTIAL CONVERSION FORM
FROM A SIX WARD WITH ONE AT-LARGE POSITION COUNCIL COMPOSITION TO A
THREE WARD AND ONE AT-LARGE COUNCIL COMPOSITION**

City Administrator Bryan Harrison discussed the current council composition and stated that the filing period to declare as a candidate will be on the ballot in 2017 and that this would be an appropriate time to discuss the potential of reconfiguring the council wards, if council was interested in considering a reconfiguration. **Harrison** stated that the current council wards were established in December 2011 via Ordinance No. 1753. **Harrison** referenced the council composition of other local governments and discussed the details of the council composition should council choose to reconfigure wards. Extensive discussion ensued amongst council regarding the process of a reconfiguration, including notifying the public, and the value of each approach.

EXECUTIVE SESSION

There was no Executive Session held.

ADJOURNMENT:

Mayor Pro Tem Rick DeGloria adjourned the meeting at 8:08 p.m.

COUNCIL CHAMBERS

CITY HALL

BURLINGTON, WA

February 23, 2017

Renee Sinclair
Director of Budget & Accounting

Rick DeGloria
Mayor Pro Tem

DRAFT



ITEM #: 1

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 9, 2017
Geoff Hawes, IT Manager

Subject: Professional Fiber Services Agreement with
Diversified Northwest

Attachments: Proposed Agreement

Public Hearing Required: YES () NO (X)

SUMMARY

Dale Morgan from Integrity Networks our previous fiber repair/installer contractor was hired by Mount Vernon late December. We are continuing on fiber repair/installation with Integrity Networks, but we opted to have a second fiber repair/installer contractor, also needed for the 0.09 fiber grant construction. We contracted with Dan from Mt. Baker cable, and he just announced to us that they are no longer going to be in business. This agreement with Diversified NW will replace the fiber repair/installer contractor agreement with Mt. Baker cable.

RECOMMENDATION

Motion to approve the Professional Fiber Services Agreement with Diversified Northwest and authorize the Mayor's signature.

CITY OF BURLINGTON PROFESSIONAL SERVICES FIBER AGREEMENT

THIS AGREEMENT made and entered into on this day March 15TH, 2017, by and between the CITY OF BURLINGTON, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City of Burlington," and Diversified Northwest whose address is 2941 Chestnut Ave., Everett WA 98201, hereinafter referred to as the "Contractor".

WHEREAS, the City of Burlington desires to engage the Contractor to provide the City of Burlington with Fiber Optic Professional Services for help in design, installation, emergency repair and maintenance of its fiber optic infrastructure; and

WHEREAS, Contractor represents that it is fully qualified to perform the work to be performed hereunder in a competent and professional manner; and

WHEREAS, Contractor represents that it is fully compliant with CJIS security qualifications to perform the work hereunder and that all work and information related to the work performed in this agreement will be treated under a non-disclosure with the City of Burlington.

NOW, THEREFORE, the Parties herein do mutually agree as follows:

1. **Engagement of Contractor.** The City of Burlington hereby agrees to engage the Contractor, and the Contractor hereby agrees to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City of Burlington, the Contractor shall not perform any services that are in addition to or beyond the scope of the Work. If the Contractor's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Contractor expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City of Burlington and Contractor. If the Work includes the design of a public work or improvement, in whole or in part, Contractor's design shall be reasonably accurate, adequate and suitable for its intended purpose.
2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City of Burlington for all purposes, whether the project for which they are made is executed or not, and may be used by the City of Burlington for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Burlington, belong to the City of Burlington. Contractor retains any intellectual property rights in documents and intangible property created by Contractor prior to engagement, or not created by Contractor for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by **31st day of December, 2017**, with an automatic annual renewal at the discretion of the City, unless notified pursuant to Section 7 ("Termination of Contract") of this Agreement. Contractor shall have the right to change the hourly rates

EXHIBIT I (Continued)

charged under this Agreement, upon renewal by the City, so that such rates are consistent with prevailing wages and existing union wages.

4. **Compensation.**

A. The City of Burlington shall pay the Contractor prevailing wages only for completed Work and for services actually rendered which are described herein. Such payment shall be full compensation for Work performed or services rendered, including, but not limited to, all labor, materials, supplies, equipment and incidentals necessary to complete the Work.

B. The Contractor shall be paid such amounts and in such manner as described in "Exhibit B".

C. Contractor may receive payment as reimbursement for Reimbursable Expenses actually incurred. "Reimbursable Expenses" means those types and amounts of expenses either listed in "Exhibit C" or such expenses as are approved for reimbursement by the City of Burlington in writing prior to the expense being incurred. If "Exhibit C" is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City of Burlington. An expense shall not be reimbursed if: (1) the expense is not identified in "Exhibit C"; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in "Exhibit C"; or (3) the expense was not approved in writing by an authorized City of Burlington representative prior to the Contractor incurring the expense.

D. Total compensation, including all services and expenses, shall not exceed a maximum of thirty thousand dollars. (\$30,000).

E. If Contractor fails or refuses to correct its Work when so directed by the City of Burlington, the City of Burlington may withhold payment otherwise due an amount that the City of Burlington in good faith believes is equal to the cost to the City of Burlington of correcting, re-procuring, or remedying any damage caused by Contractor's conduct.

F. The Contractor is responsible for paying prevailing wages to anyone sub-employed by the said Contractor.

5. **Method of Payment.**

A. To obtain payment, the Contractor shall (a) file its request for payment, accompanied by evidence satisfactory to the City of Burlington justifying the request for payment; (b) submit a report of Work accomplished and hours of all tasks completed; (c) provide professional drawings and related documentation of all adds, changes, modifications and related fiber cable numbers and identifiers; (d) to the extent reimbursement of Reimbursable Expenses is sought, submit itemization of such expenses and, , copies of receipts and invoices; and (e) comply with all applicable provisions of this Agreement. Contractor shall be paid no more often than once every thirty (30) days.

B. All requests for payment should be sent to:

City of Burlington
Attn: IT department
833 South Spruce St
Burlington, WA 98233

6. **Submission of Reports and Other Documents.** The Contractor shall submit all reports and other documents as and when specified in "Exhibit A". Said information shall be subject to review by the City of Burlington, and if found to be unacceptable, Contractor shall correct and deliver to the City of Burlington any deficient Work at Contractor's expense within a reasonable period of time. Contractor shall abide by the City of Burlington's determinations concerning acceptability of Work.

7. **Termination of Contract.** The City of Burlington reserves the right to terminate this Agreement at any time by sending written notice of termination to Contractor ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Contractor (whether by fax, mail, delivery or other method reasonably calculated to be received by Contractor in a reasonably prompt manner) or three (3) calendar days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor's material breach, the Contractor shall be paid or reimbursed for: (a) all hours worked and Reimbursable Expenses incurred up to the Notice Date (with conditions met as outlined above), less all payments previously made; and (b) those hours worked and Reimbursable Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The Notice shall be sent by United States Mail to Contractor's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by delivery. In addition, the Notice may also be sent by any other method reasonably believed to provide Contractor actual notice in a timely manner, such as fax. The City of Burlington does not waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provision of this Agreement. At its sole option, City of Burlington may deduct from the final payment due the Contractor (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other backcharges or credits.

8. **Changes.** The City of Burlington may, from time to time, unilaterally change the scope of the Work of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the scope of Work (and resulting increase or decrease in compensation), shall: (a) be made only in writing and signed by an authorized City of Burlington representative, (b) be explicitly identified as a Change Order and (c) become a part of this Agreement.

9. **Subletting/Assignment of Contracts.** Contractor shall not sublet or assign any of the Work without prior written consent of the City of Burlington.

10. Indemnification.

Provider 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 resulting from the acts, errors or omissions of the Provider in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

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

11. **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

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 Public Entity's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance

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

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
2. Commercial General Liability insurance shall be as least at broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide a per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Public Entity shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Public Entity using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

D. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.

E. Public Entity Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the Public Entity 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 Public Entity 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 Public Entity. Any insurance, self-insurance, or self-insured pool coverage maintained by the Public Entity 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

Contractor shall furnish the Public Entity with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements

EXHIBIT I (Continued)

of the Contractor before commencement of the work. Upon request by the Public Entity, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

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 Public Entity is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

J. Notice of Cancellation

The Contractor shall provide the Public Entity and all Additional Insureds for this work with written notice of any policy cancellation within two 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 Public Entity 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 Public Entity on demand, or at the sole discretion of the Public Entity, offset against funds due the Contractor from the Public Entity.

L. In case of the breach of any provision of this Section, the City of Burlington may, at its option and with no obligation to do so, provide and maintain at the expense of Contractor, such types of insurance in the name of the Contractor, and with such insurers, as the City of Burlington may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement or may demand Contractor to promptly reimburse the City of Burlington for such cost.

12. Independent Contractor.

A. It is further agreed by and between the Parties that because this Agreement shall not constitute nor create an employer-employee relationship, and since the Contractor is an independent contractor, Contractor shall be responsible for all obligations relating to federal income tax, self-employment FICA taxes and contributions, and all other so called employer taxes and contributions, including, but not limited to, industrial insurance (Workmen's Compensation), and that the Contractor agrees to indemnify, defend and hold the City of Burlington harmless from any claims, valid or otherwise, made to the City of Burlington, because of these obligations.

B. Any and all employees of the Contractor, while engaged in the performance of any Work, shall be considered employees of only the Contractor and not employees of the City of Burlington. The Contractor shall be solely liable for any and all claims that may arise under the Worker's Compensation Act on behalf of said employees or Contractor, while so engaged and for any and all claims made by a third party as a consequence of any negligent act or omission on the part of the Contractor's employees, while so engaged on any of the Work

C. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as

applicable to its employees and shall at all times save the City of Burlington free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

D. Contractor assumes full responsibility for the payment of all payroll taxes, use, sales, income, or other form of taxes (such as state and, City of Burlington business and occupation taxes), fees, licenses, excises or payments required by any City of Burlington, federal or state legislation which are now or may during the term of the Agreement be enacted as to all persons employed by the Contractor and as to all duties, activities and requirements by the Contractor in performance of the Work and Contractor shall assume exclusive liability therefore, and meet all requirements thereunder pursuant to any rules or regulations that are now or may be promulgated in connection therewith.

E. Contractor shall insure that any subcontractor or subconsultant complies with all applicable terms of this Agreement including insurance and labor practices.

13. Employment. The Contractor warrants that he/she had 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 he/she has 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 or making of this Agreement. For breach or violation of this warranty, the City of Burlington 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.

14. Audits and Inspections. At any time during normal business hours and as often as the City of Burlington may deem necessary, the Contractor shall make available to the City of Burlington for the City of Burlington's examination all of the Contractor's records and documents with respect to all matters covered by this Agreement and, furthermore, the Contractor will permit the City of Burlington to audit, examine and make copies, excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

15. City of Burlington Business License. Contractor agrees to obtain a City of Burlington business license prior to performing any work pursuant to this Agreement.

16. State of Washington Requirements. Contractor agrees to register and obtain any State of Washington business licenses, Department of Revenue account and/or unified business identifier number as required by RCW 50.04.140 and 51.08.195 prior to performing any work pursuant to this Agreement.

17. Compliance with Federal, State and Local Laws. Contractor shall comply with and obey all federal, state and local laws, regulations, and ordinances applicable to the operation of its business and to its performance of work hereunder.

18. Compliance with Grant Terms and Conditions. Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Contractor's work hereunder.

19. **Waiver.** Any waiver by the Contractor or the City of Burlington or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.

20. **Complete Agreement.** This Agreement contains the complete and integrated understanding and Agreement between the Parties and supersedes any understanding, Agreement or negotiation whether oral or written not set forth herein.

21. **Modification of Agreement.** This Agreement may be modified as provided in Section 8, or by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City of Burlington and the Contractor.

22. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, the remainder of the Agreement shall remain in full force and effect.

23. **Notices.**

A. Notices to the City of Burlington shall be sent to the following address:

City of Burlington
IT Department
833 South Spruce St
Burlington, WA 98233

B. Notices to the Contractor shall be sent to the following address:

Diversified Northwest
2941 Chestnut Ave.
Everett WA 98201

24. **Venue.** It is agreed that venue for any lawsuit arising out of this Agreement shall be Skagit County, Washington.

IN WITNESS WHEREOF, the City of Burlington and Contractor have executed this Agreement as of the date first above written.

CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.

**CITY OF BURLINGTON
WASHINGTON**

By: _____
Steve Sexton, Mayor

Date: _____

Corporation **XXXXXX**

By _____

Typed/Printed Name: D. James O'Dell

Its Prox du

Date: 1/30/17

ATTEST:

Renee Sinclair
Budget and Accounting Director
Date: _____

**Partnership
(general)**

[Contractor's Complete Legal Name]
a Washington general partnership

By _____

Typed/Printed Name: _____

General Partner

Date: _____

APPROVED AS TO FORM:

Leif Johnson, Attorney
Date: _____

**Partnership
(limited)**

[Contractor's Complete Legal Name]
a Washington limited partnership

By _____

Typed/Printed Name: _____

General Partner

Date: _____

APPROVED AS TO FORM:

Marv Pulst, Public Works Director
Date: _____

**Sole
proprietorship**

Typed/Printed Name: _____

Sole proprietor

Date: _____

**Limited
Liability
Company**

[Contractor's Complete Legal Name]
a Washington limited liability company

“EXHIBIT A”
SCOPE OF WORK

WORK TO BE PERFORMED

This Scope of Work (SOW) describes the type of work to be performed by the Contractor to assist the City of Burlington for the support, design, installation and maintenance of Fiber optic infrastructure.

Fiber Optic Installation, Maintenance, Emergency Repair and Design:

Design – Help with job costing and design.

Installation – Including Aerial, underground trenching and micro trenching, permits, pole surveys, pole make ready, conduit installations, micro trenching, splicing, fiber labeling, fiber tags and provide professional documentation, drawings etc.

Maintenance and Repair – Fiber maintenance includes repairs of fiber in conduit, repair of fiber on poles, including pole transfers, including 24 hours-per-day availability for emergency on-call repair, relashing, repairing any outside fiber plant related issues, relocate or repair fiber as is needed.

As-needed capability to provide design, installation, integration, maintenance and job costing services for fiber optic communication infrastructure applications.

Ability to work with The City of Burlington Information Technology Manager or Public Works designated staff on all jobs and provides timely job estimates and scheduled install dates.

Ability to work with The City of Burlington IT and/or Public Works staff on 7x24 emergency callout situations.

Maintain proper license, bond and insurance as an independent contractor.

Maintain strong relationships with all other City of Burlington utilities and City of Burlington business partners.

Able to meet CJIS requirements.

Ability to work with NJUNS to comply with make ready, pole permits, pole surveys, pole transfers and maintenance.

Must be listed and current on the State MRSC small works roster.

Able to work independently and on-call 24 hours-per-day as needed.

Able to provide costs based on time and material.

FIBER SPLICING:

Have the capability to provide single and mass splicing using both mechanical and fusion splicing techniques.

Able to perform all splices within a controlled environment whenever possible.

Have the capability to perform adequate emergency response repairs and hot cuts.

Able to provide splicing documentation for all jobs, including a splice log, to identify fiber number, fiber color, buffer tube color and location.

Able to provide fiber splicing capabilities including:

- Maintenance/Emergency Restoration
- Single Fusion and Mass Splicing
- Active (Hot) Fiber Rollovers
- Mid-Sheath splicing
- Ring Cuts

“EXHIBIT A”
SCOPE OF WORK

FIBER TERMINATION / MAINTENANCE

Able to provide comprehensive testing and documentation services and provide test results in both printed and digital format.

Able to provide splicing capabilities including:

- Termination (SC, LC, UPC and APC, Unicam Connectors and Pigtails)
- Complete Testing Services
- Documentation
- End to End testing
- Reel testing
- Splice Loss
- OTDR
- Power Meter/Laser Source
- GPON
- Fiber footage or meter counts
- CWDM and DWDM
- Test for live fiber

Cost Estimate:

Professional services described in this scope of work are based on time and material along with the estimated labor hours and expense allowances allocated. Services will be provided as requested by the City of Burlington, to the extent allowed by the allocated budget. If additional professional services or levels of effort in excess of the labor hours and expenses allocated in the associated fee estimates services are required, changes to the scope of work and budget may be required, as determined by the contractor and the City of Burlington.

“EXHIBIT B”
COMPENSATION

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

☐ The City of Burlington shall pay the Contractor a sum equal to the amount of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in 4(D) of this Agreement. Please provide a rate schedule that includes rates for installing fiber for both aerial and underground, splicing, termination, pole surveys, pole make ready, pole transfers, and misc. maintenance.

Name	Responsibility	Rate	Est. Hours	Extension
OSP PM/Design/Repair	Maintenance, Design, Splicing, Installation and Repair	\$63.00/HR		
OSP Foreman	Installation, Maintenance and Repair	\$56.00/HR		
OSP Lineman	Installation, Maintenance and Repair	\$52.00/HR		
OSP Groundman	Installation, Maintenance and Repair	\$43.00/HR		
OSP Flagger	Traffic Control	\$43.00/HR		
OSP Splicer	Splice/Test Fiber Cable	\$.00/HR		

“EXHIBIT C”
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Bucket Truck	\$82/HR	
OSP Vehicle w/Equipment	\$46/HR	
Misc. Materials	Cost + 15%	
Rental Equipment if needed	Cost + 15%	



ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 9, 2017

Subject: Bid Award: Septage Receiving Unit at Waste Water
Treatment Plant

Marv Pulst, Public Works Director

Attachments: Bid Results

Public Hearing Required: YES () NO (X)

SUMMARY

Bids were opened for procurement of a septage receiving unit at the Wastewater Treatment Plant (WWTP) on Thursday, February 16th at 11 a.m. The low, responsive bidder is Enviro Care Company, for the amount of \$135,625.00.

This machinery and equipment will replace the existing septage receiving unit that was previously installed in 1991. In 2016, the WWTP received 1,100,000 gallons of septage from septic tank haulers and nearby communities.

The existing receiving station consists of a mechanical bar screen, holding tank, and a pump to meter the septage into the influent pump station of the treatment plant. City Sewer department will perform installation. This equipment has been budgeted in the 2017 Sewer Machinery & Equipment line item.

RECOMMENDATION

Motion to award the bid to Enviro Care and authorize procurement of a Septage Receiving Unit for the Waste Water Treatment Plant.

Request for Bids (RFB)

SEALED BIDS will be received and publicly opened in Burlington City Hall, 833 S. Spruce St., Burlington WA 98233, Thursday, February 16, 2017 at 11:00 a.m. local time, or as soon thereafter as possible for the following equipment:

**ONE NEW LATEST MODEL OR USED WITH LESS THAN 30 HOURS
Flo-Beast Septage Station Model: VFA-1200-DM
or Equal**

The successful bidder must deliver the equipment to 900 S. Section St., Burlington, WA

Bidders must submit with their proposals, complete manufacturer's specifications and warranties covering the specific equipment.

For each separate proposal, the total price to the City of Burlington must be shown, including taxes, freight and all other charges. No adjustments, credits, rebates, or any other charges by the bidder will be considered after the bid opening.

Delivery of equipment is required within 30 days.

The City of Burlington will award the bid to the lowest or best bidder, taking into consideration: price, maintenance costs, attachments and all other factors that will contribute toward obtaining the best value for the City. The City of Burlington reserves the right to reject any or all bids and to waive irregularities in the bid or in the bid opening. No bidder may withdraw his proposal after the hours set for the opening thereof, or before award of contract, unless said award is delayed for a period exceeding forty-five (45) days.

Bid specifications and instructions can be picked up at the City of Burlington Wastewater Treatment Plant at 900 S. Section St. Burlington, WA 98233 or email done@burlingtonwa.gov

Bid envelopes must be clearly marked on the outside, **"Sealed Bid for a Septage Station to be opened at 11:00 a.m. February 16, 2017"** and must be delivered to the City of Burlington Finance Department, 833 S. Spruce St., Burlington, WA 98233 prior to bid opening time. **Bids received and not so marked will not be considered. Bids received after 11:00 a.m. February 16, 2017 will not be considered.**

For questions or bid package email done@burlingtonwa.gov

Bid Opening Form

Project: SEPTAGE STATION

Date: 2/16/17 Time: 11:00 AM Page 1 of 1

Contractor/Company		Bid Total
1	ENVIRO-CARE	135,625.00
2		
3		
4		
5		
6		
7		

Opened By: 

Witnessed by: 

CITY OF BURLINGTON
BID RESPONSE FORM
Septage Receiving unit

Company Name ENVIRO - CARE Co.
Company Address 1570 ST. PAUL AVE.
GURNEE, IL 60031
Company Representative ALAN SPRATT
Contact Number(s) 224.302.0304
Company e-mail ASPRATT@ENVIRO-CARE.COM

Equipment Description SEPTAGE RECEIVING UNIT

Submit Sealed Bid Before 11:00 am local time February 16, 2017

FOB Delivery Point: Burlington Sewer Department
900 S. Section St.
Burlington, WA 98233

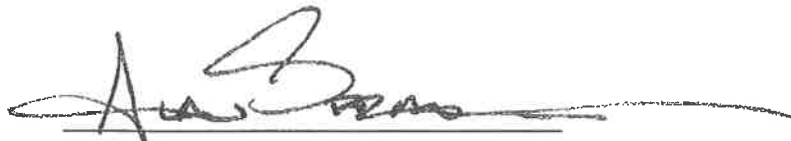
Make and Model Offered BEAST
MODEL 1200

Unit Cost: \$ 125,000.00

Sales Tax: \$ 10,625.00

TOTAL: \$ 135,625.00

Signed





ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 9, 2017

Subject: Authorize Procurement of 1-Ton Truck from State Contract for the Street Department – Budgeted in 2017

Marv Pulst, Public Works Director

Attachments: Quote from State Contract

Public Hearing Required: YES () NO (X)

SUMMARY

Attached is a quote from Washington State Department of Enterprise Services for a truck to be utilized by the Street Department. This vehicle will replace an existing 1988 Dodge 1-Ton truck. This purchase has been identified and approved in the capital facility plan for the Street Department and budgeted within the ER&R fund for 2017.

RECOMMENDATION

Authorize a purchase order to be issued for procurement of a 1-Ton truck from the State Contract for the Street Department.

Vehicle Quote Number: 2017-2-831

[Create Purchase Request requests](#)

[View organization purchase](#)

Contract & Dealer Information

Contract #: 05916

Dealer: Columbia Ford (W403)
700 7th Avenue
Longview WA 98632

Dealer Contact: Marie Tellinghiusen
Dealer Phone: (360) 423-4321 Ext: 187
Dealer Email: mariet@colford.com

Organization Information

Organization: BURLINGTON, CITY OF - 22902
Email: traviss@burlingtonwa.gov

Color Options

Vehicle Options

Order Code	Option Description	Qty	Unit Price	Ext. Price
2017-0913-001	2017 Ford F450 4WD Cab & Chassis, Regular Cab, 145WB, 60CA, DRW, 16,000# GVWR (F4H/650A/145WB/68L)	1	\$33,522.00	\$33,522.00
2017-0913-003	Credit for pickup from Dealer (Orders for Western Washington) (Deduct)(DLR) Customer to provide mud flaps & trip permit)	1	(\$75.00)	(\$75.00)
2017-0913-004	Alternative Wheelbase, Regular Cab, 169WB, 84CA (F4H/169WB)	1	\$174.00	\$174.00
2017-0913-033	Power Take-Off (PTO) Provision with Mobile and Stationary PTO Modes (Available with 6.8L Gas or 6.7L Diesel) (62R)	1	\$267.00	\$267.00
2017-0913-034	High-Capacity Trailer Tow Package (includes 4.30 RAR Limited Slip Rear Axle and upgraded rear axle)(Increases GCW from 31,000 Lbs to 35,000 Lbs.) (Includes Trailer Brake Wiring Kit #531 unless Trailer Brake Controller #52B is ordered)(Only available with Diesel) (535/X4L)	1	\$1,378.00	\$1,378.00
2017-0913-040	Snow Plow Prep Package (maximum front spring upgrade)(473)	1	\$82.00	\$82.00
2017-0913-043	Tires, Alternative All Terrain (225/70Rx19.5G BSW Traction: 4 Rear Traction, 2 Front A/S)(THB)	1	\$182.00	\$182.00
2017-0913-052	Backup Alarm (76C)	1	\$133.00	\$133.00
2017-0913-309	Platform Bed, 14 Foot (108CA)(inc. 40in Heavy Duty Weld On Bulkhead, Wood Deck, LED marker lights, ICC bumper) (Knap PVMX-143C) (ABW309)	1	\$4,764.00	\$4,764.00

Quote Totals

Total Vehicles: 1

Sub Total: \$40,427.00

8.3 % Sales Tax: \$3,355.44

Quote Total: \$43,782.44



ITEM #: 4

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 9, 2017

Subject: Indigent Defense Contracts: 1. Public Defense Auditor, 2. Addendum to Public Defense Supervisor, and 3. Mountain Law, PLLC

Attachments: Public Defense Auditor contract

Public Hearing Required: YES () NO (X)

Draft Mountain Law, PLLC contract

SUMMARY

It is expected that supervision of the Burlington and Mount Vernon municipal court indigent defense systems by the U.S. District Court will terminate at the end of March 2017. In anticipation of that occurrence, the following actions are recommended to be approved by Council:

1. Public Defense Auditor Contract: Following an extensive RFQ, screening and interview process, the Mayors of Burlington and Mount Vernon have selected Ronald Kessler to serve in the position of Public Defense Auditor effective April 1, 2017. A copy of the draft proposed contract is attached. A discussion of the process and of Mr. Kessler's qualifications will be provided at the council meeting.
2. Public Defense Supervisor Contract Addendum/Extension: The contract with the current U.S. District Court appointed Public Defense Supervisor expires March 30, 2017. The cities anticipate that federal court supervision of the public defense system will expire on March 31, 2017 (the three year anniversary of oversight/supervision). At such time, it is also anticipated that a Public Defense Auditor will be contracted by the cities (without formal court supervision) to provide evaluation of and recommendations pertaining to the public defense system. In order to provide an efficient transition from the court appointed Public Defense Supervisor to the city contracted Public Defense Auditor, an extension of the existing Public Defense Supervisor contract is recommended. The extension, currently being negotiated, would provide the new Public Defense Auditor with the ability to call upon the previous Public Defense Supervisor on an on-call basis (at the discretion of the Public Defense Auditor). Compensation to the Public Defense Supervisor would be at the current hourly rate, not to exceed the current monthly compensation, and would not exceed one month in duration.

3. Revised Mountain Law Contract: Mountain Law, PLLC is the current provider of indigent defense services to the two cities. The previous contract expired at the end of 2016 and has been extended on a month to month basis to allow a replacement contract to be negotiated. A three year contract with a two-year option to extend is being negotiated. The new contract is designed to maintain and enhance the existing constitutionally sound indigent defense system, and to ensure compliance with applicable standards for provision of public defense services, including Standard One of the Washington State Bar Association Standards for Public Defense. Note, this contract is in draft form, and is currently under review by the Public Defense Supervisor and other interested parties.

RECOMMENDATION

1. Move to approve the Public Defense Auditor contract with Ronald Kessler and authorize the Mayor to sign.
2. Move to approve an addendum/extension of the contract with the Public Defense Supervisor and authorize the Mayor to sign.
3. Move to approve the new contract for Public Defense services with Mountain Law, PLLC and authorize the Mayor to sign (or continue to the March 23rd meeting for further review).

PROFESSIONAL SERVICES CONTRACT FOR PUBLIC DEFENSE AUDITOR

In consideration of the mutual benefits to be derived and the promises contained herein, the Cities of Mount Vernon and Burlington, Washington municipal corporations ("Cities"), and Ronald Kessler, the "Auditor" have entered into this Agreement.

1. Scope of Services. The Auditor is an experienced attorney with both trial experience as a public defender, experience as a supervisor of defense attorneys providing services to indigent criminal defendants and a retired judge with approximately thirty years experience managing and trying criminal cases, both misdemeanors and felonies. The Auditor has been appointed due to his experience, knowledge and skills. The Auditor will perform all duties and responsibilities as set forth in the decision *Wilbur v. Mount Vernon, et al* rendered by Judge Robert Lasnik ("Decision") and any subsequent orders.

1.1 It is understood by the parties that the Auditor is an independent contractor performing duties listed in the Decision and orders of the court. He is not an employee of Mountain Law or the Cities. The Auditor will act in a neutral role and does not represent clients of Mountain Law or other persons represented by appointed counsel in the Cities' municipal courts and accepts no duties that flow from such representation

1.2 The Auditor is responsible for the assessment of Public Defense Providers' ("Providers'") adherence to the Standards adopted by the Cities as well as the constitutional and ethical obligations of defense counsel. The Auditor is familiar with the Decision in *Wilbur v. Mt. Vernon, et al.* The Auditor shall evaluate the Providers counsel and consult with them regarding performance and report periodically to the Cities through their Contract Administrator and other city officials.

1.3 The Auditor will gather information related to the representation of indigent defendant clients in the Cities which would be protected under Rule of Professional Conduct (RPDC) 1.6(a). Client confidentiality shall be maintained consistent with the attached Scope of Work Section I(A)(11).

The scope of services shall be consistent with the attached Scope of Work Section I.

2. Compensation. In consideration and support of the services to be provided, the Cities agree to pay the compensation set forth below. The services of the Public Defense Auditor are to be provided on a part-time as-needed periodic basis consistent with the attached Scope of Work Section II. The actual time spent shall be at the discretion of the Auditor and be commensurate with timely and thorough completion of the tasks. The parties understand and acknowledge that the actual requirements will fluctuate from month to month depending on the

findings and needs of the Auditor. In consideration thereof the Cities shall provide the following compensation:

2.1 \$120 per hour payable monthly for services incurred. While the parties understand that the time demands will vary, the time estimates set forth in the Scope of Work Section II shall be the goal. Costs associated with the services are not to exceed an annual amount of \$92,160 based upon 64 hours per month. Hourly charges for consultation with and assistance to the Cities Contract Administrator for resolution of complaints and other requested support are an additional charge not contained in the base monthly/annual charge and are in addition to the "do not exceed" amount. The base sum includes compensation for the Auditor's services and amounts for insurance, travel expense, lodging, office equipment and other overhead. The Cities shall provide the Auditor with adequate office space for confidential communications. The Cities shall not be responsible for compensating the Auditor for travel time between the Auditor's home and Skagit County. In the event that the basic cost assumptions of the parties regarding the unique tasks assigned to the Auditor prove insufficient to adequately compensate the Auditor, he may request adjustment of this base amount on thirty days' notice, and the parties agree to negotiate in good faith to adjust the compensation to cover unanticipated or increased costs.

2.2 Time off may be taken by the auditor at his sole discretion for holidays, illness or vacations as long as he performs the tasks required by this contract.

2.3 The Auditor shall not serve as a judge *pro tempore* in any court in Skagit County. Nothing in this contract shall preclude the Auditor from sitting as a judge *pro tempore* in any other court.

2.4 The Auditor will bill the Cities monthly in writing for services rendered. Bills shall set out the services rendered by tenth of an hour. The Cities shall pay all undisputed charges in a timely manner, on their normal payment cycle within thirty (30) days of receipt of this bill.

3. Term. The term of this agreement shall be from April 1, 2017 through April 1, 2021.

3.1 Termination of Agreement. This Agreement is terminable only for cause defined as:

3.1.1 Material breach of the provisions of this contract which are not cured within thirty (30) days after the provision of written notice of breach by the Cities.

3.1.2 The suspension or loss of a license to practice law in the State of Washington or conviction for a felony.

3.1.3 By the death, disability or resignation of the Auditor.

3.1.4 By mutual agreement of all the parties hereto.

4. Nondiscrimination. Neither the Auditor nor any person acting on behalf of the Auditor will discriminate against any person in violation of state or federal law.

5. No Indemnification. No indemnification is provided under this contract and the parties' liabilities shall be determined in accordance with the laws of the State of Washington.

6. Insurance. The Auditor will procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work by the Auditor. The Auditor will obtain insurance, naming the Cities as additional named insureds for general liability with a minimum limit of liability of \$2,000,000 combined single limit each occurrence bodily injury and property damage, automobile liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage and professional liability (errors and omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.

7. Work Performed by Auditor. In addition to compliance with the Public Defense Standards adopted by the Cities, in the performance of work under this Agreement, the Auditor will comply with all federal, state and municipal laws, ordinances, rules and regulations which are applicable to Auditor's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of the Auditor's particular skills, qualifications, experience, and ability to perform the Duties and Responsibilities incorporated in this Agreement. Therefore, the Auditor has personally signed this Agreement below to indicate that he is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the Cities and refusal to subcontract may be withheld at their sole discretion. Any assignment of this Agreement by the Auditor without the express written consent of the Cities, the Plaintiff and the Court shall be void.

9. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Cities and by the Auditor.

10. Entire Agreement; Prior Agreement Superseded. The written provisions and terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the Cities, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.

11. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and

shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITIES:

Bryan Harrison, Contract Administrator
City of Burlington
833 South Spruce St.
Burlington WA 98233

AUDITOR:

Ronald Kessler

13. Non-Waiver of Breach. The failure of the Cities or Auditor to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Any complaint regarding any contract breach will be first addressed to the Auditor. If the matter cannot be resolved the parties may agree to confidential mediation in an effort to resolve the issues. If one party requests mediation the other party will have five days in which to respond to the request and the time of mediation offered by the proposing party. In the event of early termination of this Agreement by the Cities, the Auditor may request review of such termination by and arbiter in a binding arbitration proceeding. The arbiter may be selected either with the agreement of the Public Defense Auditor and the Cities or, in the event that the parties cannot agree, by application to the Federal Conciliation and Mediation Service (FCMS) in accordance with its procedures. The decision of the arbiter shall be final. The parties shall bear their own costs in arbitration and the arbiter's cost shall be paid by the losing party, provided, however, that if the arbiter finds that the Cities acted in bad faith, the Cities will pay all costs associated with the arbitration including the Public Defense Auditor's reasonable legal fees.

15. Confidentiality. Nothing herein shall be construed to obligate, require or permit the Cities, its officers, agents, or employees to inquire into any protected communication between the Auditor, Public Defender and/or any indigent defendant.

16. Venue: Attorney Fees. In the event of any litigation arising out of this Agreement, the prevailing party will be reimbursed for reasonable attorneys' fees from the other party. This Agreement will be governed by and construed in accordance with the laws of the State of Washington. Venue for an action arising out of this Agreement will be in Skagit County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2017.

CITY OF MOUNT VERNON

By: _____
Mayor Jill Boudreau

ATTEST/AUTHENTICATED:

By: _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF SPECIAL COUNSEL

By: _____
W. Scott Snyder

CITY OF BURLINGTON

By: _____
Mayor Steve Sexton

ATTEST/AUTHENTICATED:

By: _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF SPECIAL COUNSEL:

By: _____
W. Scott Snyder

PUBLIC DEFENSE AUDITOR

By: _____

Name: _____

CONTRACT FOR INDIGENT DEFENSE SERVICES

WHEREAS, the Cities of Burlington and Mount Vernon, Washington (hereinafter "Cities") provide public defense services pursuant to contract with attorneys practicing as Mountain Law, PLLC ("Mountain Law"), and

WHEREAS, this Contract is entered into at a time when the Cities are transitioning from supervision of the Public Defense Supervisor to a monitoring program by a contract Public Defense Auditor, and

WHEREAS, the Public Defense Supervisor has identified concerns regarding WSBA Standard 1 and the payment of comparable compensation which the Cities have reviewed through the services of an independent human resources professional, and

WHEREAS, as a result of that review, the Attorneys have developed a work plan (herein "Work Plan") to address and to maintain comparable compensation for the individual public defenders providing services under this Agreement and the ultimate goal of retention of experienced public defenders, and

WHEREAS, the parties wish to extend their contract for an additional term or terms subject to periodic review as provided herein,
NOW THEREFORE

In consideration of the mutual benefits to be derived and the promises contained herein, the Cities of Mount Vernon and Burlington, Washington municipal corporations ("Cities"), Mountain Law, PLLC, and the individual attorneys who perform services under this Contract (the "Attorneys") have entered into this Agreement.

1. Scope of Services, Standards and Warranty. The Attorneys will provide indigent defense services in accordance with the Standards adopted by the Cities in Mount Vernon by ordinance and Burlington by resolution contemporaneously with approval of this Agreement (hereinafter "Standards") and the Decision in *Wilbur v. Mt. Vernon*, 989 F. Supp 2d 1122 (W.D. WA 2013) (hereinafter "Decision"). These Standards are incorporated by this reference as if herein set forth. In the event the Standards adopted by the cities are amended in order to incorporate changes in order to conform to changes in Washington Supreme Court Rules or Standards or in the Washington State Bar Association Standards, the parties agree to reopen this Agreement in order to incorporate those changes and adjust the provisions of this Agreement, including compensation as needed to conform this Agreement to the Standards. The Attorneys individually warrant that he/she, and every Attorney and/or intern employed by the Attorneys to perform services under this Contract, has read and is fully familiar with the provisions of the Washington Supreme Court Rule, the Washington State Bar Association Standards, and the Standards adopted by the Cities ("Standards"). Compliance with these Standards and the Decision goes to the essence of this Agreement.

1.1 The Attorneys, and every attorney and/or intern performing services under this Agreement, shall certify compliance quarterly with the Municipal Courts on the form established for that purpose by court rule. A copy of each and every such certification shall be provided to the Cities contemporaneously with filing with the Municipal Courts and with the Public Defense Auditor, and, following the end of her tenure with the Public Defense Program Administrator and Auditor. In this Contract the term "Public Defense Auditor" shall refer to the Public Defense Supervisor to the conclusion of her charge and thereafter to the Public Defense Auditor with whom the Cities contract.

1.2 The requirements of the Decision detail affirmative duties and obligations of the Attorneys and, ultimately the Cities. By way of illustration and not limitation, the Attorneys have proposed compensation levels, staffing and infrastructure that provide the capacity and resources to meet the Standards including affirmation efforts to contact a client who fails to appear for an appointment and document those efforts.

1.3 Attorneys will maintain contemporaneous records on a daily basis on a form provided by the Cities. Attorneys will provide confirmation of continuing education courses in the area of criminal law and defense annually by December 10th. Attorneys will maintain and provide to the Public Defense Auditor all data, information and case files referenced in the Decision and any and all other information reasonably requested by the Public Defense Auditor or a successor, so long as consistent with the attorney-client privilege and the protective order entered in the Decision. The Attorneys shall promptly report a sustained disciplinary action by the Washington State Bar Association or a finding by a court of competent jurisdiction that the Attorney has been found to have provided ineffective assistance of counsel.

1.4 The Attorney agrees to provide for use by incarcerated indigent defendants a free, "do not record" phone line.

1.5 The Attorney shall, with respect to any jail or other incarceration facility in which an assigned defendant is incarcerated:

1.5.1 Review forms from the jail or other incarceration facility to assure that they accurately advise clients whether written communications are confidential; and

1.5.2 With reference to any indigent defendant client being held in an out-of-county jail or other incarceration facility, determine what arrangements have been made to allow clients to maintain confidential communications with their Attorney and timely notify the Cities if no such arrangements are in place.

1.6 The Attorney shall maintain client complaints received in a log as well as in the client's file and shall follow up on complaints within three (3) court days. Copies of the complaint log shall be provided to the Cities on a quarterly basis or upon its request on the form developed by the Cities and its Public Defense Auditor. The Attorney shall cooperate, to the full extent consistent with preservation of the attorney-client privilege and the protective order in the underlying Decision so long as it remains in effect with review of Complaints by the Cities, their Public Defense Auditor and the Public Defense Program Administrator.

1.7 The Attorney warrants that his/her compensation, reflected in Section 2 Compensation, reflects all infrastructure, support, administrative services, routine investigation, and systems necessary to comply with the Standards and Decision.

1.8 Attorney agrees to cooperate and communicate with the Cities' Public Defense Auditor in the fulfillment of his/her duties as well as its Public Defense Program Administrator to the full extent consistent with preservation of the attorney-client privilege.

1.9 The Attorney will develop, maintain and keep current a training manual(s) for attorneys and staff performing services under this Agreement. The manual(s) will be maintained and made available for review by the Public Defense Auditor, provided however, that such manual(s) shall be available only to the Public Defense Auditor under court ordered confidentiality agreement which limits and restricts dissemination of the manual to the Public Defense Auditor.

1.10 Each and every Attorney with three (3) years or less of experience as a Public Defender providing services under this Agreement shall earn at least ten (10) CLE credits per year in areas relevant to the misdemeanor defense practice. Attorneys with more public defense experience shall comply with WSBA Standard 9. The Attorney shall document training annually by providing the Contract Administrator a list of all trainings attended by attorneys and staff during each year of the contract. Any training which results in a CLE credit shall be so designated showing the CLE credit given for such training.

1.11 The Attorney shall provide the Cities a monthly report of the time spent supervising and training new attorneys, staff and other administrative duties relating to the performance of service under the underlying Contract for Indigent Defense Services.

1.12 The attorney designated by the Attorneys to serve as the Managing Attorney of service providers under this Agreement (herein "Managing Attorney") shall maintain a caseload of equal to or less than thirty percent (30%) of the maximum unweighted caseload standard, e.g., one hundred twenty (120) cases per year. If the City's Contract Administrator, in consultation with the Public Defense Auditor, finds that Attorneys have fully implemented the Work Plan and that Attorneys are retaining sufficiently experienced public defenders, the Cities may authorize the Managing Attorney to utilize a fifty percent (50%) workload in accordance with WSBA Standard 10 for public defense agencies with five or fewer public defenders.

1.13 The Attorneys shall maintain a system to collect the following information, referenced in the reports of the Public Defense Auditor as "data points." The information gathered shall include:

1.13.1 the number of cases assigned to each Attorney each month, with the year-to-date total;

1.13.2 the number of closed cases in which expert services were requested;

1.13.3 the number of closed cases in which interpreter services requested, either in court or for utilization by the Public Defender;

1.13.4 the number of closed cases in which an investigator was used;

1.13.5 the number of closed cases in which substantive motions were filed;

1.13.6 the number of closed cases which were tried by a jury, by a judge, or in which charges were dismissed or significantly reduced on the day of trial;

1.13.7 the number of cases which were resolved by the dismissal of the charges, a significant reduction in charges or dismissal of other cases with a plea on the remaining case(s);

1.13.8 the number of appeals and/or writs; and

1.13.9 the number of attorney and investigator hours per closed case.

1.14 The parties will communicate regularly regarding the information collected under this Contract.

1.14.1 The parties will calendar meetings at least quarterly as may be necessary to review the data collected and its significance. The parties will use these meetings to monitor the execution of the Work Plan the maintenance of compliance with Standard 1. The review will address the issues identified in the Work Plan. The parties agree that fulfillment of the Work Plan, the retention of experienced Public Defenders and the maintenance of comparable compensation in accord with WSBA Standard 1 are an essential part of the consideration for this Contract. Failure to comply with the Standards constitutes cause to terminate this Contract. (See Section 3). The reports shall be reviewed with the Public Defense Auditor and Contract Administrator at least quarterly.

1.14.2 The parties acknowledge that Chapter 42.56 RCW, the Public Records Act, imposes obligations on both public agencies and by extension to their contractors. In the event that either the city or the Attorneys receive a request for public records in the hands of the Attorneys, the city will promptly notify the other party of the request and the city or cities' proposed response date. The parties will attempt to work together to establish an appropriate date for production as well as determining the authority regarding the release of any document or the waiver of any exemption, provided however that nothing herein shall require the release of privileged documents by the Attorneys. In the event that the parties cannot agree regarding the application of an exemption, the city or cities will give adequate prior written notice of the intention to release a document or documents. If the Attorneys believe a document or documents are privileged or otherwise fall within the standard established by RCW 42.56.540 for relief, the

Attorneys may promptly seek judicial examination of such a document pursuant to that statute. If any request or continuing pattern of requests imposes substantial unforeseen costs, the Attorneys may apply to the city for reimbursement of such unforeseen costs. "Unforeseen costs" do not include time and costs incurred by the Attorneys in gathering, copying and transmitting records to the city or cities.

1.15 The Attorneys shall provide counsel to defendants at arraignment and preliminary appearances regardless of whether they have been screened.

1.16 The Attorneys' preparation and appearance at arraignment, status, post conviction conviction proceedings and calendars shall be counted at 0.22 per case per hour in review under Section 2.6.

2. Compensation. Effective the month following execution of this Agreement the Cities shall pay the Attorneys for services rendered under this Contract the sum of Fifty-Eight Thousand Seven Hundred Ninety-Five Dollars (\$58,795) per month for the initial term of this Contract.

The compensation amount represents the salary and benefits necessary to provide sufficient attorneys to handle the estimated case load within Supreme Court Rule guidance who are devoted to public defense for the City and all infrastructure, support, and systems necessary to comply with the Standards, Supreme Court Rule and the Decision. As provided in Section 2.6 and its subparagraphs below, the parties will periodically review staffing and compensation in light of changes in court rule, and case load, if any. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense service will comply with the Standards, Supreme Court Rule and the Decision with an adequate reserve capacity for each attorney. Attorneys additionally agree and promise that he/she will devote his/her full effort to the performance of this Agreement and will undertake no private or other public practice of law that would impede their ability to perform under this Agreement.

2.1 Case Counts. Based upon case counts maintained by attorneys and reviewed by the Cities, current estimates for annual case counts for all indigent cases filed by the Cities is approximately one thousand six hundred (1,600) cases or about four hundred (400) cases per quarter. As provided in the Standards, the case counts also include the Attorneys' appearance at all arraignments, status, post conviction proceedings and calendars. The terms "case" and "credit" shall be defined as provided in the Standards. The Cities have adopted an unweighted case count.

2.2 Adjustment; Internal Allocation. As provided in the Standards, compensation may be revised upwards. Upon the Attorney's request, the Cities shall review any particular case with the Attorneys to determine whether greater compensation should be assigned, and upward revisions shall not be unreasonably refused. The Cities shall, for internal purposes, allocate the costs of this contract sixty percent (60%) to Mount Vernon and forty percent (40%) to Burlington. This allocation shall be reviewed on or about May 31 of each year under this Contract and any extension thereof in order to adjust these percentages to reflect actual usage as shown by assigned cases.

2.3 Base Compensation. Except as expressly provided in Section 2.4 and 2.5, the cost of all infrastructure, administrative, support and systems as well as standard overhead services necessary to comply with the established standards is included in the base payment provided in Section 2.1 above.

2.4 Payments in Addition to the Base Compensation. The Cities shall pay for the following case expenses when approved by the Municipal Courts from funds available for that purpose. Unless the services are performed by Attorney's staff or paraprofessional subcontractors, such as an interpreter or investigator, additional expenses not provided for in overhead, shall include but are not limited to:

- 2.4.1 medical and psychiatric evaluations;
- 2.4.2 expert witness fees and expenses;
- 2.4.3 interpreters and translators;
- 2.4.4 polygraph, forensic and other scientific tests;
- 2.4.5 a computerized or other legal research which is not typically maintained as a part of defense counsel legal libraries or research capabilities;
- 2.4.6 extra ordinary investigation expenses; and
- 2.4.7 any other expenses the Municipal Courts find necessary and proper for the investigation, preparation, and presentation of a case.

2.5 The Cities shall pay or reimburse the following:

2.5.1 Lay Witness Fees. Lay witness fees and mileage incurred in bringing defense witnesses to court, but including but not limited to salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

2.5.2 Copying Clients' Files. The actual cost of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

2.5.3 Copying Direct Appeal Transcripts Supreme Court Rules for the Administration of Courts of Limited Jurisdiction RALJ Appeals. The actual cost of preparing and making copies of direct appeal transcripts for representation in post-conviction relief cases;

2.5.4 Records. To the extent such materials are not provided through discovery, the cost of acquiring medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs; and

2.5.5 Process Service. The normal, reasonable cost for the service of a subpoena.

2.6 Review and Renegotiation.

2.6.1 Due to Increases or Decreases in Case Load. The Cities and the Attorneys shall, at the option of either party, renegotiate this contract if there is a significant increase or decrease in the number of cases assigned. Significant “decrease” shall mean a change of more than ten percent (10%) in the number of cases assigned. If cases are estimated to approach or exceed one thousand seven hundred twenty (1,720) cases per year or four hundred thirty (430) cases per quarter, the parties may renegotiate this contract to increase case coverage and compensation to Attorneys. At the request of either party, the Cities and Attorneys will periodically review case assignment trends, requests for additional credits and any other matters needed to determine contract compliance or necessary contract modifications. Attorneys shall promptly notify the Cities when quarterly case loads require use of overflow or conflict counsel to assure that cases assigned to Attorneys remain within the limits adopted in this contract and comply with state and local standards.

2.6.2 Renegotiation Due to Change in Rule or Standard. This contract may be renegotiated at the option of either party if the Washington State Supreme Court significantly modifies the Standards for Indigent Defense adopted pursuant to the Court rule.

2.6.3 Review of Contract Extension. On or before October 1, 2019, unless this Agreement has been terminated as provided herein, Attorneys will give the Cities a proposal for a (2) two-year extension provided for in Section 3. The Cities shall respond by December 15, 2019, and with the mutual agreement of the parties, compensation and other contract terms may be adjusted for future years.

3. Term. The term of this Agreement shall be from the date of execution through December 31, 2019, unless sooner terminated as provided herein. The Agreement may be extended for one (1) additional two (2) year term at the mutual agreement of the parties, not to exceed five (5) years in total.

3.1 For Cause. This agreement may be terminated for cause for violation of any material term of this agreement. “Material term” shall include any violation indicating a failure to provide representation in accordance with the rules of the court and the ethical obligations established by the Washington State Bar Association, a violation of the Standards or the Decision or the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney, or any Attorneys providing service under this agreement, has been suspended or revoked. Any violation of the other provisions of this Contract shall be subject to cure. Written notice of contract violation shall be provided to the Attorneys who shall have thirty (30) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the Cities’ discretion. In lieu of terminating this contract, the Cities may agree in writing to alternative corrective measures.

3.2 Termination on Mutual Agreement. The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed to in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party.

3.3 Termination on Cessation of the Municipal Court. In the event that the Cities acting jointly or either City individually chooses in its/their sole discretion to terminate its/their Municipal Court, this agreement shall expire following one (1) years written notice by the City or Cities to the Attorneys.

3.4 Obligations survive Termination. In the event of termination of this agreement, the following obligations shall survive and continue:

3.4.1 Representation. The compensation established in this agreement compensates Attorneys for services relating to each and every assigned case. Therefore, in the event this agreement is terminated pursuant to Sections 3.2 and 3.3 above, Attorneys will continue to represent clients on assigned cases set for trial to be held within sixty (60) days of the date of termination until a case is concluded on the trial court level or the client fails to appear for a scheduled court appearance. Attorneys will continue to represent clients in post-conviction proceedings and will be compensated at the rate of Sixty-Five Dollars (\$65.00) per hour for preparation and attendance at any hearing or other post conviction proceeding for a minimum of one (1) year or such other term as the Parties shall agree. Attorneys will reasonably cooperate with newly appointed counsel on case reassignment in fulfillment of his/her ethical obligations.

3.4.2 The provisions of sections 1 and 5, as well as this subsection 3.4 survive termination as to Attorneys. The Cities shall remain bound by the provisions of section 2.4 and its subsections with respect to additional costs incurred with respect to cases concluded after the termination of this contract.

4. Nondiscrimination. Neither the Attorneys nor any person acting on behalf of the Attorneys, shall, by reason of race, creed, color, national origin, sex, sexual orientation, including gender identity, honorably discharged veterans or military status, or the presence of any sensory, mental, or physical disability, HIV/AIDS and Hepatitis C status, or the use of a trained guide dog or service animal by a person with a disability, discriminate against any person who is qualified and available to perform the work to which the employment relates, or in the provision of services under this agreement.

5. Indemnification.

5.1 The Attorneys agree to hold harmless and indemnify the Cities, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorneys' fees or awards, and including claims by Attorneys' own employees to which Attorneys might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorneys, their officers or agents.

5.2 It is specifically and expressly understood that the indemnification provided herein constitutes the waiver of the Attorneys' waiver of immunity under Title 51 RCW solely for the purposes of this indemnification. The parties have mutually negotiated this waiver.

5.3 The Cities agree to hold harmless and indemnify the Attorneys, their officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorneys' fees or awards, arising out of or in connection with any willful misconduct or negligent error or omission of the Cities, their officers or agents.

5.4 This clause shall survive the termination or expiration of this agreement and shall continue to be in effect for any claims or causes of action arising hereunder.

6. Insurance. The Attorneys shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or property which may arise from or in connection with the performance of work hereunder by the Attorney, or the agents, representatives, employees, or subcontractors of the Attorney.

6.1 Minimum Scope of Insurance. Attorneys shall obtain insurance of the types described below, naming the City as additional named insureds:

6.1.1 General Liability with a minimum limit of liability of \$2,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.2 Automobile Liability covering owned and non-owned vehicles with a minimum limit of liability of \$1,000,000 combined single limit each occurrence bodily injury and property damage.

6.1.3 Professional Liability (Errors and Omissions) for attorneys with a minimum limit of liability of \$2,000,000 each claim.

6.1.4 Workers' Compensation per statutory requirements of Washington industrial insurance RCW Title 51.

6.2 Verification of Coverage. Attorneys shall furnish the Cities 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 Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the cities. The Attorneys shall provide the Cities with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Contract. The purpose of "tail coverage" is to provide insurance coverage for all claims that might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract.

7. Work Performed by Attorneys. In addition to compliance with the Standards, in the performance of work under this Agreement, Attorneys shall comply with all federal, state and

municipal laws, ordinances, rules and regulations which are applicable to Attorneys' business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

8. Work Performed at Attorneys' Risk. Attorneys shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work hereunder, and shall take all protections reasonably necessary for that purpose. All work shall be done at the Attorneys' own risk, and the Attorneys shall be responsible for any loss or damage to materials, tools, or other articles used or held in connection with the work. Attorneys shall also pay its employees all wages, salaries and benefits required by law and provide for taxes, withholding and all other employment related charges, taxes or fees in accordance with law and IRS regulations.

9. Personal Services, No Subcontracting. This Agreement has been entered into in consideration of the Attorneys' particular skills, qualifications, experience, and ability to meet the Standards incorporated in this Agreement. Therefore, the Attorneys have personally signed this Agreement below to indicate that he/she is bound by its terms. This Agreement shall not be subcontracted without the express written consent of the Cities and refusal to subcontract may be withheld at the Cities' sole discretion. Any assignment of this Agreement by the Attorneys without the express written consent of the Cities shall be void.

10. Modification. No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Cities and the Attorney. With the approval of the City, an additional attorney may be added to this Agreement by adding his or her signature to these agreements.

11. Entire Agreement; Prior Agreement Superseded. Upon execution, the written provisions and terms of this Agreement, together with any exhibit attached hereto, shall supersede all prior verbal statements of any officer or other representative of the Cities, and such statement(s) shall not be effective or construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement. Upon execution, this Agreement shall supersede any and all prior agreements between the parties.

12. Written Notice. All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in the Agreement or such other address as may be hereinafter specified in writing:

CITIES:

Bryan Harrison, Contract Administrator
City of Burlington
833 South Spruce St.
Burlington WA 98233

ATTORNEYS:

Jonathan J. Lewis
Mountain Law, PLLC
c/o Baker Lewis Schwisow & Laws, PLLC
1712 Pacific Avenue, Suite 204
Everett WA 98201

13. Nonwaiver of Breach. The failure of the Cities to insist upon strict performance of any of the covenants and agreements contained herein or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of such covenants, agreements, or options and the same shall be and remain in full force and effect.

14. Resolutions of Disputes, Governing Law. Should any dispute, misunderstanding or conflict arise as to the terms or conditions contained in this Agreement, the matter shall be referred to the Contract Administrator, the Burlington City Manager, whose decision shall be final. Nothing herein shall be construed to obligate, require or permit the Cities, its officers, agents, or employees to inquire into any privileged communication between the Attorneys and any indigent defendant. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for reasonable attorneys' fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington and the rules of the Washington Supreme Court as applicable. Venue for an action arising out of this Agreement shall be in Skagit County Superior Court.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 20____.

CITY OF MOUNT VERNON

By: _____
Mayor Jill Boudreau

ATTEST/AUTHENTICATED:

By _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF SPECIAL COUNSEL

By: _____
W. Scott Snyder

CITY OF BURLINGTON

By: _____
Steve Sexton, Mayor

ATTEST/AUTHENTICATED:

By: _____
City Clerk

APPROVED AS TO FORM:
OFFICE OF SPECIAL COUNSEL:

By: _____
W. Scott Snyder

ATTORNEYS
MOUNTAIN LAW, PLLC

By: _____
Jonathan Lewis

By: _____
Christian Baker

By: _____
Michael Laws

EXHIBIT A

The undersigned Attorney hereby personally warrants and certifies that as a condition of their performance of this Agreement on behalf of Mountain Law, they will commit to providing the services under this Agreement in accordance with the Standards set forth in sections 1, 4, and 7, and that the Attorney's personal warranty of that performance shall survive the Agreement in accordance with subsection 3.4 of this Agreement.

ATTORNEY: _____
Print Name

ATTORNEY: _____
Print Name