

CITY COUNCIL AGENDA
City Hall, 833 South Spruce Street
7:00 p.m. March 23, 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 March 9, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION: Goals for 2017 & Accomplishments of 2016 – Executive/Human Resources/Legal/Finance

OFFICERS REPORTS: TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

NEW BUSINESS:

- 1) Resolution – Petition to City Council whether or not to move forward on proposed street vacation of the south 335 feet of North Hill Boulevard by Pacific Woodtech
- 2) Agreement with Gray & Osborne for Engineering Services – Regent Street Alley Improvements
- 3) Interlocal Agreement with Skagit County for Pictometry Software
- 4) Indigent Defense – 1. Interlocal Agreement with the City of Mount Vernon to administer and fund a Public Defense Auditor Contract; and 2. Public Defense Auditor Contract

FUTURE WORKSHOP:

EXECUTIVE SESSION:

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

ADJOURNMENT:

MEETINGS:

- | | |
|--|---|
| 1) <u>PUBLIC WORKS COMMITTEE:</u> | Tuesday March 21, 2017 4:00 p.m.
Engineering Conference Room, 833 S Spruce St |
| 2) <u>DOWNTOWN BURLINGTON ASSOCIATION:</u> | Wednesday March 22, 2017 9:00 a.m.
Chamber of Commerce, 520 E Fairhaven Ave |
| 3) <u>AUDIT & FINANCE COMMITTEE:</u> | Thursday March 23, 2017 4:00 p.m.
City Hall, 833 S Spruce Street |
| 5) <u>PLANNING COMMISSION:</u> | Thursday March 23, 2017 6:00 p.m.
Council Chambers, 833 S Spruce St |
| 6) <u>PARKS ADVISORY BOARD:</u> | Monday April 3, 2017 5:30 p.m.
Parks & Recreation, 900 E Fairhaven Ave |
| 7) <u>LIBRARY BOARD:</u> | Tuesday April 4, 2017 6:00 p.m.
Burlington Public Library, 820 E Washington Ave |

March 2017

March 2017							April 2017						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
5	6	7	8	9	10	11	2	3	4	5	6	7	8
12	13	14	15	16	17	18	9	10	11	12	13	14	15
19	20	21	22	23	24	25	16	17	18	19	20	21	22
26	27	28	29	30	31		23	24	25	26	27	28	29
							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

Feb 26 - Mar 4

Mar 5 - 11

Mar 12 - 18

Mar 19 - 25

Mar 26 - Apr 1

April 2017

April 2017

May 2017

Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
2	3	4	5	6	7	8	1	2	3	4	5	6	7
9	10	11	12	13	14	15	8	9	10	11	12	13	14
16	17	18	19	20	21	22	15	16	17	18	19	20	21
23	24	25	26	27	28	29	22	23	24	25	26	27	28
30							29	30	31				

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

March 9, 2017

CALL TO ORDER:

Mayor Steve Sexton called the meeting to order at 7:05 p.m., with the Pledge of Allegiance. Council members present: Bill Aslett, Tonya Bieche, J. DeGloria, R. DeGloria, Edie Edmundson, Chris Loving, and Ted Montgomery. Staff present: Bryan Harrison, Geoff Hawes, Brittany Johnson, Marv Pulst, Travis Schwetz, Renee Sinclair, and Levon Yengoyan.

MINUTES:

A motion was made to approve the minutes of the February 23, 2017 council meeting by **Councilors J. DeGloria/Aslett**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors J. DeGloria/Aslett** to approve Accounts Payable checks numbered 35680 – 35834 in the amount of \$227,295.16; and February 28th payroll checks numbered 35652 – 35679 in the amount of \$542,730.87. All in favor; motion carried.

PUBLIC COMMENTS:

Tana Wood – 1745 Monroe St commented regarding the discussion at the last council meeting about council ward reconfiguration. She stated that she does not support the reconfiguration and supports the current council structure.

Brad Whaley – 20299 Gardner Ct stated his concern with homelessness in Burlington. He stated that homeless individuals are being bussed to Burlington from Seattle. He has held conversations with many homeless individuals who commented this is how they got to Burlington. Discussion ensued regarding the steps that can be taken to bring attention to this matter. **Mayor Sexton** commented on County resources that will be available this summer; the current County jail would be a viable homeless shelter.

COUNCIL COMMENTS:

Councilor Aslett thanked the Public Works Department for the new speed limit sign on Anacortes Street; it is a great change and is making the intersection safer. **Council Aslett** asked **IT Manager Geoff Hawes** to look into options to access the council packets on the council member's tablets that may be more user friendly.

MAYOR COMMENTS:

Mayor Sexton thanked **Councilor R. DeGloria** for covering the last meeting while he was in Spokane to discuss and tour the City of Spokane's fiber network.

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OFFICER'S REPORTS:

City Administrator Bryan Harrison announced that the City of Burlington has received their 5th consecutive WellCity Award from the Association of Washington Cities. He thanked **Brittany Johnson**, Wellness Coordinator, and the Wellness Committee for their efforts and dedication to the wellness of employees. **Harrison** announced that **Police Chief Bill Van Wieringen's** retirement event will be held on March 30th and that the City's **Building Official Jim Sherwood's** last day with the City of Burlington will be March 10th; **Sherwood** has taken a position with the City of Monroe. **Harrison** informed council that there was discussion to hold an Open House Public Forum in the Spring to update citizens on what is currently going on at the City of Burlington, Maiben Park proposal, results of the Historical Reconnaissance Survey, and other topics. The potential meeting date is April 12th, 2017 beginning at 6:00 p.m. A formal notice will be published and citizens will be notified. **Harrison** informed council that the Historical Preservation Committee will hold a Public Forum on Saturday, May 6th, at Burlington City Hall to dedicate the newly installed historical display cases.

NEW BUSINESS:

PROFESSIONAL FIBER SERVICES AGREEMENT WITH DIVERSIFIED NORTHWEST

IT Manager Geoff Hawes discussed details of agreement and the need for the agreement as the current contractor is closing his business. This agreement is for a contractor for fiber expansion.

A motion was made to approve the Professional Services Fiber Agreement with Diversified Northwest and authorize the Mayor's signature by **Councilors Aslett/J. DeGloria**. All in favor; motion carried.

BID AWARD: SEPTAGE RECEIVING UNIT AT WASTE WATER TREATMENT PLANT

Public Works Director Marv Pulst discussed the need for this unit and described what this unit is used for. This will replace the current unit which was installed in 1991.

A motion was made to award the bid to Enviro Care in the amount of \$135,625.00 and authorize procurement of a Septage Receiving Unit for the Waste Water Treatment Plant by **Councilors Loving/R. DeGloria**. All in favor; motion carried.

PROCUREMENT OF A 1-TON TRUCK FOR THE STREET DEPARTMENT – BUDGETED IN 2017

Public Works Director Marv Pulst discussed the need for the 1-ton truck for the Street Department and added that this truck will replace the 1988 Dodge 1-ton truck that is currently being used.

March 9, 2017

A motion was to authorize a purchase order to be issued in the amount of \$43,782.44 for procurement of a 1-ton truck from the State Contract for the Street Department by **Councilors Aslett/Montgomery**. All in favor; motion carried.

INDIGENT DEFENSE CONTRACTS: 1. PUBLIC DEFENSE AUDITOR 2. ADDENDUM TO PUBLIC DEFENSE SUPERVISOR 3. MOUNTAIN LAW, PLLC

City Administrator Bryan Harrison asked that this agenda item be deferred to the March 23rd council meeting.

EXECUTIVE SESSION

There was no Executive Session held.

ADJOURNMENT:

Mayor Sexton adjourned the meeting at 7:33 p.m.

Renee Sinclair
Director of Budget & Accounting

Steve Sexton
Mayor

RESOLUTION NO. XX-2017

**A RESOLUTION OF THE CITY OF BURLINGTON, WASHINGTON IN THE MATTER OF THE A
PETITION TO VACATE A PORTION OF NORTH HILL BOULEVARD**

WHEREAS, the City received a petition to vacate a portion of North Hill Boulevard on February 28, 2017, and

WHEREAS, the property owner who submitted the vacation petition owns all of the property on both sides of the street subject to the petition, and

WHEREAS, street vacations are governed by chapter 35.79 RCW, and

WHEREAS, RCW 35.79.010 requires that vacation petitions be considered at a public hearing, and

WHEREAS, RCW 35.79.010 further requires that the date of the required hearing be set by resolution.

NOW, THEREFORE, BE IT RESOLVED, that a public hearing shall be held on April 27, 2017 to consider the vacation petition attached to this resolution as exhibit "A", and

BE IT FURTHER RESOLVED, that the Planning Department is hereby directed to ensure public notice of the required hearing is provided in accordance with the requirements of RCW 35.79.020, and

BE IT FURTHER RESOLVED, that the Planning Department is hereby directed to evaluate the proposed vacation and provide the City Council with a report and recommendation for consideration in advance of the public hearing on April 27, 2017.

INTRODUCED AND PASSED at a regular meeting of the City Council of the City of Burlington on this 23rd day of March, 2017.

THE CITY OF BURLINGTON

Steve Sexton, Mayor

ATTEST:

Renee Sinclair
Director of Budget & Accounting

APPROVED AS TO FORM:

Leif Johnson, City Attorney

Published: _____



PLANNING & PERMIT CENTER

833 S. Spruce Street
Burlington, WA 98233

(360) 755-9717 Fax: (360) 755-9309
bplanning@burlingtonwa.gov

FEE:
\$940

PETITION FOR VACATION OF STREET OR ALLEY

VACATION # _____ DATE FILED _____

To the City Council of the City of Burlington, Washington.

Comes now the undersigned and, pursuant to RCW Chapter 35.79, respectfully show:

I

The Undersigned petitioner's request that the following described property in the City of Burlington be vacated pursuant to RCW Chapter 35.79.

The final 355' of North Hill Blvd, from intersection with hillcrest drive to the end where North Hill Blvd meets existing fence to Pacific Woodtech property.

II

Each of the undersigned petitioners is the owner of any interest in real estate of the above described area:

III

Person(s) owns property abutting on said area.

Pacific Woodtech Corporation

IV

The names and addresses of the owners of property abutting on said area are as follows:

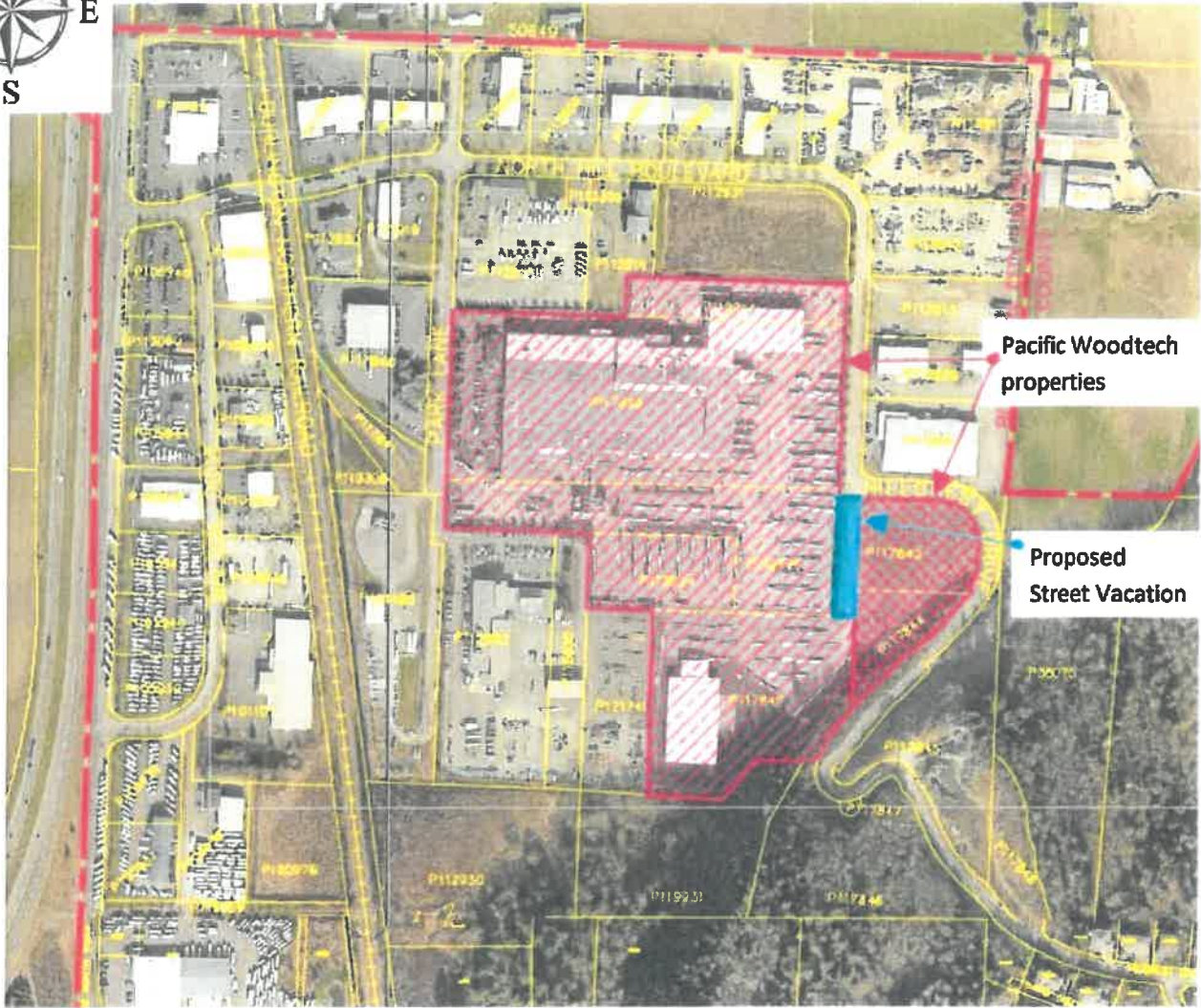
NAME	(PLEASE PRINT OR TYPE)	PROPERTY ADDRESS
<i>Pacific Woodtech Corp</i>		<i>1850 Park Lane, Burlington WA</i>
_____		_____
_____		_____
_____		_____

The undersigned petitioners constitute more than two-thirds of the owners of said abutting property.

WHEREFORE, petitioners pray that proceedings be had hereon for the vacation of said *North Hill Blvd* street in the manner prescribed by RCW Chapter 35.79.

Respectfully submitted,

SIGNATURE	MAILING ADDRESS	DATE
<i>Randy S. U. J.</i>	<i>1850 Park Lane Burlington WA</i>	<i>2-28-17</i>
_____	_____	_____
_____	_____	_____





Imagery ©2017 Google, Map data ©2017 Google 100 ft

Measure distance

Total distance: 355.07 ft (108.23 m)

UTILITY COMPANIES

(for City use only)

FRONTIER COMMUNICATIONS
595 PEASE ROAD
BURLINGTON WA 98233

PUGET SOUND ENERGY
1660 PARK LANE
BURLINGTON WA 98233

CASCADE NATURAL GAS
1520 S. 2ND STREET
MOUNT VERNON WA 98273

P.U.D. #1
P.O. BOX 1436
MOUNT VERNON WA 98273

COMCAST CABLE
400 SEQUOIA DRIVE
BELLINGHAM WA 98226

RCW 35.79.030**Hearing—Ordinance of vacation.**

The hearing on such petition may be held before the legislative authority, before a committee thereof, or before a hearing examiner, upon the date fixed by resolution or at the time the hearing may be adjourned to. If the hearing is before a committee the same shall, following the hearing, report its recommendation on the petition to the legislative authority which may adopt or reject the recommendation. If the hearing is held before a committee it shall not be necessary to hold a hearing on the petition before the legislative authority. If the hearing is before a hearing examiner, the hearing examiner shall, following the hearing, report its recommendation on the petition to the legislative authority, which may adopt or reject the recommendation: PROVIDED, That the hearing examiner must include in its report to the legislative authority an explanation of the facts and reasoning underlying a recommendation to deny a petition. If a hearing is held before a hearing examiner, it shall not be necessary to hold a hearing on the petition before the legislative authority. If the legislative authority determines to grant the petition or any part thereof, such city or town shall be authorized and have authority by ordinance to vacate such street, or alley, or any part thereof, and the ordinance may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate such city or town in an amount which does not exceed one-half the appraised value of the area so vacated. If the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property or portions thereof were acquired at public expense, the city or town may require the owners of the property abutting the street or alley to compensate the city or town in an amount that does not exceed the full appraised value of the area vacated. The ordinance may provide that the city retain an easement or the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. A certified copy of such ordinance shall be recorded by the clerk of the legislative authority and in the office of the auditor of the county in which the vacated land is located. One-half of the revenue received by the city or town as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city or town.

[2011 c 130 § 1; 2002 c 55 § 1; 2001 c 202 § 1; 1987 c 228 § 1; 1985 c 254 § 1; 1969 c 28 § 4. Prior: 1967 ex.s. c 129 § 1; 1967 c 123 § 1; 1965 c 7 § 35.79.030; prior: 1957 c 156 § 4; 1949 c 14 § 1; 1901 c 84 § 2; Rem. Supp. 1949 § 9298.]



ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 23, 2017 Subject: Agreement with Gray & Osborne for Engineering Services-Regent Street Alley Improvements
Marv Pulst, Public Works Director

Attachments: Agreement Public Hearing Required: YES () NO (X)
Scope of Work
Exhibits

SUMMARY

This \$42,300 contract with Gray & Osborne will facilitate street and sewer improvements to an existing alley between Regent and Skagit Streets. Work includes replacing the existing Sanitary Sewer main, installation of storm water conveyance & water quality piping, and reconstruction/paving of the alley. Gray & Osborne engineers will provide the bid package (plans, specifications, and estimate) for the improvements, and assist City engineers with construction management duties.

RECOMMENDATION

Motion to approve the agreement with Gray & Osborne for Engineering Services-Regent Street Alley Improvements in the amount of \$42,300 and authorize the Mayor's signature.

CONTRACT NO. _____

DEPARTMENT: Public Works-Sewer

FEDERAL TAXPAYER I.D. 91-0890718

CONSULTANT: Gray & Osborne, Inc.

SERVICES PROVIDED: Engineering Services for Regent Street Alley Sewer and Street Improvements.

AMOUNT: \$42,300.00

FUND SOURCE: Sewer & Storm
Engineering

DURATION: FROM: March 23, 2017

TO: December 31, 2017

AGREEMENT

THIS AGREEMENT made and entered into on this 23rd day of March, 2017, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City"), and **Gray & Osborne, Inc.**, (hereafter referred to as "Provider").

WITNESSETH:

WHEREAS, the City desires to contract with the Provider for providing of services; and

WHEREAS, the Provider is licensed and/or duly qualified to provide such services; and

WHEREAS, the City has an interest in promoting the health, safety and welfare of the citizens of the City of Burlington; and

WHEREAS, the Scope of Work included in this Agreement is consistent with promoting the interests of the City; and

WHEREAS, the City and the Provider are desirous of entering into an agreement to formalize their relationship.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Provider do mutually agree as follows:

1. WORK AND/OR SERVICES TO BE PROVIDED BY THE PARTIES:
 - a. The Provider shall complete in a satisfactory and proper manner, as determined by the City, the work and/or services described in "**Exhibit A,B-1&B-2**", Scope of Work and/or Services of Provider, which is attached hereto and incorporated herein by reference.

- b. The City will provide such assistance and guidance to the Provider as may be required to support the objectives of this Agreement and additional duties as outlined in "**Exhibit A,B-1&B-2**", Scope of Work and/or Services of City, which is attached hereto and incorporated herein by reference.

2. TIME OF PERFORMANCE:

All services described under Scope of Work and/or Services shall be conducted on or before December 31, 2017.

3. CONSIDERATION:

The City shall pay to the Provider for work and/or services as follows:

The sums billed to the City shall not exceed the total sum of **\$42,300.00**. Provider shall bill the City of Burlington monthly by way of itemized invoices for the services rendered under this Agreement. Any deposits paid by the City in advance shall be offset against amounts billed, and shall be reflected in the Provider's invoice.

4. RELATIONSHIP:

The City and Provider intend that an independent contractual relationship be created by this Agreement. Provider is not considered to be an employee of the City for any purpose, and neither the Provider nor any employee of the Provider shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Provider specifically represents and stipulates that the Provider is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that provider is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

5. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Provider fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the suspension or termination of this Agreement.

Further, in the event the Provider has failed to perform any substantial obligation to be performed by the Provider under this Agreement, then the City may, upon written notice to the Provider, withhold all monies due and payable to Provider, without penalty, until such failure to perform is cured or otherwise adjudicated.

6. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes to the Agreement. Any and all agreed modifications shall be in writing and signed by each of the parties.

7. REPORTS AND INFORMATION:

The Provider, in such form as the City may require, shall provide reports as to the status of the work or services undertaken pursuant to this Agreement, including the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as a part of the Agreement by whatever legal and reasonable means are deemed by the City.

9. DEFENSE & INDEMNITY AGREEMENT:

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. This provision of this section shall survive the expiration or termination of this Agreement.

10. NO THIRD-PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the parties hereto only, and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

11. PROOF OF INSURANCE:

The Provider shall provide proof of insurance for general comprehensive liability in the amount of \$1,000,000 per occurrence to cover activities during the term of this Agreement and \$2,000,000 in the aggregate. Proof of insurance shall be in a form acceptable and approved by the City. A certificate of insurance naming the City of Burlington at 833 S. Spruce Street, Burlington, WA 98233, its

elected and/or appointed officials and/or officers, subcontractors, agents and/or employees as additional insureds shall accompany this Agreement for signing.

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

- a. Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Provider.
- b. The Provider shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

Subcontractors:

The Provider shall have sole responsibility for determining the insurance coverage and limits required, if any, to be obtained by subcontractors, which determination shall be made in accordance with reasonable and prudent business practices.

12. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

13. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

14. VENUE AND JURISDICTION:

All parties shall submit and not object to jurisdiction and venue being that of Skagit County, Washington, in connection with any claims arising out of this Agreement.

15. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

16. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

17. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

18. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

19. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior consent of the other party, which consent shall not be unreasonably delayed or withheld.

20. HEADINGS:

The headings to the paragraphs of this Agreement are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.

21. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address:

City of Burlington
ATTN: City Clerk
833 S. Spruce Street
Burlington, WA 98233

With additional copies to:

Burlington Public Works Department
Burlington City Attorney
833 S. Spruce Street
Burlington, WA 98233

Any notices to be sent to Provider shall be sent to the following address:

Gray & Osborne, Inc.
701 Dexter Ave N #200
Seattle, WA 98109

22. AUTHORITY:

Each individual executing this Agreement on behalf of the City and the Provider represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Providers.

IN WITNESS WHEREOF, the City and the Provider have executed this Agreement as of the date and year last written below.

CITY OF BURLINGTON

Steve Sexton
Mayor

Marv Pulst, P.E.
Public Works Director

Attest:

Dr. Renee C. Sinclair, CPFO
Director of Budget & Accounting

Approved As To Form

Leif Johnson, City Attorney

PROVIDER:

By: _____

Gray & Osborne, Inc
Tax ID Number: 91-0890718
UBI Number: 600 087 923

EXHIBIT “A”

SCOPE OF WORK

CITY OF BURLINGTON REGENT STREET ALLEY SEWER AND STREET IMPROVEMENTS ENGINEERING SERVICES FEBRUARY 22, 2017

The City of Burlington desires to construct the Regent Street Sanitary Sewer Replacement project. The project includes the replacement of approximately 600 linear feet of sewer pipe in an alley between Regent Street and Skagit Street. Preliminary design for the sewer replacement has already been completed. In addition, the City would like to make improvements to the driving surface in the alley. The alley will be paved and storm water from the new paved surface will be collected, treated, and discharged into an infiltration facility in the alley. A geotechnical report will be prepared by PanGEO, Inc. in order for us to properly size the stormwater infiltration facility. The project will be separated into two schedules of work.

The specific tasks in the scope of work for this project are described below.

SCHEDULE A – SANITARY SEWER REPLACEMENT

Task 1 – Design Services

- Make a site visit to walk the alignment.
- Incorporate available utility as-built and right-of-way information.
- Update Contract plans and specifications. Specifications will be prepared in WSDOT Standard Specifications 2016 format.
- Quality Assurance/Quality Control meeting.
- Prepare the final Contract Documents.

Task 2 – Bidding/Award Services

- Prepare and place the advertisement for bids in the Skagit Valley Herald and the Daily Journal of commerce.
- Distribute bid documents to bidders and plan centers.
- Maintain a plan holders list.
- Respond to bidders' questions during the bid period and distribute addenda to the bid documents.
- Prepare and distribute addenda to the contract documents as necessary.
- Conduct a prebid conference.
- Attend and assist with the bid opening.
- Prepare the bid tabulation.

- Check contractor references and insurance requirements.
- Prepare recommendation of award of the contract to the City of Burlington.
- Assist the City in the preparation of progress pay estimates based on City provided quantities.

SCHEDULE B – STREET AND STORMWATER IMPROVEMENTS

Task 1 – Design Services

- Make a site visit to walk the alignment.
- Provide a geotechnical analysis (PanGEO – geotechnical subconsultant) to excavate a test pit, perform a soil analysis, check groundwater levels, and prepare a report for sizing of an infiltration and pretreatment facility.
- Conduct a hydrologic analysis of the drainage area to estimate stormwater volume and size infiltration facilities.
- Provide additional site survey for stormwater drainage and street improvements.
- Incorporate available utility as-built and right-of-way information.
- Prepare preliminary Contract plans and specifications. Specifications will be prepared in WSDOT Standard Specifications 2016 format.
- Quality Assurance/Quality Control meeting.
- Prepare the final Contract Documents.

Task 2 – Bidding/Award Services

- Prepare and place the advertisement for bids in the Skagit Valley Herald and the Daily Journal of commerce.
- Distribute bid documents to bidders and plan centers.
- Maintain a plan holders list.
- Respond to bidders' questions during the bid period and distribute addenda to the bid documents.
- Prepare and distribute addenda to the contract documents as necessary.
- Conduct a prebid conference.
- Attend and assist with the bid opening.
- Prepare the bid tabulation.
- Check contractor references and insurance requirements.
- Prepare recommendation of award of the contract to the City of Burlington.
- Assist the City in the preparation of progress pay estimates based on City provided quantities.
- Prepare a of a Department of Ecology UIC form for submittal by the City.

Assumptions

- Construction management is not included in this scope of work.
- The City will provide a backhoe to excavate the infiltration test locations and provide water for the tests.
- The City will be responsible for any permits necessary for this project. The Engineer will complete a DOE Underground Injection Control (UIC) registration form for new infiltration facilities as necessary to be submitted by the City.
- The project will be prepared in accordance with the Washington State Department of Ecology (DOE) Stormwater Management Manual for Western Washington.

BUDGET

The estimated amount payable to the Engineer for completion of all work associated with this Scope of Work, including contingencies, salaries, overhead, direct non-salary costs and net fee is \$42,300.00 for the sewer replacement, and the street and stormwater improvements. This amount shall not be exceeded without prior written authorization of the City. A breakdown of this estimated maximum is provided in the attached Exhibits "B-1" and "B-2."

EXHIBIT "B-1"

ENGINEERING SERVICES SCOPE AND ESTIMATED COST

CITY OF BURLINGTON - REGENT STREET ALLEY SEWER AND STREET IMPROVEMENTS *SCHEDULE A - SANITARY SEWER REPLACEMENT*

Tasks	Principal Hours	Project Manager Hours	Civil Eng. Hours	AutoCAD Technician Hours
Design Services				
Site visit		4	4	
As-built Information		1	4	4
Update Plans and Specs		4	20	16
QA/QC Meetings	4	4	4	
Finalize Contract Documents		2	4	8
Bidding/Award Services				
Advertise the project for bids			2	
Distribute bid documents			2	
Respond to questions and prepare addenda		4	4	2
Prebid conference		4		
Attend the bid opening		4		
Recommendation of award		1	2	
Assist in pay estimate preparation		2	8	
Hour Estimate:	4	30	54	30
Fully Burdened Billing Rate Range:*	\$112 to \$177	\$99 to \$177	\$77 to \$126	\$48 to \$116
Estimated Fully Burdened Billing Rate:*	\$150	\$161	\$100	\$100
Fully Burdened Labor Cost:	\$600	\$4,830	\$5,400	\$3,000

Total Fully Burdened Labor Cost: \$ 13,830

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ current IRS rate) \$ 500

Printing \$ 170

TOTAL ESTIMATED COST: \$ 14,500

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

EXHIBIT "B-2"

ENGINEERING SERVICES SCOPE AND ESTIMATED COST

CITY OF BURLINGTON - REGENT STREET ALLEY SEWER AND STREET IMPROVEMENTS SCHEDULE B - STREET AND STORMWATER IMPROVEMENTS

Tasks	Principal Hours	Project Manager Hours	Civil Eng. Hours	AutoCAD Technician Hours	Professional Land Surveyor Hours	Field Survey (2 person) Hours
Design Services						
Site visit		4	4			
Geotechnical Analysis		2	2			
Hydrologic Drainage Analysis		2	8	4		
Additional Survey		2	2		2	12
As-built Information		1	4	4		
Plans and Specs		4	28	24		
QA/QC Meetings	4	4	4			
Finalize Contract Documents		2	4	8		
Bidding/Award Services						
Advertise the project for bids			2			
Distribute bid documents			2			
Respond to questions and prepare addenda		4	4	2		
Prebid conference		4				
Attend the bid opening		4				
Recommendation of award		1	2			
Assist in pay estimate preparation		1	6			
Prepare DOE UIC form		1	6			
Hour Estimate:	4	36	78	42	2	12
Fully Burdened Billing Rate Range:*	\$112 to \$177	\$99 to \$177	\$77 to \$126	\$48 to \$116	\$109 to \$135	\$144 to \$212
Estimated Fully Burdened Billing Rate:*	\$150	\$161	\$100	\$100	\$120	\$175
Fully Burdened Labor Cost:	\$600	\$5,796	\$7,800	\$4,200	\$240	\$2,100

Total Fully Burdened Labor Cost: \$ 20,736

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ current IRS rate) \$ 500

Printing \$ 228

Subconsultant:

PanGEO, Inc. \$ 5,760

Subconsultant Overhead (10%) \$ 576

TOTAL ESTIMATED COST: \$ 27,800



ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 23, 2017 Subject: Pictometry Software

Marv Pulst, Public Works Director

Attachments: Interlocal Agreement with Skagit County Public Hearing Required: YES () NO (X)

SUMMARY

Pictometry online software allows various departments (Engineering, Stormwater, Planning, Sewer, Streets, Parks, Police, and Fire) to access current high resolution aerals of the City as well as identifies parcels and associated assessor data. This program is made available through a cost sharing arrangement with Skagit County in the form of an interlocal agreement. The agreement covers a two year time period at a cost of \$5,000 per year for a total of \$10,000.

RECOMMENDATION

Motion to approve the interlocal agreement with Skagit County for pictometry software and authorize the Mayor' signature.

SKAGIT COUNTY BOARD OF COMMISSIONERS
1800 CONTINENTAL PLACE, SUITE. 100
MOUNT VERNON, WA 98273

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN SKAGIT COUNTY AND CITY OF
BURLINGTON TO ESTABLISH A COST SHARING PARTNERSHIP FOR PICTOMETRY IMAGERY
AND SOFTWARE**

GRANTOR: Skagit County

GRANTEE: City of Burlington

COUNTY CONTRACT NO.: _____

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN SKAGIT COUNTY AND CITY OF BURLINGTON TO ESTABLISH A COST SHARING PARTNERSHIP FOR PICTOMETRY IMAGERY AND SOFTWARE

WHEREAS, Skagit County and The City of Burlington are authorized to provide cooperative information services under the Interlocal Cooperative Act RCW 39.34; and

WHEREAS, Skagit County has entered into an Agreement (see Exhibit B) with Pictometry International Corporation, hereinafter referred to as "Pictometry", for the provision of certain licensed Pictometry products, encompassing, among others, specified aerial images of the County and all or portions of selected adjacent jurisdictions; and

WHEREAS, Section C.2 of the Agreement between Skagit County and Pictometry has a provision to allow Authorized Subdivisions and their personnel, Authorized Users, to use licensed Pictometry products provided that the Authorized Subdivision follows the terms and conditions of the "Pictometry Delivered Content Terms And Conditions Of Use" (see Exhibit B) and has an Agreement with Skagit County; and

WHEREAS, The City of Burlington is listed as an Authorized Subdivision and has evaluated the Pictometry products and determined that those products would be beneficial to their operations; and

WHEREAS, Skagit County and The City of Burlington are interested in developing partnerships and working cooperatively with each other in order to reduce project costs and eliminate duplication of services; and

WHEREAS, the public will benefit from both the products received and the cost savings of such partnerships.

NOW, THEREFORE, Skagit County hereinafter "County" and The City of Burlington, hereinafter "Customer" agrees as follows:

1.0 RESPONSIBILITIES:

1.1. County Responsibilities: Upon completion of the image acquisition and signed Interlocal Agreement with the County, the County agrees to furnish the Customer the following products and services:

1.1.1. Delivery of a portable disk drive containing all the licensed Pictometry products which shall include the image library. The Customer shall provide the portable disk drive as specified in Section 1.2.4 of this Agreement.

1.1.2. Provide one hour of telephone technical support to help resolve issues and problems in the installation, maintenance, and use of licensed products provided herewith.

1.1.3. Shall organize two end user orientation training sessions which will be taught by Pictometry. The Customer may designate two authorized representatives to attend each training session.

In addition, the County may organize one advanced user technical training session. The Customer may designate one authorized representative to attend this session.

- 1.1.4. Annual billing for the use of licensed Pictometry products. This also includes oversight of the financial accounting between the County and Authorized Subdivisions.
- 1.1.5. May provide extended support services beyond the aforementioned requirements for training, technical support, product development, providing historic (2007, 2009, 2011 2013, and 2015) Pictometry imagery or other services that are related to the support of Pictometry products. These extended services shall require a Work Order and financial compensation as specified in Section 5.5, Extended Service Rates.
- 1.1.6. May provide cost sharing of licenses for the Pictometry Connect online service as an annual fee. License packages are provided by Pictometry in 50 and 100 license packs and the County will divide the licenses between Tier 1 and Tier 2 partners at a per license price as further defined in Section.5.6, Connect Online License Sharing, of this Agreement.
- 1.2 **Customer Responsibilities:** Upon execution of the signed Interlocal Agreement with the County, the Customer agrees to the following:
 - 1.2.1. To comply with this Interlocal Agreement and the terms and conditions of the Master Agreement between Pictometry International and the County (Exhibit B). This also applies to Pictometry Connect licensing.
 - 1.2.2. Designate one employee as a liaison between the County and the Customer as a single point of contact for technical support, training, work requests, and disseminating information to the Customer's end users. The designated Liaison and their contact information shall be reported to the County.
 - 1.2.3. Authorized users of the Customer shall direct all questions, requests, and other technical matters to the Customers Liaison.
 - 1.2.4. Shall provide a portable disk drive, large enough to hold all the data, to the County so that Pictometry products can be loaded and delivered to the Customer.
 - 1.2.5. The Liaison or their Designee shall distribute the Pictometry products to the Customers authorized users in accordance with both this Agreement and the Pictometry Master License Agreement.
 - 1.2.6. The Customer is responsible to provide Pictometry training and technical support to their Authorized Users.
 - 1.2.7. The Customer shall notify the County within ten (10) business days after the Customer receives notice from Pictometry of any Pictometry actions, conditions, or circumstances which could affect the Customers rights under this Agreement.

2.0 SERVICE CONDITIONS AND DATA LIMITATIONS

- 2.1 Acceptance of Completed Work:** The County's Master Agreement with Pictometry is currently scheduled for image acquisition between March and April (leaf-off tree condition to insure more visibility) of 2017. However, this is contingent upon weather conditions. There is a possibility that the image acquisition may occur at a later date. Once the image acquisition is complete and the County has received and approved the Pictometry products, a copy of the Pictometry products shall be created on a portable disk drive, provided by the Customer, and delivered to Customer for final inspection. The Customer has ten (10) calendar days to inspect the product and notify, in writing, the County of any product errors, omissions, flaws, or incomplete work. If no errors are brought to the attention of the County within ten (10) calendar days, the product acceptance and delivery shall be considered complete.
- 2.2 Hours of Support:** The County will give support from the Hours of 8:00 AM to 4:00PM Monday through Friday, excluding scheduled County holidays or closure days. Problem resolution shall be done during normal business hours unless it has been previously coordinated and approved by the County.
- 2.3 Product Archival and Retention:** The County is not responsible for the backup, retention, or archive of products provided to Customer. It is Customers responsibility to maintain hard copy and digital records in accordance with Public Records Laws (RCW, 40.14 and WAC, Section 434). In the event that the Customer requests from the County another copy of the Pictometry products, the County shall be financially compensated for their actual costs to create and deliver an additional copy of the Pictometry products.
- 2.4 Confidential and Proprietary Information:** The Customer acknowledges that they are a public agency and as such are required to allow members of the public access to certain materials within the Customer's control or possession. In the event the Customer receives a public records request for Pictometry information or intellectual property, as defined in the Master Agreement between Pictometry International and Skagit County (Exhibit B) in Section B under subsection 5.2 (Confidentiality of Delivered Content), within five (5) business days of receiving such request and prior to providing any materials to the Requestor, the Customer will notify both the County and Pictometry of such request for information and will make attempts to provide Pictometry with adequate time to seek a protective order under applicable law. In the event of a request for public records, nothing in this Agreement shall prevent nor hinder the Customer from fully complying with the Washington state Public Records Act.
- 2.5 Data Limitations:** The County makes no warranty, expressed or implied, concerning products provided by the County or Pictometry including the content, accuracy, currency or completeness, or concerning the results to be obtained from queries or use of the data. All products are expressly provided as is and with all faults. The County makes no warranty of fitness for a particular purpose, and no representation as to the quality of any products supplied to the Customer. No employee or agent of the County or the Customer is authorized nor may waive or modify this paragraph.
- 2.6 Spatial Accuracy:** Electronic spatial data can be printed or represented at various scales other than the original source of the data. The Customer is responsible for adhering to industry standard mapping practices, which specify that data utilized in a map or analysis, separately or in combination with other data, will be produced at the largest scale common to all data sets. For example, the Skagit County tax parcel data has an accuracy level of +/- 300 feet; whereas

Pictometry imagery may have an accuracy of 15 feet or less. Overlaying these two datasets will potentially show significant shift in the data providing a false geographic representation.

3.0 DATA LIABILITY AND INDEMNIFICATION

- 3.1 Liability:** The County, its elected or appointed officers, employees or agents shall not be liable to Customer (or transferees or vendees of Customer) for damages of any kind, including lost profits, lost savings or any other incidental or consequential damages relating to the provision of the data or the use of it. Customer shall have no remedy at law or equity against the County in case the data provided is inaccurate, incomplete or otherwise defective in any way. Customers only remedies are those specified in this Agreement. County is supplying this information in good faith and Customer agrees hold County, its elected or appointed officers, employees or agents harmless for any liability incurred as a result of using Pictometry products under this Agreement.
- 3.2 Indemnification:** Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agree to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this Agreement except as expressly provided herein.
- 3.3 No Joint Venture or Partnership:** It is understood and agreed that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this Agreement.
- 3.4. Non-Conforming Services:** For any services which fail to conform to the specification of this Agreement and/or any Work Order pursuant to this Agreement, and such failure is caused solely by the negligence of County, no charge will be invoiced. If both parties are negligent, they agree to apportion cost between them to the damage attributable to the actions of each. Customer is solely responsible for any damage caused in whole or in part by inaccurate or inadequate data, programs, or software furnished to the Customer by the County.

Neither party will be liable for any failure to comply with or delay in performance of this Agreement where failure or delay is caused by or results from any events beyond its control, including but not limited to, fire, flood, earthquake, accident, civil disturbances, acts of any governmental entity, war, shortages, embargoes, strikes (other than those occurring in the workforce of the party claiming relief, or the workforces of its subcontractors), transportation delays, or acts of God.

The County is not liable for system failure, power loss, loss of Internet, loss of network connectivity, software system failure, security breach/failure or other unforeseeable conditions that result in the unavailability of service to the Customer.

It is the Customers responsibility to follow the terms and conditions of this Agreement and the Master Agreement between Pictometry International and the County (see Exhibit B).

- 3.5. **Damages:** Neither party will seek damages, either direct, consequential, or otherwise against the other in addition to the remedies stated herein.
- 3.6 **Third Party Claims:** In the event that either party is found liable for damages to third parties as a result of the performance of services under this Agreement, each party will be financially responsible for the portion of damages attributable to its own acts and responsibilities under this Agreement.

4.0 **TREATMENT OF ASSETS**

- 4.1 **Property Title:** The Pictometry products are licensed through Pictometry International and are subject to the provisions of the Master Agreement between Pictometry International and Skagit County (see Exhibit B). The Customer is required to follow the terms and conditions of the "Pictometry Delivered Content Terms And Conditions Of Use" (see Exhibit B).
- 4.2 **Use of Property:** Any property furnished by County to Customer shall, unless otherwise provided in this Agreement, or approved by the owner, be used for the performance of this Agreement.
- 4.3 **Notification:** If any County property is lost or stolen the Customer shall immediately notify both Pictometry and the County and shall take all reasonable steps to protect the property.

5.0 **SERVICE CHARGES AND PAYMENT PROVISIONS**

- 5.1 **Pictometry Fees:** With Pictometry' s approval, the County is making Pictometry products available to Authorized Users as defined in the contract C20160494 between Skagit County and Pictometry (see Exhibit B). The Customer is listed as an Authorized Subdivision and therefore is eligible to purchase Pictometry products from the County (subject to the requirements outlined in Section 2.1, Acceptance of Completed Work, of this Agreement). There are three areas of potential cost within this Agreement. They include:
- **Flight Fees (Required):** The flight fees cover the cost of the aerial image acquisition, Electronic Field Study (EFS) software, and the ArcGIS Plug-in software to view the imagery and make measurements from the imagery. These are mandatory fees that must be paid by the Customer. A two tier fee structure was established to provide a simple and equitable cost plan (see Section 5.2, Pictometry Product Flight Fees).
 - **Extended Services Fees (Optional):** Although rare, the Customer may require extended support services which are services in addition to the "County's Responsibilities" as stated in Section 1.1. These extended services may include: additional training, technical support or other service that is related to the support of Pictometry products. This is an optional fee (see Sections 5.5 through 5.54).
 - **Pictometry Connect Licenses Fees (Optional):** Pictometry provides several ways to access the aerial image library. These include EFS software, ArcGIS Pictometry Plugin, and Pictometry Connect web access. EFS and the ArcGIS Plugin are included with the Flight Fees whereas Pictometry Connect is an additional cost.

Pictometry Connect provides most of the same functionality as EFS; however, it's accessed through a web browser. This gives the user the ability to access the image library anywhere they have an internet connection. Since this software is hosted by Pictometry, there is no need to install any software. This is the most flexible option provided by Pictometry to access the aerial imagery. However, there is an additional cost for this service. For more information see Section 5.6, Connect Online License Sharing.

- 5.2 Pictometry Product Flight Fees:** A two tier fee structure has been established to provide a simple and equitable cost plan for the purchase of Pictometry products for all Authorized Subdivisions. Tier one agencies are those agencies that have county-wide responsibilities. The costs for tier one agencies are \$7,500 per year for a total of \$15,000 over the term of this Agreement (2 year term). The tier two agencies are those agencies that have city-wide responsibilities. The cost for tier two agencies is \$5,000 per year for a total of \$10,000 over the term of this Agreement (2 year term). The Customer is considered a tier two agency and therefore shall pay a total of \$10,000 for a two year license of Pictometry products. The Pictometry Product Flight Fees include the sale tax.
- 5.3 Pictometry Product Flight Credits:** The primary intention of this Interlocal Agreement is to develop partnerships and work cooperatively with other agencies in order to reduce project costs and eliminate duplication of services. In the event that the income received from the partnership exceeds the yearly flight cost (\$59,654.06 plus tax), an equitable proportioned financial credit shall be provided to each partner agency. This situation may occur if additional agencies join the partnership. Reimbursements, if any, will be provided by the County at the end of each fiscal year.
- 5.4 Pictometry Product Payment Dates:** The first payment of \$5,000 is due one month after the Customer has received the Pictometry products. The second payment of \$5,000 is due no later than one year after the first payment due date.
- 5.5 Extended Service Rates:** As specified in Section 1.1.5 of this Agreement, the Customer may require extended support services which are services in addition to the "County's Responsibilities" as stated in Section 1.1. These extended services may include: additional training, technical support, product development, providing historic (2007, 2009, 2011, 2013 and 2015) Pictometry imagery, or other service that is related to the support of Pictometry products.

Rates are based on actual costs for services not fixed rates. Actual costs include overtime salary, benefits, and material costs. Overtime salary is used instead of straight time salary since all extended service work will be completed outside of the County's 40 hour work week.

Employees are paid at different rates depending on their job classification and seniority. The County shall assign personnel to the project based on the complexity of the task and resource availability. All efforts shall be made by the County to minimize costs to the Customer where possible. Labor rates may also change due to natural step increases or unexpected changes outside the County's budget process, such as, union negotiations, change in personnel, change in County employee's salary and benefits, or other unexpected costs. If requested, the

County will make available to the Customer a copy of the detailed expense report generated from the County's financial system.

All extended services shall require a signed Work Order as described in Section 5.5.1 of this Agreement.

5.5.1 Work Orders: If the Customer needs additional Pictometry support and the County has the technical expertise and available resources, the Customer may submit a Work Order which shall fully specify the services and deliverables to be provided (see sample Skagit County GIS Work Order Form, attached to this Agreement as Exhibit A). The Work Order Form shall also indicate the estimated cost and any other additional terms and conditions applicable to the service. The work estimates may not reflect the actual cost to complete the Work Order. The County will promptly inform Customer if actual costs will exceed the Work Order estimate by more than 20%. Work will commence only after both the service specification and the cost estimate, as described on the "Skagit County GIS Work Order Form" (Exhibit A) have been agreed to and approved by Customer. Costs resulting from changes (Change Orders) to the service specification contained on a Work Order requested by Customer that exceed the original cost estimate will be amended on the Work Order Form and initialed and dated by both parties. All work orders are to be governed by the terms of this Agreement unless otherwise specified in the Work Order.

5.5.2 Delegation of Work Order Assignments: County shall have the sole discretion to assign projects to the appropriate personnel considering personnel strengths, experience, work schedule and work load. The County also has the option to reject extended service requests.

5.5.3 Time Tracking and Reporting: County will track employee, time, and cost for each unique issue or work request. Each time the Customer communicates with the County to identify an issue or task that needs to be performed, a Work Order is created by the County. The Customer may inquire as to the status of any outstanding requests. The Customer acknowledges that the County may give priority to completing its tasks and work assignments as a Skagit County department and the Customer understands that its Work Order may be interrupted and delayed due to other Skagit County Business. It shall be County's responsibility to track and document each task so that the Customer has a clear understanding of the status of each request or task.

5.5.4 Overhead Costs: The County has an objective to ensure all costs of services provided to partner agencies are billed in full, including an indirect cost rate to cover overhead. The rate for the provided services is set at 15.6% for 2016. Invoices sent to the Customer shall include the salary and benefits, materials, and a 15.6% overhead cost. The overhead percentage shall be applied to the salary and benefits portion of the invoice. The rate may change periodically as new adjustments are applied and this Agreement shall use whatever is most current at the time of invoicing.

5.6 Connect Online License Sharing: As specified in section 1.1.6, the County and the Customer(s) have the ability to share a Pictometry Connect license package for access to the Pictometry Connect online service. Licenses are concurrent and organizations can have up to 5 times as many accounts set up as concurrent licenses. The Customer will annually notify the County how many licenses they desire and the County will divide up license packs and

calculate the cost per license. Fees may change periodically due to changes Pictometry makes to the license pack costs or due to the need to expand the total number of licenses required by the group of Pictometry Partners. The formula used to determine the per-year cost of an individual license is (Total License Cost) + (Sales Tax) / (Total Number of Licenses). For 2017, a license pack of 50 licenses costs \$2,200 plus \$187.00 for tax so each individual license costs \$47.74.

The County will send out invoices for the agreed upon number of licenses and provide the Customer with an Administration license account for their sub-organization. Each Customer organization will have to agree to the online terms and conditions for using Pictometry Connect when they first begin using the service (see Exhibit C). In addition, each Customer organization will be solely responsible to maintain the user license accounts for their individual organization. This is an optional cost to the Customer. If the Customer chooses not to purchase Pictometry Connect licenses, they can still access the aerial image library using Electronic Field Study software which is included in the Flight Fees.

The Pictometry Connect service will be turned off when the contract reaches its end date or if the contract is terminated.

- 5.7 Use of Pictometry Products by Contractors:** Pictometry will allow, under certain conditions, the Customer to provide Pictometry products to contractors that are performing services to the Customer for compensation. These conditions are described in Schedule B, Sections 1, 2, and 3, of the Master Agreement between Pictometry International and Skagit County (see Exhibit B). Written notice to Pictometry is required prior to granted access to Delivered Content. Exhibit D includes Pictometry's "Authorized Sub User Agreement". The Customer is responsible for adhering to Pictometry's terms and conditions of the Master Agreement between Pictometry International and the County (Exhibit B).

6.0 AGREEMENT TERM AND TERMINATION

- 6.1 Agreement Term:** This Agreement commences upon execution by signature of both parties and shall terminate 2 years after the execution date.
- 6.2 Termination:** Any party hereto may terminate this Agreement upon thirty (30) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.
- 6.3 Termination for Cause Right to Cure and Payment:** If the County or Customer does not fulfill in a timely and proper manner their performance obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will correct the violation or failure within 30 working days. If the failure or violation is not corrected, this Agreement may be terminated immediately by written notice from the aggrieved party to the other party. Upon termination of this Agreement for cause, Customer will pay for services rendered prior to the effective date of the termination. An equitable adjustment in the agreement price for partially

completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work.

7.0 MISCELLANEOUS AGREEMENT PROVISIONS

- 7.1 Payment of Taxes:** If the County is required to pay sales or use tax in order to provide service under this Agreement, such taxes will be billed to Customer.
- 7.2 Invoices and Late Payment:** The County will invoice Customer when products are delivered and accepted. Payment is due upon receipt of invoice by Customer and becomes delinquent 30 days thereafter. A late payment charge may be applied to any remaining balance 60 days after invoice. Late payment charges, if any, will be imposed on the unpaid balance at the rate of 1% per month. Agreements with balances more than 90 days past due may be terminated under the TERMINATION FOR CAUSE provision of this Agreement, and services discontinued. Amounts disputed by the Customer are not subject to late payment charges.
- 7.3 Disputes:** The Customer will promptly notify the County of disputes regarding invoices, or of services which the Customer believes do not conform to the agreed upon terms of this Agreement or Work Order.
- 7.4 Venue and Choice of Law:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the law of the State of Washington.
- 7.5 Assignment:** This Agreement may not be assigned by either party to a third party without the prior written consent of both County and Customer.
- 7.6 Waiver:** Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.
- 7.7 Severability:** In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this Agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

7.8 Party Representatives: Listed below are the parties' representatives for purposes of carrying out this Agreement. All notices and communications which may be required by this Agreement shall be in writing and may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

Customer: City of Burlington
833 South Spruce Street
Burlington, WA 98233

Contact: Marv Pulst, P.E., Public Works Director
Telephone Number: (360) 755-1334
E-mail: marvp@burlingtonwa.gov

County: Skagit County, GIS Department
1800 Continental Place
Mount Vernon, WA 98273

Contact: Geoffrey Almvig, GISP, GIS Manager
Telephone Number: 360-416-1131
E-mail: geoffa@co.skagit.wa.us

DATED this _____ day of _____, 2017.

CITY OF BURLINGTON

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Steve Sexton, Mayor

Ron Wesen, Chair

Approved as to form:
Leif Johnson, City Attorney

Kenneth A. Dahlstedt, Commissioner

Renee C. Sinclair, Director of
Budget & Accounting

Lisa Janicki, Commissioner

Attest:

For Contracts under \$5000
Authorization per Resolution R20030146

Clerk, Board of County Commissioners

County Administrator

Recommended:

Department Head

Approved as to form:

Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Risk Manager

Budget & Finance Director

Exhibit A

The following is a Skagit County GIS Work Order Form sample as specified in the Section 5.5.1 (Work Order) of the Agreement:

Skagit County GIS Work Order

REQUESTED BY:		WORK APPROVAL SIGNATURE: X
		W.O. NUMBER: GIS-MMDDYYYY-001

W.O. DATE	REQUESTED BY	WORK BY	INVOICE # FOR BILL	TERMS
				Net 30

PRODUCT	DESCRIPTION	APPROX. HOURS / QNTY	RATE	AMOUNT
<u>Note:</u> This information serves as a cost estimate only and not an invoice or bid. The costs are based on a cost allocation and time and materials and may vary from the initial estimate by 10%. We will contact you if these costs appear to be greater than 10%.		Subtotal		
		Sales Tax		N/A
		Shipping & Handling		
		Other		
		TOTAL COST ESTIMATE		\$0

COMMENTS: <u>Cost Estimate Only</u>	
Authorized by:	Date:

Exhibit B

Master Agreement between Pictometry International and Skagit County

(Authorized Subdivisions are required to follow the conditions set forth in this Master Agreement)

Exhibit C

Pictometry Online Services General Terms and Conditions

Exhibit D

Pictometry's Authorized Sub User Agreement



ITEM #: 4

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: March 23, 2017

Subject: Indigent Defense: 1. Inter-Local Agreement with the City of Mount Vernon to administer and fund a Public Defense Auditor contract; and 2. Public Defense Auditor contract;

Attachments: 1. Inter-local Agreement - City of Mount Vernon

Public Hearing Required: YES () NO (X)

2. Public Defense Auditor Contract – Snohomish

County Public Defender Association

SUMMARY

It is likely that supervision of the Burlington and Mount Vernon municipal court indigent defense system 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. Inter-Local Agreement with Mount Vernon to administer and fund a Public Defense Auditor contract:

An inter-local agreement has been drafted to administer and fund a joint Burlington – Mount Vernon contract with a Public Defense Auditor. The proposed inter-local agreement is for a four year period, and is funded 60% by Mount Vernon, and 40% by Burlington.

2. Public Defense Auditor Contract: Following an extensive RFQ, screening and interview process, the Mayors of Burlington and Mount Vernon have selected the Snohomish County Public Defender Association to serve in the position of Public Defense Auditor. A copy of the draft proposed contract is attached. The contract is for a four year term, commencing upon expiration of the Public Defense Supervisor's term, but no sooner than April 1, 2017. The first year total cost is \$76,920 (with Burlington responsible for 40% or \$30,768). A discussion of the selection process and of the contractor's qualifications will be provided at the council meeting.

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF MOUNT VERNON
AND
THE CITY OF BURLINGTON
FOR PUBLIC DEFENSE AUDITOR SERVICES**

WHEREAS, the City of Mount Vernon (hereinafter "Mount Vernon") and the City of Burlington (hereinafter "Burlington") are municipal corporations organized under the laws of the State of Washington, and

WHEREAS, the Interlocal Cooperation Act Chapter 39.34 RCW authorizes municipal corporations to contract with one another to perform any act that each is independently authorized to perform, and

WHEREAS, the parties wish to provide for a joint contract with a Public Defense Auditor to perform audit services relating to quality assessment and quality control of the provision of public defense services by the Cities' primary Public Defender as well as their Conflict Counsel within the context of the Cities' criminal justice system in order to maintain a robust system of Public Defense conforming to adopted Standards, NOW, THEREFORE

The Cities of Mount Vernon and Burlington have entered into this Interlocal Agreement ("ILA") in consideration of the mutual promises set forth herein and the mutual benefits to be derived in exercise of the authority granted by the Interlocal Cooperation Act Chapter 39.34 RCW.

1. Purpose of the ILA. The purpose of this ILA is to provide for the funding of a joint contract with a Public Defense Auditor. These services may be provided by an independent contractor or through a contract with a public defense agency. One of the primary purposes of this interlocal agreement is to establish a separate and independent audit structure to assist the Cities in maintaining compliance with the Public Defense Standards which they have respectively adopted. The parties state their intent to provide an atmosphere free of political influence in which the Public Defense Auditor can be guided by the Standards in the assessment of the Public Defender and Conflict Counsel. A contract with the Public Defense Auditor will accordingly include, but is not limited to, provisions which:

1.1 Provide the Public Defense Auditor adequate latitude to identify the amount of time which the Public Defense Auditor devotes to complaint review, resolution of complaints, in-court observation, review of de-identified case file information and rights, and the recommendation of remedial measures as the Public Defense Auditor deems necessary to address problems in the public defense system.

1.2 Provide for termination of the contract only “for cause” with an option for review of any early termination “for cause” in a binding arbitration procedure.

1.3 Provide for establishment of a contract cycle which does not coincide with the election cycles of the Cities’ Mayor or Council Members.

2. Scope of Work; Public Defense Auditor. A Scope of Work for the position is attached as Exhibit A, incorporated by this reference as fully as if herein set forth.

3. Process to Fill the Position. The Public Defense Auditor will be selected by the Mayors from a list of three possible candidates admitted to them by a selection committee. The respective City Councils will confirm appointment of the Public Defense Auditor by their approval of a contract. A selection committee will be appointed by the Mayor and will include one representative from each Cities’ administrative staff and at least three members who are neither employed by the Cities, the Municipal Court or the District or Superior Court of Skagit County. Police officers, prosecutors and members of the Cities’ City Attorney offices will not participate in the selection process. The committee will include members with relevant legal experience, such as retired judges, members with a criminal defense background, preferably with public defense experience and a social service provider familiar with the social service needs of Skagit County and the residents of the Cities. Recommendations for panel members will be solicited from, among others, Plaintiff’s counsel in Wilbur, the Public Defense Supervisor, the Washington State Office of Public Defense, the Washington Defender Association, the Washington Association of Criminal Defense Lawyers and the Skagit County Bar Association.

At the Mayors’ discretion, the selection committee may be expanded if, in the opinion of the Mayors, additional qualified candidates will improve the process, provided, however, that in all events, the majority of the committee shall be individuals who are neither appointed nor elected officials of the Cities, nor employees of the Cities or the Courts. The selection committee will be staffed by the Cities’ Contract Administrator. Reasonable travel and other expenses will be provided by the Cities.

4. Reports. The Public Defense Auditor shall provide at least two biannual reports to the Mayors and City Councils regarding the performance of the Public Defender and Conflict Counsel as well as the operation of the Public Defense System in the context of the Cities’ criminal justice system. A report will be provided by the Public Defense Auditor in conjunction with preparation of the Cities’ annual budgets (“Budget Report”) of each year in order that it may be available to the Mayors in the preparation of the Mayors’ budgets and reviewed by each City Council in the budget process. The reports are described in Exhibit A, Scope of Work. Each Mayor designates the Burling City Administrator as the City official responsible for receipt of reports of the Public Defense Auditor. Changes in the designated official shall be provided in writing to the other City, the Contract Administrator and the Auditor. The designated City official will inform the Mayors and City Councils for each City of his or her agreement or disagreement with the Public Defense Auditor’s recommendations, the steps which have been taken to correct performance issues as well as implement improvements in the public defense system and any response to the Public Defense Auditor’s comments regarding the proposed public defense budget (in the annual budget report.)

5. Cost Sharing. The Cities shall share the costs of the Public Defense Auditor on a pro-rata basis based upon the number of case filings assigned to the Public Defender in the previous calendar year. For the initial year of the Public Defense Auditor's term and contract and this Interlocal Agreement the percentage is stipulated to be: Mount Vernon sixty percent (60%) and Burlington forty percent (40%). Either party may request reassessment of this percentage by providing ninety (90) calendar days notice to the other party. The Cities will meet and confer in order to determine whether any adjustment in the percentage is appropriate. In the event the parties cannot agree, the dispute will be addressed in accordance with Section 12 Dispute Resolution. In the event of arbitration, the arbiter shall be guided by the public defender case assignments of each City for the preceding three (3) years with an emphasis on the preceding year.

5.1 The City of Burlington shall be responsible for making monthly payments to the Public Defense Auditor. At the discretion of the parties, the City of Burlington may provide a monthly statement to the City of Mount Vernon. Regardless of billing, both parties shall be responsible for its respective share of the contract cost of Public Defense Auditor's services provided under a contemporaneous contract between the parties and the Public Defense Auditor.

5.2 In entering into this Interlocal Agreement, Mount Vernon and Burlington have considered, pursuant to RCW 39.34.180, the estimated costs of services, anticipated and potential revenues available to fund the services and fee component.

6. Term. This ILA shall commence when approved by both parties and posted on either parties' website. The ILA expires on June 30, 2021. The ILA may be extended by the mutual agreement of the parties. This Agreement may not be terminated prior to the expiration of its term without the express consent of both parties coupled with a termination of the underlying contract with the Public Defense Auditor.

7. Indemnity. The parties shall each indemnify the other as follows:

7.1 Mount Vernon Indemnity. Mount Vernon shall each protect, indemnify, and save harmless Burlington, its officers, elected officials, agents, volunteers, and employees from any and all costs, claims, judgments, or awards of damages (including costs and all attorney fees), arising out of or in any way resulting from the negligent acts, errors or omissions of Mount Vernon, its officers, employees, and agents in performing this ILA.

7.2 Burlington Indemnity. Burlington shall each protect, defend, indemnify, and save harmless Mount Vernon, its officers, employees, and agents from any and all costs, claims, judgments, or awards of damages, arising out of or in any way resulting from the negligent acts, errors, or omissions of Burlington, its officers, employees, or agents in performing this ILA. To, but only to the extent necessary to indemnify Mount Vernon from loss, Burlington waives its indemnity under Title 55 RCW.

7.3 Survival of Indemnitees. The provisions of this Section and its subsections shall survive the expiration or termination of this ILA.

8. Actions Contesting ILA. Each party shall appear and defend any action or legal proceeding brought to determine or contest: (i) the validity of this ILA and/or (ii) the legal authority of Burlington and/or Mount Vernon to undertake the activities contemplated by this ILA. If both parties to this ILA are not named as parties to the action, the party named shall give the other party prompt notice of the action and such party shall move to intervene. Each party shall bear any costs and expenses taxed by the court against it separately, provided any costs and expenses assessed by a court against both parties jointly shall be shared equally.

9. Financing. Except as specifically provided herein, there shall be no financing of any joint or cooperative undertaking pursuant to this ILA. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this ILA.

10. Property. This ILA does not provide for the acquisition, holding, or disposal of real or personal property.

11. Joint Administrative Board. No separate legal or administrative entity is created by this ILA. To the extent necessary, this ILA shall be administered by the City Administrator for Burlington or his/her designee, and the City Administrator Mount Vernon or his/her designee as a Joint Administrative Board.

12. Dispute Resolution. It is the parties' intent to resolve any disputes relating to the interpretation or application of this ILA informally through discussions at staff level. If a dispute arises from or relates to this ILA or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation before resorting to arbitration. The mediator may be selected by agreement of the parties or if they cannot agree, through the Federal Mediation and Conciliation Service (FMCS). Following mediation, any unresolved controversy or claim arising from or relating to this ILA or breach thereof shall be settled through binding arbitration. The arbitrator may be selected by agreement of the parties or through the FMCS. All fees and expenses for mediation or arbitration shall be borne by the parties equally; however, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

13. Independent Contractor. Each party to this ILA is an independent contractor with respect to the subject matter herein. Nothing in this ILA shall make any employee of Burlington/Mount Vernon employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded Mount Vernon employees by virtue of their employment. Nothing in this ILA shall make any employee of Mount Vernon a Burlington employee for any purpose, including but not limited to for withholding taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded Burlington employees by virtue of their employment. At all times pertinent hereto, employees of Mount Vernon are acting as Mount Vernon employees and employees of Burlington are acting as Burlington employees.

14. Notices. Any notice or other communication given hereunder shall be deemed sufficient, if in writing and delivered personally to the addressee, or sent by certified or registered mail, return receipt requested, addressed as follows, or to such other address as may be designated by the addressee by written notice to the other party:

City of Mount Vernon:

Peter Donovan
910 Cleveland Avenue
PO Box 809
Mount Vernon WA 98273

City of Burlington:

Bryan Harrison, City Administrator
833 S. Spruce Street
Burlington WA 98233-2810t

15. Partial Invalidity. Whenever possible, each provision of this ILA shall be interpreted in such a manner as to be effective and valid under applicable law. Any provision of this ILA which shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.

16. Assignability. The rights, duties, and obligations of either party to this ILA shall not be assignable.

17. Entire Agreement. This ILA contains the entire understanding between the parties and supersedes any prior understandings and agreements between them regarding the subject matter hereof. There are no other representations, agreements, or understandings, oral or written, between the parties hereto relating to the subject matter of this ILA. No amendment of, or supplement to, this ILA shall be valid or effective unless made in writing and executed by the parties hereto.

18. Recording. Consistent with RCW 39.34.040, this ILA shall be posted on either Mount Vernon's or Burlington's respective websites listed by subject matter.

19. Insurance. Each party shall be responsible for maintaining its own insurance.

DATED this ____ day of _____, 2016.

CITY OF MOUNT VERNON

By: _____
Mayor Jill Boudreau

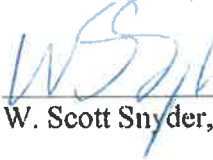
Approved as to form:

By: 
W. Scott Snyder, Special Counsel

CITY OF BURLINGTON

By: _____
Mayor Steve Sexton

Approved as to form:

By:  _____
W. Scott Snyder, Special Counsel

PROFESSIONAL SERVICES CONTRACT FOR PUBLIC DEFENSE AUDITOR

THIS AGREEMENT, made and entered into between the City of Burlington and the City of Mount Vernon, hereinafter referred to as "Cities" and the Snohomish County Public Defender Association, a Washington non-profit corporation, hereinafter referred to as the "Contractor";

WHEREAS, the Cities desire to engage the professional services and assistance of a consulting firm to provide the services of a public defense auditor;

NOW, THEREFORE, in consideration of mutual benefits accruing, it is agreed by and between the parties hereto as follows:

1. **Scope of work.** The scope of work shall include all services and material necessary to accomplish the above-mentioned objectives in accordance with the Scope of Services that is marked as Exhibit A, attached hereto and incorporated herein by this reference.

2. **Duration of Contract.** This Contract shall be effective and services commence ten calendar days following written notice to proceed from the Cities, with an anticipated start date of April 1st, 2017, and shall terminate four years from the date commenced, unless extended or terminated earlier. The Contractor shall perform the work authorized by this Agreement promptly in accordance with the receipt of the required governmental approval.

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

2.1.1 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.

2.1.2 The suspension or loss of a license to practice law in the State of Washington or conviction for a felony of the Contractor's designates service provider.

2.1.3 By the death, disability or resignation of the prime service provider.

2.1.4 By mutual agreement of all the parties hereto.

3. **Compensation.** The Cities will pay the Contractor provided hereunder as set forth in Exhibit B, attached hereto and by this reference made part of this contract.

4. **Services Provider.** Jennifer Rancourt shall be the sole service provider. The duties of the Auditor shall not be delegated without the express written consent of the Cities.

5. **Ownership and use of documents.** All research, tests, surveys, preliminary data and any and all other work product prepared or gathered by the Contractor in preparation for the services rendered by the Contractor under this Agreement shall be and are the property of the Contractor, provided, however, that:

A. All final reports, presentations and testimony prepared by the Contractor shall become the property of the Cities upon their presentation to and acceptance by the Cities and shall at that date become the property of the Cities.

B. The Cities shall have the right, upon reasonable request, to inspect, review and copy any work product during normal office hours. Documents prepared under this agreement and in the possession of the Contractor may be subject to public records request and release under Chapter 42.56 RCW.

C. In the event that the Contractor shall default on this Agreement, or in the event that this Agreement shall be terminated prior to its completion as herein provided, the work product of the Contractor, along with a summary of work done to date of default or termination, shall become the property of the Cities and tender of the work product and summary shall be a prerequisite to final payment under this Agreement. The summary of work done shall be prepared at no additional cost.

6. **Hold harmless agreement.** The Contractor shall hold harmless, indemnify and defend the Cities, their officers, officials, employees and agents from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever including costs and attorney's fees in defense thereof, for injuries, sickness, disability or death to persons or damage to property or business, caused by or arising out of the Contractor's acts, errors or omissions in the performance of this Agreement or those of the Contractor's employees, agents, or subcontractors. PROVIDED HOWEVER, that the Contractor's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the Cities, their officers, officials, employees or agents. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the Contractor's indemnity obligation hereunder shall apply only to the percentage of fault attributable to the Contractor, its employees, agents, or subcontractors.

With respect to the Contractor's obligation to hold harmless, indemnify and defend provided for herein, but only as such obligations relate to claims actions or suits filed against the Cities, the Contractor further agrees to waive its immunity under the Industrial Insurance Act, Title, 51 RCW, for any injury or death suffered by the Contractor's employees caused by or arising out of the Contractor's acts, errors or omissions in the performance of this agreement. This waiver is mutually negotiated by the parties.

The Contractor's obligation hereunder shall include, but is not limited to investigating, adjusting and defending all claims alleging lost from action, error, or omission or breach of any common law, statutory or other legated duty by the Contractor, Contractor's employees, agents or subcontractors.

7. **General and professional liability insurance.** The Contractor shall obtain and keep in force during the terms of the Agreement, or as otherwise required, the following insurance

with companies or through sources approved by the State Insurance Commissioner pursuant to Title 48 RCW.

Insurance Coverage

- A. Worker's compensation and employer's liability insurance as required by the State.
- B. Commercial general liability and property damage insurance in an aggregate amount not less than two million dollars (\$2,000,000) for bodily injury, including death and property damage. The per occurrence amount shall be written with limits no less than one million dollars (\$1,000,000).
- C. Vehicle liability insurance for any automobile used in an amount not less than a one million dollar (\$1,000,000) combined single limit.
- D. Professional liability insurance in the amount of one million dollars (\$1,000,000).

Excepting the Worker's Compensation Insurance and Professional Liability Insurance secured by the Contractor, the Cities will be named on all policies as an additional insured. The Contractor shall furnish the Cities with verification of insurance and endorsements required by the Agreement. The Cities reserves the right to require complete, certified copies of all required insurance policies at any time.

All insurance shall be obtained from an insurance company authorized to do business in the State of Washington. The Contractor shall submit to the Cities a verification of insurance as outlined above within fourteen days of the execution of this Agreement.

No cancellation of the foregoing policies shall be effective without thirty days prior notice to the City.

The Contractor's professional liability to the City shall be limited to the amount payable under this Agreement or one million dollars (\$1,000,000), whichever is the greater, unless modified elsewhere in this Agreement. In no case shall the Contractor's professional liability to third parties be limited in any way.

8. **Discrimination prohibited.** Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, sexual orientation, marital status, veteran status, liability for service in the armed forces of the United States, disability, or the presence of any sensory, mental or physical handicap, or any other protected class status, unless based upon a bona fide occupational qualification.

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

10. **Integration.** The Agreement between the parties shall consist of this document, the Scope of Services attached hereto as Exhibit A, and the Fee Schedule attached hereto as Exhibit B. These writings constitute the entire Agreement of the parties and shall not be amended except by a writing executed by both parties. In the event of any conflict between this written Agreement and any provision of Exhibits A or B, this Agreement shall control.

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

12. **Standard of Care.** Consultant represents that Contractor has the necessary knowledge, skill and experience to perform services required by this Agreement. Contractor and any persons employed by Contractor shall use their best efforts to perform the work in a professional manner consistent with sound practices, in accordance with the schedules herein and in accordance with the usual and customary professional care required for services of the type described in the Scope of Services.

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

14. **Non-assignable.** The services to be provided by the Contractor shall not be assigned or subcontracted without the express written consent of the Cities.

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

The Contractor specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.

16. **Notices.** Notices to the Cities shall be sent to the following address:

**City Administrator
City of Burlington
833 South Spruce Street
Burlington, WA 98233**

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

**Snohomish County Public Defender Association
2722 Colby Avenue, Suite 200
Everett, WA 98201**

Receipt of any notice shall be deemed effective three days after deposit of written notice in the U.S. mails, with proper postage and properly addressed.

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: _____

Print Name: _____

EXHIBIT A

SCOPE OF WORK Public Defense Contractor

The Public Defense Contractor is responsible for quality assurance, quality control review, and assessment of the Cities' Public Defense System, as well as for recommending to the Cities remedial actions, training, funding adjustments, and other actions appropriate to maintenance of a robust Public Defense System, fully compliant with the Public Defense Standards adopted by the City Councils in February 2016, as such Standards now exist or may be amended. The Contractor shall also familiarize himself with the reports of the Public Defense Supervisor as well as the forms and systems which have been put into place.

The Contractor shall: 1-assess the performance of defense counsel, as described below; 2- work with the Public Defense Contract Administrative Assistant to improve City public defense procedures; 3-review and comment on the proposed public defense budget, 4-report to the Cities' Mayors, Councils and designated administrative authority about the status of public defense and public defense budgets, and 5-convene and facilitate discussion by key stake holders of how to establish a community court and diversion system. Such duties shall include, at minimum, the items listed below. Estimates of the time required to fulfill these duties are set forth in Section II below.

SECTION I DUTIES

A. Public Defense Providers: The Contractor serves as the evaluator of the services provided by the Cities Public Defense Providers. The Contractor is responsible for assessment of Public Defense Providers' adherence to the Standards adopted by the City as well as the constitutional obligations of defense counsel. The Contractor shall be familiar with the December 4, 2013 Memorandum and Decision in *Wilbur v. Mt. Vernon, et al.* The Contractor shall evaluate the Public Defense Providers, counsel and a consult with them regarding performance to the extent consistent with the Contractor's role, and report periodically to the Cities through their Contract Administrator and other city officials. The following list is illustrative and is not intended to limit the discretion of the Contractor to evaluate and promote a robust public defense system which complies with the Cities adopted Standards and state and federal constitution. The Contractor will document any violation of the Standards and contract as well as all reviews, evaluations and assessments referenced below.

1. Timely and confidential client meetings. Evaluate whether Public Defense Providers are making contact, either in person or by phone, in a confidential setting with each new client within seventy-two (72) hours of appointment. The Contractor will review the reason(s) documented by the Public Defense Provider for any failure and whether an opportunity for confidential communications occurred prior the client's first court hearing.

2. Performance of certain tasks during the first client meeting. Evaluate

whether the Public Defense Providers perform the following tasks when they first meet with the client:

- (a) Advise the client of their right to jury trial and their right to a speedy trial;
- (b) Advise the client of the elements of the charge and that the prosecutor must prove each element beyond a reasonable doubt to obtain a conviction;
- (c) Advise the client of the right to present a defense;
- (d) Advise the client that it is solely the client's decision whether to accept or reject a plea offer; and
- (e) Discuss with the client any potential witnesses or avenues of investigation.

3. Evaluation of the client's competency and needs. Evaluate the Public Defense Provider's first contact with clients, and whether the Public Defense Providers are determining if each client:

- (a) Appears competent to proceed with the court process;
- (b) Has a sufficient literacy level to understand written court documents such as the guilty plea form and sentencing orders;
- (c) Needs an interpreter; and
- (d) Is a non-citizen in need of expert immigration advice.

4. Appropriate response to information provided by client. Evaluate whether the Public Defense Providers are responding appropriately to information provided by the client and discovery obtained in each case, including pursuing additional discussions with the client, investigations, medical evaluations, legal research, and other appropriate responses as suggested by the circumstances.

5. Client communications and complaints. The Contractor shall review Public Defense Provider's adherence to the policies established by the Public Defense Supervisor for responding to all client contacts and complaints (including jail kites), as well as the length of time in which a response must occur. The Contractor shall review disposition of client complaints by the Public Defense Providers. Unresolved complaints shall be addressed in accordance with the policy created by the Public Defense Supervisor.

6. Use of interpreters, translators, investigators, and other available resources. Evaluate whether the Public Defense Providers are appropriately using interpreters, translators, investigators and other resources. Review the use of these resources.

7. Role of advocate in courtroom. Evaluate courtroom proceedings to ensure that the Public Defense Providers are fulfilling their role as advocates before the court on the client's behalf.

8. Full advisement and options. Evaluate whether the Public Defense Providers are fully advising clients of their options regarding possible dispositions, including information on treatment services, any options for less onerous disposition based on treatment, explanation of plea offers, the consequences of a conviction, the conditions that are normally imposed at sentencing, any applicable immigration consequences, and any other consequences about which the client expresses concern.

9. Adequate recording keeping. Evaluate whether the Public Defense Providers are complying with contract terms regarding the maintenance of contemporary records on a daily basis and providing the reporting required by contract.

10. Evaluate appropriate allocation of cases. Evaluate whether cases are being allocated to each Public Defense Service Provider in consideration of existing workload, the seriousness of the charges, any factors that may make a case more complex or time consuming, and the attorney's experience level.

11. Review of Public Defender's Files. Select and review randomly chosen files from each Public Defender to ensure that the necessary tasks are being performed and documented, with appropriate time spent on each task. Review shall be of "de-identified" files in a manner which fully acknowledges and preserves the attorney/client privilege. No client file, however, de-identified, shall be reviewed if the client fails to consent to review of his or her file. A system to document the client's consent or refusal of review shall be created.

12. Report of Data. Review the reports of Public Defense Providers to ensure compliance with the Standards and Contract. Review reports to assure that they are being provided in accordance with the reporting system established by the Public Defense Supervisor.

B. City Public Defense Contract Administrator: The Contractor shall meet with the Cities' Contract Administrator to review the Cities' public defense procedures, including assigning cases to the conflict counsel panel, recruiting, evaluating and retaining a qualified and robust conflict counsel panel, and receiving and reviewing complaints regarding the Cities Public Defense System and counsel.

The Contract Administrator and Contractor shall review at least quarterly the closed case reports filed by the Cities' primary public defense firm, the hours spent on each case and in total, and the disposition of each case.

The Contract Administrator and Contractor shall review reports filed monthly by the Cities' primary public defense firm which reports shall detail the number of cases assigned to the firm and individually to each attorney and, (redacted of client identifying information), work done by staff investigators and attorneys, detailing jail visits, legal research, investigation, client

meetings, and other information contained in the reports now provided by the firm to the Cities.

The Contract Administrator and Contractor shall review and comment on the procedures for soliciting Requests for Qualifications (RFQs) for public defense services and the procedures for assessing any request to extend an existing public defense contract.

The Contractor will provide to the Contract Administrator and City Administrators the Contractor's assessment of whether the Cities' Public Defense System (a) provides actual representation of and assistance to individual criminal defendants including reasonable investigation and advocacy, and where appropriate, adversarial testing of the prosecutor's case and (b) complies with all provisions of the Public Defense Provider's Contract and the Cities' Standards. Whenever improvement is required, the Contractor should meet with the Contract Administrator and City Administrators to advise how the Public Defense Providers' services and the Public Defense System can be improved.

The Contractor shall be available to consult with the Contract Administrator regarding issues related to public defense services or issues that may affect public defense services that may arise during the year.

C. Budgets: The Contractor shall be provided with the adopted public defense budget for the year in which he/she is appointed, and with a report of the prior year's adopted budget vs. actual expenditures, in time for the Contractor to provide timely and meaningful recommendations about the proposed public defense budget for the following year. The Contractor's recommendations shall be provided in writing to the person each City timely identifies as responsible for development of the proposed budget. That City employee shall meet and confer with the Contractor about the Contractor's recommendations.

D. Reports to City Administrators and Elected Officials: On or about April 1 and October 1 of each year, the Auditor shall report in writing to the Mayor, City Council, and designated City Administrators regarding the Public Defense System, in light of the Public Defense Standards.

The Reports shall be specific to each City and shall include a summary of the Auditor's observations of defense counsel, evaluation of reports filed by the defense firm and conflict counsel; discussion of the impact of the budget, and evaluation of procedures for any RFQ for public defense services or extension of an existing contract contemplated by the Cities.

The Reports shall assess the performance of the Cities' Public Defense Contractors and address any impediments to the delivery of public defense services in the City's Criminal Justice System, including screening and court procedures.

The Reports shall detail the impact of actions taken by other participants in the Criminal Justice System (for example changes in filing practices or jail operations), upon the delivery of public defense services.

The October Report shall review the proposed public defense budgets in light of the

Cities' projected public defense caseloads; and include recommendations related to the Cities' public defense and criminal justice systems, including appropriate changes, if any, to the Public Defense Standards.

If at any time during the year the Auditor has concerns about the City Public Defense System or the impact of a policy on public defense, he or she shall raise the issue in advance of the April and October Report dates.

E. Projects Impacting Public Defense and Criminal Justice Systems. Recognizing that the primary function of the Auditor is monitoring the provision of public defense services, the Public Defense Auditor may be asked to convene and facilitate discussion of projects relating to the Criminal Justice System which impact the provision of Public Defense Services. As an example, the Cities may ask the Auditor to convene and facilitate discussion of how to establish a Community Court and diversion program for the Cities

SECTION II ² TIME REQUIRED

A. Introduction.

Attorneys in the public defense system for the Cities of Burlington and Mount Vernon represent 1200-1600 indigent clients per year. Public defense attorneys must appear in three physically separated courts: the Mount Vernon Municipal Court, the Burlington Municipal Court, and the Skagit County District Court (located in the Skagit County Jail building). Few if any opportunities now exist for the Cities' stakeholders--police, jail, court, prosecution, public defense, county probation, and ordinary citizens--to discuss and act on systematic criminal justice issues, such as court scheduling and the new Skagit County jail. Discussion with the courts is a challenging part of the Auditor's role.

The Public Defense Auditor will assess the quality of the public defense systems of the Cities of Mount Vernon and Burlington on an ongoing basis, including assessment of information reported by the primary public defense provider and by conflict panel attorneys. In addition to assessing the quality of public defense, the Auditor should be a bridge between stakeholders and provide a public defense perspective on systemic criminal justice issues.

B. Duties and time estimates.

The Auditor's duties, as described in Section I of this Scope of Work, include review of unresolved complaints and disposition of resolved complaints, assist in resolution of complaints, in-court observation of attorneys from the office of the primary defender and a six to eight attorney conflict panel, review of case information reported by primary provider and conflict attorneys, recommendation of measures to address systematic issues, the impact of systematic changes by others in the criminal justice system (e.g. jail or court scheduling), budget review and comments, and two written reports each year. The time demands of the Auditor's work will vary and the following time estimates are conservative:

Review monthly primary defender reports (now provided in Excel) with Public Defense Administrative Assistant (PDAA), and consult with primary defender as needed	.5 day/month
Review quarterly Conflict Counsel reports with PDAA, consult with conflict counsel as needed Estimated 1 day/quarter-averaged to .33/month	.33 day/month
Review 2 closed cases per primary defender attorney per/month, including police reports, client file to extent possible, court file and Judicial Information System (JIS) docket. Estimated 10 files/month/45-60 min per file	1 day/month
Observe combination of primary defender and conflict panel attorneys on out of custody calendars, in custody calendars in the jail, motion calendars, trials, consult with attorneys and primary defender supervisor	2 day/month
Obtain transcripts of court proceedings trials, review with attorney and supervisor. 5 day/month	.5 day/month
Consult with PDAA regarding comments, both resolved and unresolved complaints and follow up, as needed	.5 day/month
Consult with PDAA on issues that arise, e.g. jail access, recordings, and observe screening and appointment process	.5 day/month
Review public defense budget, including budget for primary provider and conflict counsel, expert services ordered by the court, PDA cost, prior year budget to actual. Estimated 2 days per/year	1.5 hrs/month*
Write April report for each City, which must include summary of work, observations and recommendations Estimated 2 days/year	1.3 hrs/month*
Write October report for each City, which must include comments/analysis and recommendation on proposed public defense budget in light of past expenditures, case projections and potential impacts on public defense system of changes in the justice system. Report to City Councils. Estimated 3 days/year 1.5 hrs/month*	1.5 hrs/month*
Consult with PDAA generally e.g. conflict counsel recruitment, retention, applications, meeting with new applicants at their offices, miscellaneous public defense issues Estimated 1.5 day/ year	1 hr/month*
Review PDAA work for adherence to procedures, discuss conclusions and recommendations with PDAA. Estimated half day per quarter, two days per year.	1.33 hr/month*
Subtotal known average time/month 6.48 day/month	6.48 day/month
Discuss with City representatives about systematic issues such as: establishment of a community court and diversion system, configuration of Mount Vernon courtroom to provide space for confidential communication, remodel of Burlington Municipal courtroom contemplated by City of Burlington, impact of new Skagit County Jail now under construction, future issues such as client survey 1 day/month	1 day/month
Total Estimated Monthly Average	7.48 day/month

*Estimate of hours per month is total time needed, for example two days, to write April report, divided by months of the year to arrive at an average number of hours per month, though the total time will probably be spent in a single month. The monthly average hours totaled, divided by 8 hours/day are included in estimated monthly total days. If the Cities ask the Auditor to convene discussion of how to establish a community court and diversion system, the Auditor and Cities will review the duties, time estimates and compensation to assure that the primary duty of the Auditor for quality assurance, quality control review and assessment of the Public Defense System is not negatively impacted.

Please note that this estimate of the time required does not include travel time either to the Cities or between the Courts nor office administrative time.

EXHIBIT B

COMPENSATION

In consideration for the services provided under this contract, the Cities agree to pay the Contractor as follows: First Year: \$76,920.00, total, at a rate of \$6,410.00 per month; Second Year: \$79,227.60 total (3% increase), at a rate of \$6,602.30 per month; Third Year: \$81,604.43 total (3% increase), at a rate of \$6,800.37 per month; and Fourth Year: \$84,052.56 total (3% increase), at a rate of \$7,004.38 per month. Payment will be made by the Cities upon submission of monthly vouchers by the Contractor.

The Cities will pay the Contractor for travel outside of Skagit and Snohomish Counties and other extraordinary expenses necessitated by the work under the contract. The Contractor shall submit an invoice to the Cities for any such expenses incurred.