

**CITY COUNCIL AGENDA**  
**City Hall, 833 South Spruce Street**  
**7:00 p.m. April 13, 2017**

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**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, Ward, Yengoyan

**MINUTES:**

City Council Meeting March 23, 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

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**UNFINISHED BUSINESS:**

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**CONSENT AGENDA:**

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**NEW BUSINESS:**

1) Indigent Defense Contract – Mountain Law, PLLC

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**FUTURE WORKSHOP:**

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**EXECUTIVE SESSION:**

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

**ADJOURNMENT:**

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**MEETINGS:**

- |   |   |
|---|---|
| 1) <u>COUNCIL WORKSHOP:</u>                   | Thursday <b>April 6, 2017</b> 6:00 p.m.<br>Council Chambers, 833 S Spruce St            |
| 2) <u>PUBLIC SAFETY COMMITTEE:</u>            | Tuesday <b>April 11, 2017</b> 4:00 p.m.<br>Public Safety Building, 311 Cedar St         |
| 3) <u>AUDIT &amp; FINANCE COMMITTEE:</u>      | Thursday <b>April 13, 2017</b> 4:00 p.m.<br>City Hall, 833 S Spruce Street              |
| 4) <u>PUBLIC WORKS COMMITTEE:</u>             | Tuesday <b>April 18, 2017</b> 4:00 p.m.<br>Engineering Conference Room, 833 S Spruce St |
| 5) <u>SKAGIT TRANSIT BOARD:</u>               | Wednesday <b>April 19, 2017</b> 1:00 p.m.<br>Council Chambers, 833 S Spruce St          |
| 6) <u>PLANNING COMMISSION:</u>                | Wednesday <b>April 19, 2017</b> 7:00 p.m.<br>Council Chambers, 833 S Spruce St          |
| 7) <u>COMMUNITY RECEPTION – POLICE CHIEF:</u> | Thursday <b>April 20, 2017</b> 6:00 p.m.<br>Council Chambers, 833 S Spruce St           |

# April 2017

April 2017

May 2017

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

# May 2017

May 2017

June 2017

Su	Mo	Tu	We	Th	Fr	Sa
7	8	1	2	3	4	5
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		29	30	31		

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

Apr 30 - May 6

May 7 - 13

May 14 - 20

May 21 - 27

May 28 - Jun 3

March 23, 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: Joe DeGloria, Rick DeGloria, Edie Edmundson, and Chris Loving. Staff present: Bryan Harrison, Brad Johnson, Brittany Johnson, Leif Johnson, Tom Moser, Marv Pulst, and Renee Sinclair.

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

**MINUTES:**

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

**AUDIT OF BILLS:**

A motion was made by **Councilors J. DeGloria/R. DeGloria** to approve Accounts Payable checks numbered 35851 – 35975 in the amount of \$807,657.89; and March 15 payroll checks numbered 35835 – 35850 in the amount of 372,449.38. All in favor; motion carried.

**PUBLIC COMMENTS:**

No Public Comments.

**COUNCIL COMMENTS:**

**Councilor J. DeGloria** stated that in response to the Mayor's email regarding meeting commitments that he would be available to assist. **Councilor Edmundson** suggested that the council hold a workshop to further discuss. A council workshop will be held on Thursday, April 6, 2017 at 6:00 p.m. to discuss Mayoral and Council Commitments. **Councilor Edmundson** commented that the American Legion was holding their grand opening of the military museum on Saturday. **Councilor Loving** welcomed **Councilor Edmundson** to the Skagit County Historical Museum Board.

**MAYOR COMMENTS:**

No Mayor Comments.

**OFFICER'S REPORTS:**

**Public Works Director Marv Pulst** thanked the Legal Department for the information regarding the WCIA grant. The City received WCIA Sidewalk Grant for sidewalk improvements. Discussion followed regarding the concerns with the sidewalk and safety issues.

March 23, 2017

**City Administrator Bryan Harrison** reviewed the report provided by the **Parks & Recreation Director Jennifer Berner** regarding the recreation program use as requested by council. Discussion was held regarding the number of Burlington citizens utilizing Parks & Recreation programs.

**Councilor Bieche** arrived at 7:12 p.m.

**City Administrator Bryan Harrison** briefed council on a discussion with the YMCA and asked council if there is any additional information needing to make a decision regarding the funding request and if further information is needed to please contact him.

**NEW BUSINESS:**

**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 WOOD TECH**

**Senior Planner Brad Johnson** reviewed the request made by the property owner, Pacific Wood Tech, and described the property and the details of the vacation process. **Brad Johnson** stated that the approval of the Street Vacation petition by the City Council is the first step in moving forward with the vacation process pursuant to RCW 35.79. Discussion ensued regarding how this street vacation would affect future development of Burlington Hill and the notification that is required to be given to property owners within that vicinity. **Brad Johnson** reviewed the street vacation process and the notification requirements.

A motion was made to approve the Street Vacation petition request to vacate the south 335 feet of North Hill Boulevard and authorize the Mayor's signature on the resolution by **Councilors Bieche/J. DeGloria**. All in favor; motion carried.

**AGREEMENT WITH GRAY & OSBORNE FOR ENGINEERING SERVICES – REGENT STREET ALLEY IMPROVEMENTS**

**Public Works Director Marv Pulst** reviewed the scope of work for the proposed agreement with Gray & Osborne and the history of the project. **Pulst** stated this agreement will facilitate street and sewer improvements to an existing alley between Regent and Skagit Streets.

A motion was made to approve the agreement with Gray & Osborne for engineering services for the Regent Street alley improvements in the amount of \$42,300 and authorize the Mayor's signature by **Councilors Loving/Bieche**. All in favor; motion carried.

March 23, 2017

**INTERLOCAL AGREEMENT WITH SKAGIT COUNTY FOR PICTOMETRY SOFTWARE**

**Public Works Director Marv Pulst** reviewed the scope of work for the proposed agreement with Skagit County for pictometry software. **Pulst** explained the benefits of pictometry software and stated this is the current software being used for pictometry and this agreement would renew the software for two years. Discussion of fees and history of use of the options that incurred fees followed.

A motion was made to approve the interlocal agreement with Skagit County for pictometry software and authorize the Mayor's signature by **Councilors Loving/Bieche**. All in favor; motion carried.

**EXECUTIVE SESSION**

**City Administrator Bryan Harrison** proposed that council enter into Executive Session to discuss a personnel matter and the following council agenda item which does contain information regarding a lawsuit, Wilbur vs. Mount Vernon.

**City Attorney Leif Johnson** stated that an Executive Session will be held Per RCW 42.30.110 to discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. The executive session should take approximately twenty minutes and action is expected as a result of the executive session. Council and city staff adjourned for Executive Session at 7:32 p.m.

City staff returned from Executive Session at 8:09 p.m.

**INDIGENT DEFENSE – 1. INTERLOCAL AGREEMENT WITH THE CITY OF MOUNT VERNON TO ADMINISTER AND FUND A PUBLIC DEFENSE AUDITOR; AND 2. PUBLIC DEFENSE AUDITOR CONTRACT**

A motion was made to approve the interlocal agreement with the City of Mount Vernon to jointly administer and to fund the Public Defense Auditor Contract and authorize the Mayor's signature by **Councilors R. DeGloria/Loving**. All in favor; motion carried.

A motion was made to approve the Public Defense Auditor contract with the Snohomish County Public Defense Association and authorize the Mayor's signature by **Councilors Loving/J. DeGloria**. All in favor; motion carried.

COUNCIL CHAMBERS

CITY HALL

BURLINGTON, WA

March 23, 2017

**ADJOURNMENT:**

**Mayor Sexton** adjourned the meeting at 8:11 p.m.

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Renee Sinclair  
Director of Budget & Accounting

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Steve Sexton  
Mayor



ITEM #: \_\_\_\_\_

CHECK ONE:

NEW BUS. ☒

OLD BUS. \_\_\_\_\_

## AGENDA ITEM

Council Date: April 13, 2017 Subject: Indigent Defense Contract: Mountain Law, PLLC

Attachments: Cover Memo from W. Scott Snyder, Special Counsel Public Hearing Required: YES ( ) NO ( X )  
Mountain Law, PLLC Contract for Indigent Defense  
Services

### SUMMARY

Mountain Law, PLLC is the current provider of indigent defense services to the cities of Mount Vernon and Burlington. The previous contract expired at the end of 2016, and has been extended on a month to month basis to allow a replacement contract to be negotiated. A three year contract with a two-year option to extend has been negotiated. The new contract is designed to maintain and enhance the existing constitutionally sound indigent defense system, and to ensure compliance with applicable standards for provision of public defense services, including Standard One of the Washington State Bar Association Standards for Public Defense.

### RECOMMENDATION

Move to approve the new Contract for Indigent Defense Services with Mountain Law, PLLC and authorize the Mayor to sign.



## MEMORANDUM

**DATE:** March 30, 2017

**TO:** Mayor Jill Boudreau  
City Council Members  
CITY OF MOUNT VERNON

Mayor Steve Sexton  
Burlington City Council Members  
CITY OF BURLINGTON

**FROM:** W. Scott Snyder, Office of Special Counsel

**RE:** Renewal of Public Defense Agreement with Mountain Law, LLC

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### INTRODUCTION

In late summer of 2016 staff and I began working with the court-appointed Public Defense Supervisor, Eileen Farley, to establish a process to transfer the Cities' Public Defense System from court supervision. That process included (1) selecting and contracting with a Public Defense Auditor; (2) enacting an interlocal agreement between the Cities for the Auditor's services; and (3) reviewing whether to extend the current contract with Mountain Law. Over the following months, each step in the process was discussed with Ms. Farley, the ACLU and plaintiff's counsel as well as with your staff. The product, consisting of a process for transition, was brought to the City Councils for your review and approval at your Council meetings of October 12 and 13, 2016. On those dates, the City Councils approved the process and authorized an RFQ for an Auditor to replace the Public Defense Supervisor.

Since that date, a selection process for the Auditor has completed and the City Councils recently approved an agreement with the Snohomish County Public Defense Association for the services of the Auditor, Jennifer Rancourt.

The review of the public defense provider proceeded on a separate track. While the general level of service provision has been outstanding and Mountain Law has met all of the statistical parameters and reporting requirements established by the Public Defense Supervisor, Ms. Farley expressed concern regarding certain aspects of the compensation structure in light of the Cities' adopted Public Defense Standards. Accordingly, the Cities authorized the engagement of a

consultant to review that compensation structure. Following meetings with the Public Defense Supervisor and Mountain Law as well as staff and Mayors Boudreau and Sexton, Mountain Law developed a Work Plan to voluntarily address the recommendations contained in the consultant's report. Based upon that response, the Mayors of the Cities authorized negotiation of an extension of the Mountain Law contract in consultation with the Public Defense Supervisor, the ACLU and plaintiff's counsel. This contract is a result of that negotiation and incorporates the Work Plan developed by Mountain Law.

### MOUNTAIN LAW CONTRACT

The contract which has been forwarded to you with a recommendation for approval has a three-year term. This term was adopted in accordance with discussions with the Public Defense Supervisor, staff and the plaintiffs to permit overlap with the Public Defense Auditor contract previously approved by the City Councils. The contract is terminable only for cause.

The case count contained in the contract is based upon the Cities' historic case assignment data. One change in the contract is the removal of references to a specific number of attorneys. Rather, the case count maximum of 400 cases per attorney is incorporated through the Cities' adopted standards. This case count limitation is in line with the Washington State Bar Association Indigent Defense Standards and the Washington Supreme Court rules. Moving to a case count as opposed to a body count permits greater flexibility and efficiency and allows the use of techniques such as job sharing and part-time employment to provide maximum efficiency.

The other significant structural change involves the incorporation of the Work Plan referenced earlier. Mountain Law commits to address the compensation issues raised by Ms. Farley. A portion of the increase in compensation in the agreement (\$3,345.00 per month) is targeted toward the additional financial costs of meeting the Work Plan.

Compensation itself is an increase over the 2014 contract of seven percent in the first year and three percent for the second and third years. This amount was averaged out over the 36-month term of the contract. Please note that this increase takes into account that the Public Defender worked without an increase from 2014 through 2016.

In the contract, there are also positive incentives for Mountain Law if it meets the terms of the Work Plan. For example the number of CLE credits and the amount of the Mountain Law supervisor's time devoted to supervision will decrease to WSBA standards if the goals of the Work Plan are met. Compliance will be determined by the Cities' Public Defense Contract Administrator in consultation with the Public Defense Auditor.

A provision was also inserted to address public records requests which are becoming an issue state-wide for public defenders.

Mayor Jill Boudreau  
Mayor Steve Sexton  
March 30, 2017  
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The remainder of the contract is similar to or identical to the contract which has been in place since 2014. I look forward to reviewing the contract with you at your Council meetings on April 12 and 13.

I recommend adoption of the agreement to you and have approved it as to form.

Respectfully submitted,

W. Scott Snyder

WSS/gjz

## CONTRACT FOR INDIGENT DEFENSE SERVICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Complaints by the Cities, their Public Defense Auditor and the Public Defense Program Administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.13.8 the number of appeals and/or writs; and

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

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

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

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

adequate prior written notice of the intention to release a document or documents. If the Attorneys believe a document or documents are privileged or otherwise fall within the standard established by RCW 42.56.540 for relief, the Attorneys may promptly seek judicial examination of such a document pursuant to that statute or to request review of whether the documents requested are public records. If any request or continuing pattern of requests imposes substantial unforeseen costs, the Attorneys may apply to the city for reimbursement of such unforeseen costs. "Unforeseen costs" do not include time and costs incurred by the Attorneys in gathering, copying and transmitting records to the city or cities.

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

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

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

The compensation amount represents the salary and benefits necessary to provide sufficient attorneys to handle the estimated case load within Supreme Court Rule guidance who are devoted to public defense for the City and all infrastructure, support, and systems necessary to comply with the Standards, Supreme Court Rule and the Decision. As provided in Section 2.6 and its subparagraphs below, the parties will periodically review staffing and compensation in light of changes in court rule, and case load, if any. The parties believe that they have provided sufficient capacity to ensure that, in all respects and at all times, public defense service will comply with the Standards, Supreme Court Rule and the Decision with an adequate reserve capacity for each attorney. Attorneys additionally agree and promise that he/she will devote his/her full effort to the performance of this Agreement and will undertake no private or other public practice of law that would impede their ability to perform under this Agreement. Attorneys will report quarterly in writing any criminal cases worked outside of this Contract by Attorneys performing services under this Contract as well as any civil case. This quarterly report shall include the nature of the charge for criminal cases. Civil cases reported shall include the percentage the individual attorney's case load is being reduced to account for the civil case(s) and sufficient information to document the impact of the civil case and the case load reduction.

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



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

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

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

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

2.5 The Cities shall pay or reimburse the following:

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

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

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

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

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

## 2.6 Review and Renegotiation.

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

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

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

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

3.1 For Cause. This agreement may be terminated for cause for violation of any material term of this agreement. "Material term" shall include any violation indicating a failure to provide representation in accordance with the rules of the court and the ethical obligations established by the Washington State Bar Association, a violation of the Standards or the Decision or the provisions of Section 6 relating to insurance, conviction of a criminal charge, and/or a finding that the license of the Attorney, or any Attorneys providing service under this agreement, has been suspended or revoked. Any violation of the other provisions of this

Contract shall be subject to cure. Written notice of contract violation shall be provided to the Attorneys who shall have thirty (30) business days to correct the violation. Failure to correct the violation will give rise to termination for cause at the Cities' discretion. In lieu of terminating this contract, the Cities may agree in writing to alternative corrective measures.

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

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

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

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

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

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

5. Indemnification.

5.1 The Attorneys agree to hold harmless and indemnify the Cities, its officers, officials, agents, employees, and representatives from and against any and all claims, costs, judgments, losses, or suits including Attorneys' fees or awards, and including claims by

Attorneys' own employees to which Attorneys might otherwise be immune under Title 51 arising out of or in connection with any willful misconduct or negligent error, or omission of the Attorneys, their officers or agents.

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

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

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

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

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

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

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

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

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

6.2 Verification of Coverage. Attorneys shall furnish the Cities with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work. Policies shall provide thirty (30) days written notice of cancellation to the cities. The Attorneys shall provide the Cities with proof of insurance for "tail coverage" no later than December 31 of the year of termination of the Contract. The purpose of "tail coverage" is to provide insurance coverage for all claims that

might arise from occurrences during the term of the Contract or extension(s) thereof, but not filed during the term of the Contract.

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

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

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

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

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

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

**CITIES:**

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

**ATTORNEYS:**

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

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

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

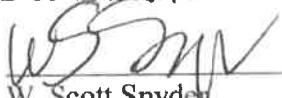
CITY OF MOUNT VERNON

By: \_\_\_\_\_  
Mayor Jill Boudreau

ATTEST/AUTHENTICATED:

By \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF SPECIAL COUNSEL

By:  \_\_\_\_\_  
W. Scott Snyder

CITY OF BURLINGTON

By: \_\_\_\_\_  
Steve Sexton, Mayor

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
OFFICE OF SPECIAL COUNSEL:

By:  \_\_\_\_\_  
W. Scott Snyder

ATTORNEYS  
MOUNTAIN LAW, PLLC

By: \_\_\_\_\_  
Jonathan Lewis

By: \_\_\_\_\_  
Christian Baker

By: \_\_\_\_\_  
Michael Laws

## **EXHIBIT A**

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

ATTORNEY: \_\_\_\_\_  
Print Name

ATTORNEY: \_\_\_\_\_  
Print Name



## **MOUNTAIN LAW WORK PLAN**

Pursuant to the Contract for Indigent Defense Services, paragraph 1.14.1, Mountain Law has agreed to institute a work plan to ensure continuing compliance with the WSBA Indigent Defense Standard 1, including standards and criteria for quarterly reports to the Auditor for the Cities on progress regarding work plan and recommendations.

In accordance with the above, Mountain Law:

1. Accepts Ms. Turner's report, as clarified in the January 24, 2017 letter from Mountain Law's counsel.
2. Incorporates in principle the goals of the Turner report. The Cities acknowledge Mountain Law's right as an independent contractor to structure and operate its business affairs so long as its business practices conform to the adopted Standards. To that end, this work plan has been developed to bring the total compensation of staff and public defenders to comparable levels in accordance with Standard One. The ultimate goal of Standard One and this work plan is the retention of experienced public defenders for reasonable periods of service consistent with the experience of private public defense firms and the provision of quality and constitutional indigent defense.
3. Mountain Law has implemented, or is prepared to implement, all the suggestions made in the January 24, 2017 letter responding to the Turner Report; including but not limited to:
  - a. Increased entry level salary;
  - b. Increased minimum experience for newly hired attorneys;
  - c. Increased benefits and/or extension of benefits to dependents;
  - d. Clarification of PTO policy and increase of PTO based on years of service; and
  - e. Other benefits and compensation to aid in retention based on experience and longevity of service.
4. Mountain Law will report to the auditor regarding the progress and status of retention of employees in its quarterly report. The quarterly reports will include at a minimum, the following information:
  - a. Identify each current employee by title (not by name);
  - b. Identify the years of experience in criminal law;
  - c. Identify the years of service with Mountain Law;
  - d. Identify where in the salary range the employee currently is (i.e. low end, mid range, upper, or maxed for salary range – not specific salary information of employees);
  - e. Efforts made to provide professional development for the employee; and
  - f. As part of the quarterly report, Mountain Law will also identify:

- i. Whether any employee has left employment with Mountain Law since the previous quarterly report;
- ii. The reason for employee departure, including if voluntary or involuntary departure, whether moving for a different job, and whether the employee provided a reason for the departure in exit interview;
- iii. Whether Mountain Law took any steps to retain the employee if the employee departure was for a different position; and
- iv. Identify whether the employee was replaced, and if replaced compare the years of experience in criminal defense between the departing employee and the new employee.