

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

CALL TO ORDER:

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

MINUTES:

City Council Meeting June 22, 2017

AUDIT OF BILLS:

PUBLIC COMMENTS:

COUNCIL COMMENTS:

MAYOR'S UPDATE:

PROCLAMATION:

SPECIAL PRESENTATION:

OFFICERS REPORTS:

TBD

UNFINISHED BUSINESS:

CONSENT AGENDA:

NEW BUSINESS:

- 1) Appointment of Steve Stafford to the Civil Service Commission
- 2) Conditional Use Permit to allow additional density in the R-5 zoning district for a triplex on North Anacortes Street; Matt Purcell - Applicant
- 3) Conditional Use Permit to allow a drive through espresso stand and a reconfiguration of a Binding Site Plan to create four louts, construct a fueling station and convenience store at the SW corner of Nevitt Rd and SR 20; Gary & Diane Steen – Applicants.
- 4) Minor contract for disposal of Bio – Hazard evidence
- 5) Fiber Telecommunications Fee Schedule amendment
- 6) Fiber contractor amendment for .09 grant – Integrity Networks & Diversified Northwest
- 7) Skagit Transit Fiber Interlocal Agreement
- 8) Contract extension for Public Defense Supervisor through June 30, 2017

FUTURE WORKSHOP:

EXECUTIVE SESSION:

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

ADJOURNMENT:

MEETINGS:

- 1) PUBLIC SAFETY COMMITTEE: Tuesday **July 11, 2017** 4:00 p.m.
Public Safety Building, 311 Cedar Street
- 2) AUDIT & FINANCE COMMITTEE: Thursday **July 13, 2017** 4:00 p.m.
City Hall, 833 S Spruce Street
- 4) PUBLIC WORKS COMMITTEE: Tuesday **July 18, 2017** 4:00 p.m.
Public Works Conference Room, 833 S Spruce St
- 5) SKAGIT TRANSIT BOARD: Wednesday **July 19, 2017** 1:00 p.m.
Council Chambers, 833 S Spruce St
- 6) PLANNING COMMISSION: Wednesday **July 19, 2017** 7:00 p.m.
Council Chambers, 833 S Spruce Street

July 2017

July 2017

August 2017

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

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Jun 25	26	27	28	29	30	Jul 1
2	3	4	5	6	7	8
	5:30pm Parks Board (Parks & Rec Dept) - Judy Sheahan	6:00pm Library Board (Library)				
9	10	11	12	13	14	15
		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
		4:00pm Public Works Committee (Engineering Conf Room)	1:00pm SKAT Board (Burlington City Hall) 7:00pm 9:00pm Planning Commission (City Co			
23	24	25	26	27	28	29
			9:00am 10:00am Downtown Burlington Association (Visitor Information Center/	4:00pm Audit & Finance (City Hall) 7:00pm Council Meeting		
30	31	Aug 1	2	3	4	5

6/25 - 30

7/2 - 7

7/9 - 14

7/16 - 21

7/23 - 28

7/30 - 8/4

August 2017

August 2017

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

September 2017

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

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

Jul 30 - Aug 5

Aug 6 - 12

Aug 13 - 19

Aug 20 - 26

Aug 27 - Sep 2

June 22, 2017

CALL TO ORDER:

Mayor Steve Sexton called the meeting to order at 7:00 p.m., with the Pledge of Allegiance. Council members present: Bill Aslett, Tonya Bieche, Rick DeGloria, Edie Edmundson, and Ted Montgomery. Staff present: Jennifer Berner, Bryan Harrison, Brittany Johnson, Leif Johnson, Marv Pulst, Jim Rabenstein, Renee Sinclair, and Sarah Ward.

A motion was made to excuse **Councilors J. DeGloria/Loving** from the meeting by **Councilors Aslett/Bieche**. All in favor; motion carried.

MINUTES:

A motion was made to approve the minutes of the June 8, 2017 council meeting by **Councilors R. DeGloria/Aslett**. All in favor; motion carried.

AUDIT OF BILLS:

A motion was made by **Councilors J. DeGloria/Loving** to approve Accounts Payable checks numbered 36768 - 36905 in the amount of \$489,773.27; and June 15 payroll checks numbered 36751 - 36767 in the amount of \$338,808.38. All in favor; motion carried.

PUBLIC COMMENTS:

No Public Comments.

COUNCIL COMMENTS:

Councilor Aslett commented that he has seen an increase in graffiti in Burlington and he brought it up at the Public Safety Meeting. The Police Department is doing what they can to combat the graffiti, but they are looking into different solutions if the trend continues. The Public Safety meeting topics included fire training and the new Police Chief Mike Luvera.

MAYOR COMMENTS:

Mayor Sexton stated that Chief Luvera will be starting on Monday, July 3rd. **Mayor Sexton** stated that he and **City Administrator Bryan Harrison** attended the AWC Annual Conference this week and reviewed the topics of the conference.

SPECIAL PRESENTATIONS:

REGONITION OF BELL DONATION FROM SKAGIT RIVER STEEL

Mayor Sexton thanked Jim Sanders and Valerie Sanders who were present on behalf of Skagit River Steel for the donation of a train bell to the City of Burlington. The train bell

June 22, 2017

is displayed at the Visitor Information Center on Fairhaven Avenue. **Chamber Director Linda Jones** thanked the donors for the generous gift and it is an attraction for visitors who enjoy ringing the bell. **Jim Sanders** thanked the City for recognizing the donation and its importance to the City.

OFFICER REPORTS

Public Works Director Marv Pulst stated that the City has received a grant from Skagit Council of Governments (SCOG) in the amount of \$1.5 million dollars to construct the signal at State Route 20 and Skagit Street. The signal will be a great addition to the intersection for mobility and citizens. The project is in the design phase and staff has been working with BNSF on project. **Pulst** reported that the pavement project was awarded to Lakeside Industries and the project is scheduled to begin on July 5th and will be completed by the end of July.

Parks & Recreation Director Jennifer Berner reviewed the events of Berry Dairy Days and stated the festival was very successful. There were 225 teams participating in the soccer tournament; up from 125 teams last year. **Berner** stated that the Rush Cup Soccer Tournament will be coming back to Burlington the first week of August; that is a huge success for the Parks Department and the City of Burlington. **Berner** introduced **Jim Rabenstein** as the newly hired Parks Supervisor. **City Administrator Bryan Harrison** added that Jim competed with six individuals and earned the position of Parks Supervisor and the City is excited to have him in that role.

Library Director Sarah Ward reviewed the Touch of Truck Event that was held on June 22nd. The event was very successful and there were over 500 attendees. **Ward** reviewed the details of the adult summer reading program and invited all to participate.

City Administrator Bryan Harrison reported that the Office of Financial Management estimates Burlington's population to be 8,715 as of April 2017 based on recent development data. **Harrison** stated that the Skagit PUD Tour has been scheduled for Mayor/Council/Administrator on Thursday August 24th from 1:00 p.m. to 3:00 p.m.

NEW BUSINESS:

PUBLIC HEARING – SIX YEAR TRANSPORTATION IMPROVEMENT PROGRAM

Public Works Director Marv Pulst stated the resolution includes a listing of major transportation projects looking forward 10 – 15 years. The six year plan is required to be updated each year. In order to receive grant money projects must be listed on the TIP and reviewed the project details.

June 22, 2017

Mayor Sexton opened the Public Hearing.

There were no Public Comments.

A motion was made to close the Public Hearing by **Councilors Aslett/Bieche**. All in favor; motion carried.

Discussion followed regarding various projects and timelines.

A motion was made to approve the proposed resolution approving the 2018 – 2023 Transportation Improvement Plan and authorize the Mayor's signature by **Councilors Aslett/Montgomery**. All in favor; motion carried.

REQUEST TO APPROVE PURCHASE OF NEW TRACTOR FOR PARKS & RECREATION

Parks & Recreation Director Jennifer Berner stated this is a proposal to purchase a new tractor that has been budgeted for 2017. There is \$77,000 budgeted and the tractor bid that is on the state contract is \$64,651.74 resulting in a savings \$13,055.98.

A motion was made to authorize the purchase of a John Deere Tractor from the State Contract in the amount of \$64,651.74 by **Councilors Aslett/R. DeGloria**.

TURF MAINTENANCE PROGRAM – SKAGIT RIVER PARK

Parks & Recreation Director Jennifer Berner stated that the Parks Department would like to enter into a turf maintenance program at Skagit River Park and reviewed the details of the program. **Berner** stated the parks department has received advice from Parks Board Member Bill Black and that was very beneficial. This program would cut costs in the future and provided better fields for the community and for attracting tournaments. **Councilor R. DeGloria** thanked **Berner** for being attentive and moving forward with the project and thanked Bill Black for sharing his knowledge and time.

Discussion followed regarding the purchase of the products, the bid process, the funding source for the additional \$22,574 need to initiate the program, and the costs in the future to continue the program.

A motion was made to approve additional funds of \$22,574 for the 2017 Parks budget for a turf maintenance program at Skagit River Park by **Councilors R. DeGloria/Bieche**. All in favor; motion carried.

June 22, 2017

EXECUTIVE SESSION

There was no Executive Session.

Councilor Bieche stated that she would like an update on the drug houses. **City Attorney Leif Johnson** stated that this would be a discussion that would require a representative from the Police Department and could be held in the future.

ADJOURNMENT:

Mayor Sexton adjourned the meeting at 7:43 p.m.

Renee Sinclair
Director of Budget & Accounting

Steve Sexton
Mayor



ITEM #: 1

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13, 2017 Subject: Appointment of Steve Stafford to the Civil Service Commission
Carly Ruacho, Chief Examiner

Attachments: BMC 2.28 Public Hearing Required: YES () NO (X)
RCW 41.12.030
RCW 41.08.030

SUMMARY

Pursuant to Burlington Municipal Code 2.28 the Civil Service Commission is to be composed of three members, appointed by the mayor, who serve without compensation. Mr. Stafford has served on the Civil Service Commission since June 2009. Mr. Stafford has been a valuable member of the Commission over the past 8 years and has expressed a willingness to continue to serve on the Commission. Mr. Stafford meets the qualification requirements prescribed in RCW 41.08.030 and RCW 41.12.030. It is the recommendation of the Civil Service Examiner to appoint Mr. Stafford to another term of service on the Civil Service Commission.

RECOMMENDATION

Move to appoint Steve Stafford to the Civil Service Commission, effective July 13, 2017, for a term of six years.

Chapter 2.28

CIVIL SERVICE COMMISSION FOR POLICE AND FIRE

Sections:

- [2.28.010](#) Purpose.
- [2.28.020](#) Created – Membership – Appointment.
- [2.28.030](#) Organization.
- [2.28.040](#) Powers and duties.
- [2.28.050](#) Existing police force.
- [2.28.060](#) Police force – Applicants.
- [2.28.070](#) Police force – Removal of officers – Procedures.

2.28.010 Purpose.

The purpose of this chapter is to establish a civil service commission for the city police and fire departments, provide for the appointment of the commission members, and set forth the powers and duties of said commission, all pursuant to chapters [41.08](#) and [41.12](#) RCW. (Ord. 1464 § 1, 2001; Ord. 816 § 1, 1974).

2.28.020 Created – Membership – Appointment.

Pursuant to chapters [41.08](#) and [41.12](#) RCW, there is created a civil service commission to exercise the powers and to perform the duties established by such state law in connection with the selection, appointment and employment of police and fire department personnel in the city. The commission shall be composed of three members, who shall be appointed by the mayor and who shall serve without compensation. Such commissioners shall be appointed and shall have the qualifications as prescribed in RCW [41.08.030](#) and [41.12.030](#). (Ord. 1464 § 1, 2001; Ord. 816 § 2, 1974).

2.28.030 Organization.

The commission shall organize, hold meetings and conduct themselves as prescribed by chapters [41.08](#) and [41.12](#) RCW. The civil service commission shall meet in a regular open public meeting pursuant to the Open Public Meetings Act, at 6:00 p.m. on the second Tuesday of each month at the Police Training Room, 311 Cedar Street, Burlington. (Ord. 1737 § 6, 2011; Ord. 1464 § 1, 2001; Ord. 816 § 3, 1974).

2.28.040 Powers and duties.

The commission shall have all powers and perform all duties as prescribed in chapters [41.08](#) and [41.12](#) RCW, including but not limited to the adoption of rules and regulations, provide for tests, make investigations, conduct hearings and investigations, hear appeals, provide for, formulate and hold competitive tests, and certify to the appointing authority names of persons and eligible lists for police and fire department personnel, all in accordance with RCW [41.08.040](#) and [41.12.040](#). (Ord. 1464 § 1, 2001; Ord. 816 § 4, 1974).

2.28.050 Existing police force.

All policemen holding a position in the police department of the city, excluding the chief thereof, who shall have served in such position for a period of at least six months prior to August 22, 1974, and not on probation, are declared eligible for permanent appointment under civil service to the offices, places, positions or employment they now hold, without examination or other acts on their part, all in accordance with RCW [41.12.060](#). The position of chief of the police department of the city is specifically excluded from inclusion within the civil service. This exclusion shall apply to individuals appointed as police chief after July 1, 1987. (Ord. 1266 § 3, 1994; Ord. 816 § 6, 1974).

2.28.060 Police force – Applicants.

All applicants for employment with the police force of the city shall be required to have the qualifications, be subject to competitive examination, have a tenure of office and be subject to removal as provided by regulations adopted by the commission, the regulations, to be consistent with chapter [41.12](#) RCW. (Ord. 816 § 5, 1974).

2.28.070 Police force – Removal of officers – Procedures.

Removal, suspension, demotion or discharge of a person classified in the civil service under this chapter, and all investigations, hearings, appeals and procedures shall be in accordance with chapter [41.12](#) RCW, and the commission shall adopt rules and regulations implementing this chapter which shall substantially accomplish the purposes of chapter [41.12](#) RCW. (Ord. 816 § 7, 1974).

The Burlington Municipal Code is current through Ordinance 1817, passed June 25, 2015.

Disclaimer: The City Clerk's Office has the official version of the Burlington Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

RCW 41.12.030

Civil service commission—Appointment—Terms—Removal—Quorum.

There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid police officers a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party.

[2007 c 218 § 11; 1937 c 13 § 3; RRS § 9558a-3.]

NOTES:

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

RCW 41.08.030

Civil service commission created—Appointment—Terms—Removal—Quorum.

There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he or she resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party.

[2007 c 218 § 3; 1935 c 31 § 3; RRS § 9558-3.]

NOTES:

Intent—Finding—2007 c 218: See note following RCW 1.08.130.



ITEM #: 2

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13, 2017

Brad Johnson, Senior Planner

Subject: Conditional Use Permit to allow additional density in the R-S Semi Public zoning district for a triplex on North Anacortes Street. Matt Purcell, applicant.

Attachments: Planning Commission Staff Report & recommendation Public Hearing Required: YES () NO (X)

Exhibits

SUMMARY

The applicant is proposing to construct an apartment building with associated parking, utilities, and landscaping. The project site is zoned R-S and apartments are a permitted use in the R-S zone. The maximum density allowed in the R-S zone is normally limited to approximately 15 units per acre (one unit for every 3,000 sq. ft. of lot area) (BMC 17.24.050.H); however, apartment buildings may be constructed at higher densities with a conditional use permit (BMC 17.27.020.A).

RECOMMENDATION

Motion to approve Conditional Use Permit #3-17 subject to the conditions of approval in the Staff Report, except Condition #9 is deleted and project shall comply with the side setback standards in 17.15.055.D.3.



PLANNING COMMISSION RECOMMENDATION

DATE: June 21, 2017

PROJECT: Anacortes Street Apartments (CUP 3-17)

LOCATION: 120 N Anacortes Street (approximate)

PARCELS: P71538

APPLICANT: Matt Purcell

REQUEST:

On May 5, 2017 Matt Purcell submitted an application to construct a two story, three unit apartment building near the intersection of East Fairhaven Avenue and North Anacortes Street. The proposed building has a footprint of approximately 1,320 square feet and a total floor area of 2,640 square feet.

FINDINGS OF FACT:

The Planning Commission hereby adopts the findings of fact enumerated in the attached Staff Report and Recommendation produced by the City's Planning Department and dated June 14, 2017 (see exhibit "1").

CONCLUSIONS OF LAW:

1. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes that it is authorized to forward a recommendation to the City Council on this application pursuant to BMC 17.68.030.D and BMC 17.68.090.B.
2. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes that the public notification and procedural requirements of chapters 15.16, 17.68, and 17.76 BMC, and chapter 36.70B RCW have been addressed.
3. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes, that provided

the conditions of approval identified in this recommendation are fully implemented, the applicant's proposal will comply with the zoning code requirements identified in title 17 BMC.

4. As documented in the Staff Report and Recommendation the City's SEPA Responsible Official has determined that the proposed development is exempt from SEPA threshold determination requirements. Therefore the Planning Commission concludes that the requirements of chapter 43.21C RCW, chapter 197.11 WAC, and chapter 15.12 BMC have been addressed.
5. Based on the findings presented in the attached Staff Report and Recommendation the Planning Commission concludes, that provided the conditions of approval identified in this recommendation are fully implemented, the applicant's proposal will comply with the approval criteria for conditional use permits identified in BMC 17.68.130.E.
6. The Planning Commission has reviewed the recommended conditions of permit approval identified in the attached Staff Report and Recommendation and concludes they are necessary to ensure full compliance with applicable Burlington Municipal Code requirements.

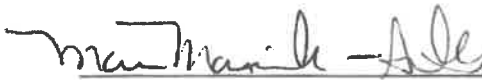
RECOMMENDATION:

Based on a thorough review of the record associated with this proposal, the applicable regulatory requirements, and the findings and conclusions presented above, the Planning Commission hereby recommends the City Council *approve* Conditional Use Permit application CUP 3-17 *subject to* the following conditions:

CONDITIONS OF APPROVAL:

The Planning Commission has concluded that conditions of approval identified in the attached Staff Report and Recommendation dated June 14, 2017 (see attached exhibit "1") are necessary to ensure compliance with applicable Burlington Municipal Code requirements. Therefore, the Planning Commission recommends the City Council require that the proposed development activities be subject to, and comply with, the conditions of permit approval enumerated in the attached Staff Report and Recommendation prepared by the Planning Department.

DATED this 21st day of June 2017


Chair, City of Burlington Planning Commission

Exhibits:
"1" Staff Report and Recommendation

* EXCEPT THAT CONDITION
NUMBER NINE IS DELETED
AND PROJECT SHALL COMPLY
WITH THE SIDE SETBACKS
STANDARDS IN BMC 17.13.055 D 3



EXHIBIT "1"
CUP 3-13

STAFF REPORT AND RECOMMENDATION

DATE: June 14, 2017

PROJECT: Anacortes Street Apartments (CUP 3-17)

LOCATION: 120 N Anacortes Street (approximate)

PARCELS: P71538

APPLICANT: Matt Purcell

STAFF: Brad Johnson, Senior Planner

REQUEST:

On May 5, 2017 Matt Purcell submitted an application to construct a two story, three unit apartment building near the intersection of East Fairhaven Avenue and North Anacortes Street. The proposed building has a footprint of approximately 1,320 square feet and a total floor area of 2,640 square feet.

FINDINGS:

Permit Process

1. The applicant is proposing to construct an apartment building with associated parking, utilities, and landscaping. The project site is zoned R-S and apartments are a permitted use in the R-S zone. The maximum density allowed in the R-S zone is normally limited to approximately 15 units per acre (one unit for every 3,000 sq. ft. of lot area) (BMC 17.24.050.H); however, apartment buildings may be constructed at higher densities with a conditional use permit (BMC 17.27.020.A).
2. The project site is approximately 3,538 square feet and the applicant is proposing to construct three apartment units; therefore, the project exceeds the normally permitted density and a conditional use permit is required.

3. Conditional use permits are classified as type III decisions (BMC 17.68.030.D) and must be approved by the City Council following a recommendation from the Planning Commission (BMC 17.68.090.B). Therefore the Planning Commission is authorized to review this proposal and forward a recommendation to the City Council.
4. Following the submittal of a land use application the City is required to determine whether or not the application constitutes a “complete” application (BMC 15.16.020.A and RCW 36.70B.070). The conditional use permit subject to this review was submitted on May 5, 2017 and determined to be complete for purposes of processing on May 12, 2017.
5. Public notification of all conditional use permit applications is required. In accordance with BMC 17.68.070.D.9, a notice was published in the Skagit Herald and distributed to adjoining property owners.
6. Following the notification described above a public comment period was provided. This comment period began on May 12, 2017 and ended on May 26, 2017. The Planning Department did not receive any public comments regarding the proposed apartment building during the comment period.

Development Standards

7. Burlington Municipal Code does *not* limit building or impervious surface coverage in the R-S zone.
8. The maximum permitted building height in the R-S zone is 45 feet (BMC 17.42.050.E). Although the applicant’s plans do not indicate how high the proposed building will be, the maximum building height should be limited to 45 feet through a condition of approval (see condition “9”).
9. Burlington Municipal Code specifies that the building setbacks requirements for the R-1 zone also apply to buildings in the R-S zone (BMC 17.27.040.B). The R-1 zone requires that all buildings be setback at least 17 feet from the front property line, 20 feet from the rear property line, and a minimum of five feet from each side property line, and further requires that the total of both side setbacks must equal or exceed 15 feet (BMC 17.15.060.B). The applicant’s site plan meets the front setback requirement and exceeds the rear property line setback requirement by three feet; however, the total of both side property line setbacks equals only 12 feet. Based on the site plan it appears the applicant could meet the required side setback without significantly reducing the square footage of the structure by extending the building further into the rear setback. Therefore, a condition of approval should be added requiring that the final building plans be revised to comply with the City’s setback requirements (see condition “10”).
10. Low impact development (LID) features must be incorporated into all development proposals unless demonstrated to be infeasible through an engineering analysis (BMC

17.14.110.C). The proposed building will be surrounded by landscaping and drain-rock. In addition the off-street parking spaces along the alley will be constructed with permeable paving. Provided the applicant complies with the City's storm-water regulations and utilizes permeable paving to the maximum extent feasible, the project will comply with the City's general LID standards. In order to ensure compliance with these requirements, a condition of approval should be included in the final decision to ensure the proposed LID features are constructed (see condition "12").

Landscaping

11. The landscaping standards set forth in Burlington Municipal Code apply to all new development in the City with limited exceptions (BMC 17.50.020).
12. Land use and conditional use permit applications must include a landscaping plan in order to be considered complete (BMC 17.50.030.A). The site plan submitted by the applicant includes sufficient information to demonstrate compliance with the City's landscaping requirements (see exhibit "A").
13. Generally, landscaping plans must be prepared by a licensed landscape architect. However, this code requirement may be waived for simple small scale projects (BMC 17.50.050.D). Because this project will be constructed on a lot that is only 3,538 square feet, the landscaping requirements are limited and the Planning Department finds that there would be little benefit in requiring that a landscape architect prepare the landscaping plan. Accordingly, the Planning Department recommends this requirement be waived.
14. A street frontage landscaping strip must be provided along Anacortes Street and this strip must be at least ten feet in width (BMC 17.50.060.A). The preliminary landscaping plan submitted by the applicant indicates the proposal will comply with this requirement (see exhibit "A").
15. The street frontage landscaping strip must include at least one tree for every 30 feet of street frontage. The site has only 34 feet of street frontage and three street trees will be provided which exceeds the minimum requirement.
16. Landscaping strips must be provided around the perimeter of the site and these strips must be at least five feet in width (BMC 17.50.070.A). The proposed landscaping plan meets this requirement with two exceptions. A sidewalk will be constructed within the perimeter landscaping strip along the northern property line. In accordance with BMC 17.50.080.G, pedestrian walkways may be constructed within landscaping areas. Three concrete patios area also shown along the southern property line. The patios are each 48 square feet. The City's landscaping code permits the Planning Commission to authorize minor deviations provided the requested deviation does not exceed 25 percent of the required standard (BMC 17.50.100.C). The proposed patios occupy approximately 14 percent of the required perimeter landscaping area and the narrowness of the project site

presents unique site planning challenges. Therefore, the Planning Department finds that the Planning Commission is authorized to grant a deviation from the normal perimeter landscaping requirements and recommends a deviation be granted. The Planning Department is also conscious of the fact the proposed building adjoins residential properties to the north and south, and that one of the purposes of the landscaping code is to reduce impacts on adjoining properties. As such, a condition should be included requiring the construction of solid fence at least six feet in height along the north and south property lines (see condition “11”).

17. One tree must be provided for every 150 sq. ft. of required perimeter landscaping area (BMC 17.50.080.C). Based on the dimensions of the project site, approximately 1,041 square feet of perimeter landscaping and seven trees are required. The site plan depicts seven trees along the southern property line and complies with this requirement.
18. The R-S zone requires that 15 percent of every development site be landscaped (BMC 17.50.050.A). Based on the site plan provided with the application, approximately 29 percent of the site will be landscaped.

Parking and Pedestrian Access

19. The applicant is proposing to construct a three unit apartment building in the Downtown Special Planning Area. Parking must be provided for apartments in the Downtown Special Planning Area at a rate of 1.1 space for each dwelling unit (BMC 17.54.020.A). Therefore, the proposal must include provisions for at least 3.3 parking spaces. In accordance with BMC 17.54.010.B.5, on-street parking spaces which adjoin a development site may be used to meet the minimum parking requirements at a rate of one space for every 20 linear feet of curb. The site plan depicts three off-street parking spaces along the alley and 34 linear feet of curb space along Anacortes Street. Because the proposal provides four parking spaces and only 3.3 are required the Planning Department finds that it complies with all applicable parking standards.
20. Parking and circulation areas must be designed to incorporate low impact development (LID) features unless demonstrated to be infeasible through an engineering analysis (BMC 17.54.050.B). The applicant is proposing to use permeable paving for the off-street parking spaces. Therefore, the Planning Department finds that the proposal complies with all applicable parking and circulation LID requirements.
21. Pursuant to Burlington Municipal Code requirements pedestrian access must be provided to the proposed building from property edges, adjacent lots, abutting street intersections, mid-block crosswalks, existing transit stops, and at intervals of 100 feet along adjoining street frontages (BMC 17.54.090.A). The proposal will provide pedestrian access from Anacortes Street and the alley along the east property line; therefore, the Planning Department finds that the proposal complies with all applicable pedestrian access requirements.

22. With limited exceptions, the City's code requires that right-of-way frontage improvements be made in conjunction with all new development (BMC 12.28.010.A). Currently Anacortes Street lacks curbs and sidewalks adjacent to the project site. Curbs and sidewalks are required for all collector and arterials streets (BMC 12.28.140.K and BMC 12.28.130.K). As a condition of approval the applicant should be required to provide a sidewalk and curb along the street frontage of the project site (see condition "5").
23. Sidewalks and walkways must be constructed using permeable paving unless demonstrated to be infeasible through an engineering analysis. A condition should be included to ensure on-site sidewalks and walkways are constructed in compliance with this standard (see condition "12").
24. Sidewalks and walkways must be sloped to drain towards adjoining landscaping areas (BMC 17.54.090.C.8). A condition should be included to ensure on-site sidewalks and walkways are constructed in compliance with this standard (see condition "8").

Conditional Use Approval Criteria

25. Conditional use permits may not be approved unless it can be demonstrated that the proposed use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration (BMC 17.68.130.E.1).
26. The applicant is proposing to construct a three unit apartment building. Multifamily housing is a use which is specifically allowed in the R-S zone. The applicant is proposing to exceed the density which would normally be allowed on the site. The Planning Department does not believe that the additional density proposed by the applicant will result in impacts that differ significantly from other uses permitted out-right in the R-S zone. As demonstrated in this report the proposal provides adequate parking in compliance with all applicable code requirements. The project site does however, adjoin two existing residences and screening should be provided between the proposed building and these residences. In order to mitigate any light, noise, or privacy impacts which may result from the construction of the proposed apartment building, fences should be constructed along the northern and southern property lines (see condition "11").
27. Conditional use permits may not be approved unless the proposal is consistent with the goals, policies and objectives of the comprehensive plan (BMC 17.68.130.E.2). The Planning

Department has reviewed the Comprehensive Plan and finds that the following goals or policies support the applicant's proposal:

- a. *Housing policy 4-B: "Provide opportunities for infill development of market rate housing in a variety of housing types to meet the needs of different economic levels, different age groups, and life styles".*
- b. *Housing goal 7: "Provide opportunities for housing developments in downtown and in other commercial areas that are of appropriate design and materials to encourage density near access to public transit and places of employment".*

28. Conditional use permit applications shall comply with all applicable requirements identified in title 17 (BMC 17.68.130.E.3). As demonstrated in this report the applicant's proposal complies with all applicable zoning code requirements.
29. Conditional uses must be constructed and maintained "so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provide a high quality of development" (BMC 17.68.130.E.4). The proposed apartment building will be located in the Downtown Special Planning Area. This area is intended to accommodate a mixture of commercial and residential uses. The project site adjoins a large contractor's office/warehouse to the west, a duplex to the north, and single-family homes to the south and east. The site is located on a block which borders Fairhaven Avenue. This street serves as the City's commercial core and the general area includes a broad mix of small scale commercial, multi-family buildings, and duplexes. Based on the limited scale of the proposal, and the diverse mixture of existing uses in the vicinity of the project site, the Planning Department finds the proposal will be compatible with the charter of the surrounding area.
30. Conditional uses shall not adversely affect public infrastructure (BMC 17.68.130.E.5). The proposed apartment building will place very limited demands on public infrastructure. As a condition of building permit approval the applicant will be required to pay impact fees for fire service, parks, and transportation. In addition sewer connection fees will apply. These charges are intended to proportionally offset the impacts of proposed development on public infrastructure. During the permit review process the City's Sewer Department provided documentation showing that a sewer line serving the residence located at 801 East Fairhaven crosses the applicant's property and the proposed building footprint. The Sewer Department has requested that the sewer line be relocated and that an easement be recorded so that sewer service to the existing residence can be maintained. The Planning Department finds that provided the required impact fees are paid, and the sewer line issues noted above area addressed, the proposal will not adversely affect public infrastructure (see condition "15").

SEPA DETERMINATION:

Exempt

The lead agency for this proposal has determined that it is categorically exempt from SEPA threshold determination requirements pursuant to BMC 15.12.070.1 and WAC 173-11-800(1)(b)(i).

PERMIT RECOMMENDATION:

The Planning Department has reviewed the applicant's proposal and determined that it can comply with applicable Burlington Municipal Code requirements provided the recommended conditions of approval are fully implemented. Therefore, the Planning Department recommends the Planning Commission forward a recommendation for approval of conditional use permit application CUP 3-17 to the City Council *subject to* the following conditions of approval:

1. This approval shall not be construed to authorize any development or site modifications beyond those described in the application and shown on the approved plans. The approved plans shall be the plans and other project documents attached to the Planning Commission's decision.
2. Except as otherwise required by the conditions of approval identified in this decision, all work, construction, and development activities shall conform to the approved plans. The approved plans shall be the plans and other project documents attached to the Planning Commission's decision. Minor modifications necessary to implement any changes requested by the Building Official, Fire Marshall, or Public Works department are permitted.
3. In accordance with BMC 17.68.120 this approval shall expire two years from the date of approval. The date of approval shall be the date the City Council's decision is signed.
4. Prior to beginning any construction activities, grading, excavation, filling, or utility work, the applicant shall apply for, and obtain a grading permit or building permit. A building permit must be obtained before beginning any foundation or building construction work.
5. Prior to approval of the final building permit inspection a sidewalk at least five feet in width shall be constructed in the street right-of-way along Anacortes street and parallel to the western property boundary. This sidewalk shall extend from the northern property line to the southern property line and shall be constructed in alignment with the sidewalk stub located at the intersection of North Anacortes Street and East Fairhaven Avenue. A curb shall also be constructed parallel to the sidewalk. The

applicant is encouraged, but not required, to extend the sidewalk and curb to the south so that it connects to the existing sidewalk.

6. All clearing, grading, construction, and development work shall comply with Title 14 BMC (storm-water regulations).
7. Sidewalks and pedestrian walkways shall be constructed as shown on the approved plans.
8. All on-site sidewalks and pedestrian walkways shall be sloped and graded to drain towards adjoining landscape areas.
9. The building shall be limited to a maximum height of 45 feet.
10. Prior to, or in conjunction with, the submittal of a building permit application, the site plan shall be amended so that the total of the two side setbacks equals or exceeds 15 feet.
11. In order to minimize light, noise, and privacy impacts on adjoining properties, solid, sight obscuring fences shall be constructed along the northern and southern property lines. These fences shall begin at the western edge of the apartment building and shall extend to the eastern property boundary. The fences shall be six feet in height from the western edge of the building to eastern edge of the building. From the eastern edge of the building to eastern property line the fences shall be three feet in height.
12. The onsite parking spaces, walkways, and patios shall be constructed of a permeable paving material such as pavers or porous concrete.
13. All outdoor lighting fixtures shall be hooded, screened, directed downwards, or located at such a height that the light source is not visible beyond the property boundaries.
14. The landscaping shown on the approved plans shall be installed prior to the approval of a final building permit inspection.
15. Prior to beginning any foundation work, the sewer line crossing the project site and serving the residence at 801 East Fairhaven shall be relocated. An easement shall be granted to the owner of 801 East Fairhaven and a copy of the recorded easement shall be provided to the Planning Department prior to approval of the final building permit inspection.

Exhibits:

A – Site Plan

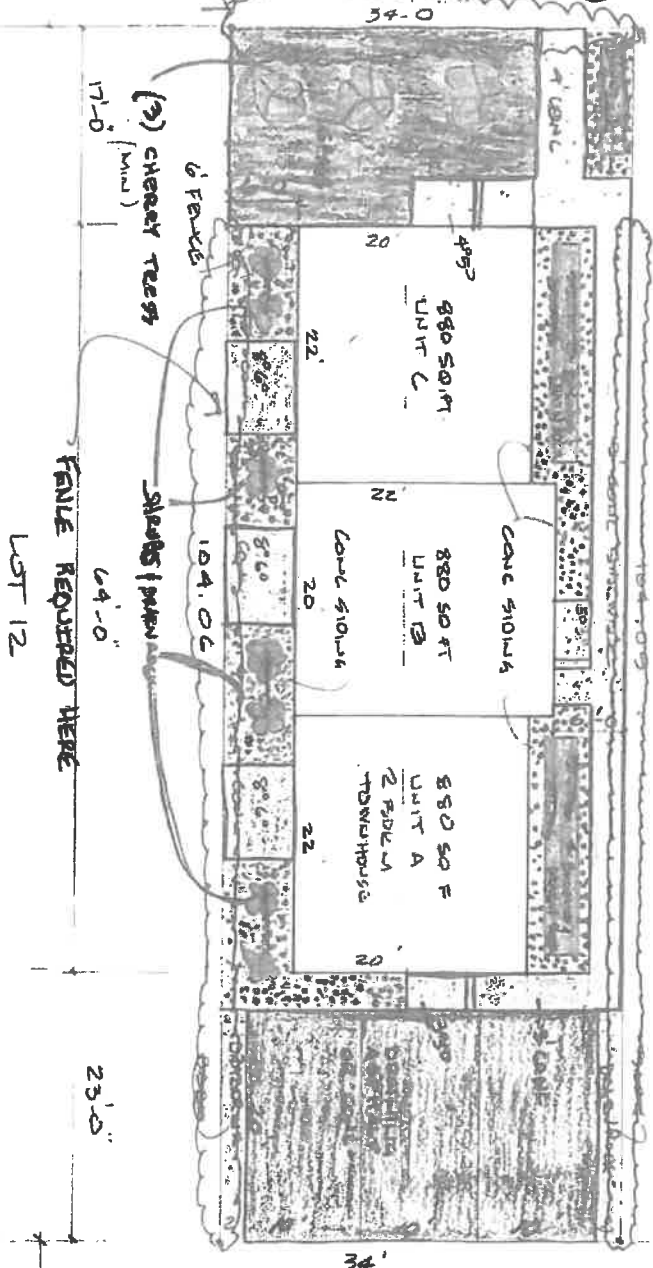
B – Sewer Department Comments

APPROVED SITE PLAN
 CUP 3-13 - NOTE: THE FOLLOWING CHANGES AND REQUIREMENTS APPLY AND MUST BE ADDRESSED PRIOR TO CONSTRUCTION

6/14/2017

- (1) TOTAL OF BOTH SIDE SETBACKS MUST EQUAL 15'
- (2) COMPLY WITH CONDITIONS OF APPROVAL
- (3) CONSTRUCT FENCES AS SHOWN
- (4) CONSTRUCT SEPTIC TANK AND USE APPROPRIATE SINKHOLE AND LOGS REQUIRED ALONG ADJACENT

LOT 10
 FENCE REQUIRED HERE



LOT 12
 FENCE REQUIRED HERE

RECEIVED
 MAY 05 2017
 CITY OF BURLINGTON
 PLANNING DEPT.

EXHIBIT
 "A"
 CUP 3-13

SITE PLAN for
 MATT PURCELL
 LOT 11 AND THE SOUTH 7' OF LOT 10 (PLAT 36)
 AMENDED PLAT OF BURLINGTON
 SEC. 32, T. 35 N., R. 4 E., W. 1.
 SKANEATELE COUNTY

From: Don Erickson
To: Kim Ohara; Dennis Yaden; Brad Johnson
Subject: RE: N. Anacortes Str - proposed Triplex
Date: Friday, March 17, 2017 1:59:38 PM

EXHIBIT "B"
CUP 3-13

Kim, I called and left a message for Matt. The house at the corner of Anacortes and Fairhaven looks like it has a side sewer that crosses the proposed triplex lot. I don't know if there is an existing easement but one will be needed and the existing side sewer will need to be relocated outside of the building foot print.

From: Kim Ohara
Sent: Friday, March 17, 2017 1:17 PM
To: Don Erickson
Subject: N. Anacortes Str - proposed Triplex

Don – P71538. Owner, Matt Purcell 360-391-4552

Kim O'Hara, CPT
Permit Center Manager
City of Burlington
833 S. Spruce Street
Burlington WA 98233
(360) 755-9717

Find us on the web: www.burlingtonwa.gov



ITEM #: 3

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13, 2017
Brad Johnson, Senior Planner

Subject: Conditional Use Permit to allow a drive through Espresso stand, and reconfiguration of Binding Site Plan to create four lots, construct a fueling station and convenience store at the SW corner of Nevitt Road and SR 20. Gary & Diane Steen, applicants.

Attachments: Planning Commission Staff Report & recommendation Public Hearing Required: YES () NO (X)
Exhibits

SUMMARY

Proposal to reconfigure an existing binding site plan to create four development sites; construct a 6,000 sq. ft. gas station and convenience store with a 4,230 sq. ft. covered fueling island; a 240 sq. ft. drive-through coffee stand; and install associated roadways, parking, utilities, and landscaping. The proposed development will result in approximately 48,327 sq. ft. of new impervious surface coverage and will include 17 parking spaces.

RECOMMENDATION

Motion to approve Conditional Use Permit #2-17, Land Use Permit #1-17 and Binding Side Plan 1-17 subject to the conditions of approval in the Staff Report.



PLANNING COMMISSION RECOMMENDATION

DATE: June 16, 2017

PROJECT: Nevitt Road Gas Station (LUP 1-17, BSP 1-17, & CUP 2-17)

LOCATION: 765 Nevitt Road (approximate)

PARCELS: P130527, P130528, and P130526

APPLICANT: Barghausen Consulting Engineers, Inc.

REQUEST:

On March 9, 2017 the City received an application to reconfigure an existing binding site plan to create four development sites; construct a 6,000 sq. ft. gas station and convenience store with a 4,230 sq. ft. covered fueling island; a 240 sq. ft. drive-through coffee stand; and install associated roadways, parking, utilities, and landscaping. The proposed development will result in approximately 48,327 sq. ft. of new impervious surface coverage and will include 17 parking spaces.

FINDINGS OF FACT:

The Planning Commission hereby adopts the findings of fact enumerated in the attached Staff Report and Recommendation produced by the City's Planning Department and dated June 16, 2017 (see exhibit "1").

CONCLUSIONS OF LAW:

1. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes that it is authorized to forward a recommendation to the City Council on this application pursuant to BMC 17.68.030.D and BMC 17.68.090.B.
2. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes that

the public notification and procedural requirements of chapters 15.16, 17.68, and 17.76 BMC, and chapter 36.70B RCW have been addressed.

3. Based on applicable Burlington Municipal Code requirements and the findings presented in the attached Staff Report and Recommendation, the Planning Commission concludes, that provided the conditions of approval identified in this recommendation are fully implemented, the applicant's proposal will comply with the zoning code requirements identified in title 17 BMC.
4. As documented in the attached Staff Report and Recommendation, The City's SEPA Responsible Official has determined that a SEPA threshold determination was issued for this project on March 10, 2009. Therefore the Planning Commission concludes that the requirements of chapter 43.21C RCW, chapter 197.11 WAC, and chapter 15.12 BMC have been addressed.
5. Based on the finding presented in the attached Staff Report and Recommendation the Planning Commission concludes, that provided the conditions of approval identified in this recommendation are fully implemented, the applicant's proposal will comply with the approval criteria for conditional use permits identified in BMC 17.68.130.E.
6. Based on the findings presented in the attached Staff Report and Recommendation the Planning Commission concludes that the proposed binding site plan will comply with the applicable requirements of Title 16 BMC and Chapter 58.17 RCW.
7. The Planning Commission has reviewed the recommended conditions of permit approval identified in the attached Staff Report and Recommendation and concludes they are necessary to ensure full compliance with applicable Burlington Municipal Code requirements.

RECOMMENDATION:

Based on a thorough review of the record associated with this proposal, the applicable regulatory requirements, and the findings and conclusions presented above, the Planning Commission hereby recommends the City Council *approve* permit applications LUP 1-17, BSP 1-17, CUP 2-17 *subject to* the following conditions:

CONDITIONS OF APPROVAL:

The Planning Commission has concluded that conditions of approval identified in the attached Staff Report and Recommendation dated June 16, 2017 (see attached exhibit "1") are necessary to ensure compliance with applicable Burlington Municipal Code requirements. Therefore, the Planning Commission recommends the City Council require that the proposed development activities be subject to, and comply with, the conditions of permit approval

City of Burlington – Planning Department
Nevitt Road Gas Station – LUP 1-17, BSP 1-17, and CUP 2-17

enumerated in the attached Staff Report and Recommendation prepared by the Planning Department.

DATED this 21st day of June 2017



Chair, City of Burlington Planning Commission

Exhibits:
"1" Staff Report and Recommendation



EXHIBIT "1"

STAFF REPORT AND RECOMMENDATION

DATE: June 16, 2017

PROJECT: Nevitt Road Gas Station (LUP 1-17, BSP 1-17, & CUP 2-17)

LOCATION: 765 Nevitt Road (approximate)

PARCELS: P130527, P130528, and P130526

APPLICANT: Barghausen Consulting Engineers, Inc.

STAFF: Brad Johnson, Senior Planner

REQUEST:

On March 9, 2017 the City received an application to reconfigure an existing binding site plan to create four development sites; construct a 6,000 sq. ft. gas station and convenience store with a 4,230 sq. ft. covered fueling island; a 240 sq. ft. drive-through coffee stand; and install associated roadways, parking, utilities, and landscaping. The proposed development will result in approximately 48,327 sq. ft. of new impervious surface coverage and will include 17 parking spaces.

FINDINGS:

Permit Process

1. The project site is comprised of a four lot binding site plan (BSP) approved by the City of Burlington in 2011. The proposal will reconfigure lots two and three of the BSP and create a fifth lot. Because the creation of lots for sale, lease, or development is subject to platting review, the applicant has submitted an application for preliminary BSP approval. Binding site plan approvals are normally classified as a type I review (BMC 17.68.030.B).
2. The proposed development includes approximately 17 parking spaces and will require landscaping. Pursuant to BMC 17.68.150.A.1 and BMC 17.68.150.A.2, any development involving the addition of more than five parking spaces, or the approval of a landscaping

plan, requires a type II land use permit and must be reviewed by the Planning Commission (BMC 17.68.150.D).

3. The project site is zoned "C-1". Drive-through coffee stands are listed a conditional use in the "C-1" zone and require a conditional use permit (BMC 17.36.030.E). Conditional use permits are classified as a type III decisions (BMC 17.68.030.D) and must be approved by the City Council following a recommendation from the Planning Commission (BMC 17.68.090.B). Therefore the Planning Commission is authorized to review this proposal and forward a recommendation to the City Council.
4. As described above the proposed development requires three separate permit applications and each permit application requires a separate review procedure. In such cases the code requires that the applications be combined and processed as single permit unless the applicant requests otherwise (BMC 17.68.030.F and BMC 17.68.040.D). Accordingly the three applications have been combined and will be processed as type III decision.
5. Following the submittal of a land use application the City is required to determine whether or not the application constitutes a "complete" application (BMC 15.16.020.A and RCW 36.70B.070). The permit application was submitted on March 9, 2017. On March 15, 2017 the Planning Department notified the applicant that their application was incomplete and requested additional materials and information. The applicant subsequently submitted additional materials on May 11, 2017 and May 15, 2017. On May 17, 2017 the Planning Department notified the applicant that their application was complete.
6. Public notification of all conditional use permit applications is required. In accordance with BMC 17.68.070.D.9, a notice was published in the Skagit Herald and distributed to adjoining property owners.
7. Following the notification described above a public comment period was provided. This comment period began on May 17, 2017 and ended on June 1, 2017. The City did not receive any comments on the proposed development during the comment period.

Zoning

8. The proposed developing includes a gas station and an associated convenience store. While retail is an allowed use in the C-1 zone, gas stations are only permitted in the C-2 zone (BMC 17.39.020.S). However, a "nonconforming" gas station existed on the site until it was demolished during the reconstruction of the SR-20/I-5 freeway interchange. Under normal circumstances the right to reestablish a nonconforming use expires 180 days after the use is discontinued (BMC 17.66.060.B). In this case it is clear that as early as 2009 the property owners disclosed their intent to reconstruct the gas station. This is documented in a 2009 SEPA Threshold Determination associated with the Steen/Holiday Sports Binding Site Plan Review. It also appears that City staff consistently assured the property owners that they would retain their right to rebuild the nonconforming gas station. Because the

property owners actively pursued permits to reconstruct the gas station, and because the City provided assurances that the gas station could be reconstructed, the Planning Department finds that the proposed gas station constitutes a legal non-conforming use and may be reconstructed.

9. The applicant is also proposing to construct a drive-through coffee stand on lot five of the binding site plan. Drive-through coffee stands are listed a conditional use the C-1 zone (BMC 17.36.030.E). The code specifies that a drive-through may be approved if; (a) it is located at a signalized intersection; and (b) is consistent with the conditional use approval criteria identified in BMC 17.68.130.E. The drive-through will be located at the intersection of Nevitt Road and SR-20, which is a signalized intersection, and as demonstrated below, can comply with the approval criteria for conditional uses.

Conditional Use Approval Criteria

10. Conditional use permits may not be approved unless it can be demonstrated that the proposed use will have no more adverse effect on the health, safety or comfort of persons living or working in the area, and will be no more injurious, economically or otherwise to property or improvements in the surrounding area, than would any use generally permitted in the district. Among matters to be considered are traffic flow and control, access to and circulation within the property, off-street parking and loading, refuse and service areas, utilities, screening and buffering, signs, yards and other open spaces, height, bulk and location of structures, location of proposed open space uses, hours and manner of operation, and noise, lights, dust, odor, fumes and vibration (BMC 17.68.130.E.1).
11. The applicant is proposing to construct a drive-through coffee stand in an area zoned for commercial development. Generally the purpose of the C-1 zone is to accommodate small to medium scale commercial businesses and to foster a pedestrian oriented shopping environment. For this reason drive-through uses are generally discouraged in the C-1 zone. Although the project site is zoned C-1, it is located immediately adjacent to a freeway interchange and is surrounded by auto oriented uses. The coffee stand will be located in a binding site plan with dedicated access to a signalized intersection. In addition, the gas station that will also be built on the site has functions and impacts that are similar to a drive through use. For these reasons the Planning Department finds that proposed coffee stand will not result in detrimental impacts to surrounding uses.
12. Conditional use permits may not be approved unless the proposal is consistent with the goals, policies and objectives of the comprehensive plan (BMC 17.68.130.E.2). The proposed coffee stand is consistent with the following comprehensive plan policies.
 - a. *Business, Commercial, and Industrial Development Policy 1-A: "Development and redevelopment of vacant and underutilized land shall be encouraged and guided to complement the existing land use base where land is fully utilized".*

b. Business, Commercial, and Industrial Development Policy 1-C: “Continue to increase retail sales trade”.

13. Conditional use permit applications shall comply with all applicable requirements identified in title 17 (BMC 17.68.130.E.3). As demonstrated in this report the applicant’s proposal complies with all applicable zoning code requirements.
14. Conditional uses must be constructed and maintained so as to be harmonious and appropriate in design, character, and appearance with the existing or intended character of the general vicinity and provides a high quality of development (BMC 17.68.130.E.4). The proposed coffee stand will be constructed on a vacant site in conjunction with a gas station. The site is located near a freeway interchange, adjoins a McDonald’s drive-through, and is generally characterized by auto oriented uses and design characteristics. The Planning Department finds that the proposed drive-through will be consistent with, and will not detrimentally impact, the character of the surrounding area.
15. Conditional uses shall not adversely affect public infrastructure (BMC 17.68.130.E.5). The proposed coffee stand will place very limited demands on public infrastructure. As a condition of building permit approval the applicant will be required to pay impact fees for fire service, parks, and transportation. In addition sewer connection fees will apply. These charges are intended to proportionally offset the impacts of proposed development on public infrastructure. The Planning Department finds that, provided the required impact fees are paid, the proposed coffee stand will not adversely affect public infrastructure.

Setbacks and Lot Coverage

16. There are no minimum standards for lot area, width, or depth in the C-1 zone; therefore all of the lots proposed by the applicant will comply with the applicable dimensional standards for the C-1 zone (BMC 17.36.040.A, B, and C).
17. Impervious surface coverage is limited to 80 percent in the C-1 zone (BMC 17.36.040.D.2). Generally impervious surfaces include areas of a site covered by buildings, pavement, or other hard surfaces. Permeable paving, such as porous concrete, pavers, and grass-grid, may be included in impervious surface calculations at a rate of 50 percent (BMC 17.06.455).
18. The site plan provided by the applicant includes a table with surface coverage calculations for each of the proposed lots. Based on this table each of the lots appears to comply with coverage limit described above. However, the calculations for lot three contain an error. Specifically, it appears that the permeable paving on this lot has been

included at rate of 100 percent. As a result the impervious surface coverage of lot three exceeds the allowable coverage by 1,601 square feet.

19. As a condition of approval (see condition “8”) the applicant will be required to address by either:
 - a. Reducing the coverage of lot three by increasing the amount of landscaping or utilizing more permeable pavement; or
 - b. Including restrictive notes on the face of the binding site plan that reduce the amount of impermeable surfaces allowed on the other lots by at least 1,601 square feet, thereby averaging the allowable impervious surface coverage across two or more lots.
20. The C-1 zone requires that all buildings be built within 10 feet of adjoining streets and roadways. The proposed coffee stand and convenience store will both be located adjacent to streets. Drive-through uses may deviate from the maximum setback standards as minimally necessary to accommodate the drive-through and queuing lanes (BMC 17.36.040.H.3.a). The proposed coffee stand appears to be located as close as possible to the intersection of Nevitt Road and SR-20 and the Planning Department finds that the building location complies with the applicable standards for drive-through uses.
21. The convenience store shown on the site plan adjoins a private road to the south and Nevitt Road to the east. As proposed this building will be located 19 feet from Nevitt Road and 18 feet from the private road. This location does not comply with the standard street setback requirements. However, the code allows exceptions to be granted in instances where alternative measures are used to provide a well-defined street edge and pedestrian oriented streetscape (BMC 17.36.040.H.3).
22. Because the convenience store will be located at the intersection of two streets, and given the site planning challenges inherent in accommodating an auto oriented use in a zone that requires pedestrian oriented landscaping and setbacks, the Planning Department believes the building is located as close as possible to adjoining streets. Moving the building closer to the intersection would reduce the total quantity of landscaping and this landscaping could not be provided elsewhere on the site. Therefore, a deviation from the maximum setback is appropriate and other pedestrian oriented amenities will need to be provided. In order to ensure a pedestrian oriented streetscape, a sidewalk will be required along the northern edge of the private road which abuts lot three to the south. This condition will also serve to address the other pedestrian access requirements outlined in this report (see condition “12”).

Development Standards and Landscaping

23. All development proposals must incorporate low impact development (LID) features, such as rain gardens, permeable pavement, vegetated roofs, or bio-retention areas, unless demonstrated to be infeasible through an engineering analysis (BMC 17.45.110.C). The proposed development includes several rain gardens and areas of permeable pavement. In addition the applicant submitted a geotechnical evaluation which demonstrates that the soils on the site are not conducive to more extensive LID features. The Planning Department finds that the applicant has adequately addressed the requirement to incorporate LID features into the project design and will be required to construct these features as a condition of approval (see conditions “9”, “10”, and “11”).
24. No development proposal shall be approved until the City Engineer finds that the proposal compiles with the City’s storm-water management regulations (Title 14 BMC) (BMC 17.45.110.A). As a condition of approval the applicant must submit an engineered storm-water plan to the Public Works Department and this plan must be approved prior to the issuance of a grading permit (see condition “11”).
25. The landscaping standards set forth in Burlington Municipal Code apply to all new development in the City with limited exceptions (BMC 17.50.020).
26. City code requirements dictate that a landscaping plan be included with a complete application (BMC 17.50.030.A) and this plan must be prepared by a licensed landscape architect (BMC 17.50.050.D). The applicant provided a landscaping plan prepared by a landscape architect that includes all of the required information (see exhibit “A”).
27. The C-1 zone requires that ten percent of every development site be landscaped (BMC 17.50.050.A). The cover page of the applicant’s plans includes a table showing the percentage of each lot that will be landscaped. Based on this table, 12 percent of lot three and 39 percent of lot 5 will be landscaped. Lots one and two are not being developed at this time and landscaping will be required as a condition of future development. Lot four is already developed and is not subject to the landscaping standards.
28. To the greatest extent possible landscaping areas must be used as storm-water infiltration areas or LID features (BMC 17.50.040.K.2). Several rain gardens will be used to treat and store storm-water. In addition the applicant provided a geotechnical evaluation showing that extensive on-site infiltration is not feasible based on soil conditions. Provided the proposed rain gardens and LID features are constructed the project will comply with the above requirement (see conditions “10” and “11”).

29. Street frontage landscaping must be provided and must consist of a strip 10 feet wide with at least one tree for every 30 feet of street frontage adjoining the development site (BMC 17.50.060.A and B). Lots two and five are surrounded by a landscaping strip that generally exceeds ten feet. Lots two and five have approximately 562 linear feet of street frontage, which means that at least 19 trees must be provide. The landscaping plan depicts only 15 trees. As a condition of approval the applicant will be required to submit a revised landscaping plan that includes at least four additional street trees (see condition "7").
30. Parking lot landscaping must be provided for parking lots with 20 or more parking spaces (BMC 17.50.080.A). The proposed development includes only 17 spaces so these requirements do not apply.

Parking and Pedestrian Access

31. Parking must be provided for convenience stores at a rate of one space for 350 square feet of floor space (BMC 17.54.020.A). The City's code also limits parking to 120 percent of the minimum requirement unless a parking study is provided to justify a greater amount (BMC 17.540.020.B). The plans provided by the applicant indicate that 17 parking spaces will be provided. This number is the within the range permitted by the City's code requirements.
32. Parking and circulation areas must be designed to incorporate low impact development (LID) features unless demonstrated to be infeasible through an engineering analysis (BMC 17.54.050.B). The applicant will be utilizing Landscaping, rain gardens, and areas of permeable pavement to meet this requirement. A geotechnical evaluation was also submitted which demonstrates that the soils found conditions found on the site are not suitable for infiltration. Because the applicant has incorporate LID features to the maximum extent possible and provided an engineering analysis which demonstrates that additional measures are not feasible, the Planning Department finds that the proposal complies with all applicable LID requirements.
33. The pedestrian access and circulation requirements identified in BMC 17.54.090 are applicable to this project. Specifically:
 - a. Pedestrian access shall be provided at all pedestrian arrival points including property edges, adjacent lots, abutting street intersections, and transit stops (BMC 17.54.090.A); and
 - b. Access at property edges and to adjacent lots shall be coordinated with existing development to provide logical circulation patterns between developments (BMC 17.54.090.A.1); and

- c. Access shall be well lit and physically separated from driveways and parking spaces by landscaping, berms, barriers, or grade separation to protect pedestrians from vehicular traffic (BMC 17.54.090.C.1); and
 - d. Pedestrian access facilities shall be at least 60 inches in width and surfaced in accordance with the City's standards for sidewalks and walkways (BMC 17.54.090.C.2); and
 - e. Cross walks are required when a walkway crosses a driveway or paved areas accessible to vehicles (BMC 17.54.090.C.4).
34. The proposed development has sidewalks along the northern perimeter and pedestrian access points connect this sidewalk to the proposed coffee stand on lot five. The Nevitt Road frontage also has sidewalks and a pedestrian connection is provided to the front of the proposed convenience store on lot three. However, the private access road serving lots one, two, and four lacks sidewalks and no access is provided to the proposed convenience store from the south or west. In order to provide a logical pedestrian circulation system, connect the various developments within the binding site plan, and ensure compliance with BMC 17.54.090.A and BMC 17.54.090A.1, sidewalks shall be constructed along the private access road in conjunction with the development of the adjoining lots (see condition "12").
35. Sidewalks and walkways must be constructed using permeable paving unless demonstrated to be infeasible through an engineering analysis. As demonstrated above the applicant provided an engineering analysis which demonstrates that the upper level soils found on the site are not suitable for storm-water infiltration.

SEPA DETERMINATION:

A SEPA Threshold Determination was previously issued for this project on March 10, 2009.

PERMIT RECOMMENDATION:

The Planning Department has reviewed the applicant's proposal and determined that it can comply with applicable Burlington Municipal Code requirements provided the recommended conditions of approval are fully implemented. Therefore, the Planning Department recommends the Planning Commission forward a recommendation for approval of permit applications LUP 1-17, BSP 1-17, CUP 2-17 to the City Council *subject to* the following conditions of approval:

1. This approval shall not be construed to authorize any development or site modifications beyond those described in the application and shown on the approved plans. For

purposes of interpreting this decision the approved plans shall be the plans and other project documents attached to the Planning Commission's decision.

- 2. Except as otherwise required by the conditions of approval identified in this decision all work, construction, and development activities shall conform to the approved plans. Minor modifications necessary to implement any changes requested by the Building Official, Fire Marshall, or Public Works department are permitted.**
- 3. In accordance with BMC 17.68.120 this approval shall expire two years from the date of approval. The date of approval shall be the date the City Council's decision is signed.**
- 4. This approval does not authorize the location, design, construction or installation of any signs. No signs may be installed unless authorized by an approved City sign permit.**
- 5. Prior to beginning any construction activities, grading, excavation, filling, or utility work, the applicant shall apply for, and obtain, a grading permit.**
- 6. Prior to beginning any building construction the applicant shall apply for, and obtain, a building permit.**
- 7. Prior to the issuance of building permits for development on lots three and five the applicant shall submit a revised landscaping plan which includes at least four additional street trees.**
- 8. Prior to the issuance of a grading permit, or final approval of the final binding site plan, the applicant shall address the impervious surface coverage limit noted in finding "19" by either: (a) reducing the coverage of lot three by increasing the amount of landscaping or utilizing more permeable pavement so that the total impervious surface coverage of lot three does not exceed 80 percent; or (b) including restrictive notes on the face of the binding site plan that limit the amount of impermeable surfaces allowed on the other lots so that the total combined impervious surface coverage of lots one, two, three, and five does not exceed 80 percent. Revised plans shall be submitted demonstrating compliance with this condition.**
- 9. All rain gardens, permeable pavement sections, and other low impact development features shown on the approved plans or required by this decision shall be constructed or installed prior to final occupancy.**
- 10. All landscaping and landscape improvements shown on the approved plans or required by this decision shall be installed prior to final occupancy.**

11. A grading permit shall not be issued until the City Engineer has determined the proposed development will comply with Title 14 and all applicable Washington State laws governing storm-water management and water quality.
12. The final binding site plan submitted for approval and recording shall include the following restrictive notes:
 - a. "All construction, development activities, and land uses shall be consistent with the notes, restrictions, and limitations shown on this binding site plan."
 - b. "All construction, development activities, and land uses shall be consistent applicable Burlington Municipal Code requirements and the Burlington Comprehensive Plan."
 - c. "The roadways, utilities, pedestrian access, sidewalks, and site infrastructure shall be maintained and shall not be removed, obstructed, or altered without prior approval from the City of Burlington."
 - d. "Development of the lots within this binding site plan may require land use permits, conditional use permits, building permits, or other approvals from the City of Burlington."
 - e. "No building permit shall be issued for any lot within this binding site plan until sewer and water service has been extended to serve the lot on which the building permit is requested".
 - f. "No final occupancy or final inspection approval shall be issued for construction on lot three until a sidewalk has been constructed along the edge of the private road where it abuts lot three".
 - g. "No final occupancy or final inspection approval shall be issued for construction on lot two until a sidewalk has been constructed along the edges of the private road where it abuts lot two".
 - h. "No final occupancy or final inspection approval shall be issued for construction on lot one until a sidewalk has been constructed along the edge of the private road where it abuts lot one".
 - i. "All required improvements shall be constructed in accordance with applicable City or Burlington standards and requirements".

13. A final binding site plan meeting all of the requirements identified in this decision shall be submitted to the City of Burlington for approval and recorded within two years of the date of this decision.
14. The final BSP submitted to the City of Burlington for approval shall be consistent with any standards or requirements established by the Skagit County Auditor for recorded documents.
15. Prior to the issuance of any building permit within the binding site plan approved by this decision all fire suppression and hydrant requirements shall be addressed and approved by the City's Fire Marshal.

Exhibits:

A – Approved Plans
B – Binding Site Plan

① BITE DEVELOPMENT NOTES

- [illegible]

ACCESSIBLE PATH OF TRAVEL NOTE:

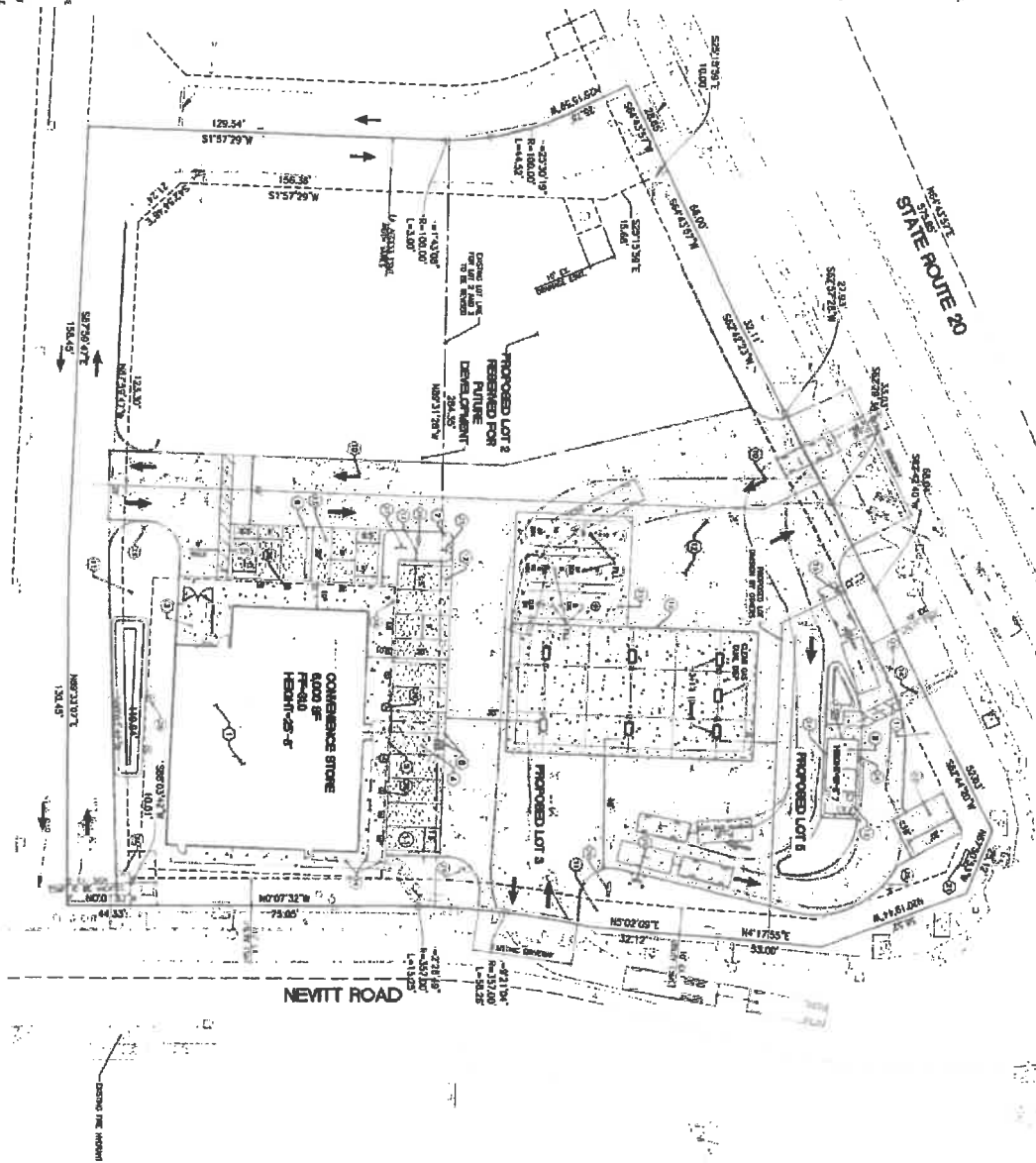
PROBES AND SENSORS ALONG ACCESSIBLE PORTS OF THERO. (1) SHALL BE CONTINUOUSLY ACCESSIBLE. (2) ARE USUALLY IN WORK. (3) ARE A MINIMUM 1/2 IN. CROSS SECTION. AND (4) ARE NEARLY NECESSARY TO CHANGE FLUIDS AT A SLOPE DETERMINED AS CONVENIENTLY (20-120) SHALL HAVE THERMS CONNECTED WITH AN SENSITIVE SECTION 4 IN. THERE A THERM COUPLER OF A MINIMUM 1/2 IN. AND THE THERM COUPLERS ARE NOT SEPARATED BY CABLES. READINGS OF OTHER ELEMENTS BETWEEN FLOWMETER AND/OR CONTROL ARMS SHALL BE FORWARDED BY A CONTINUOUS RECORDING INSTRUMENT WITH A 3" WIDE, CONTINUOUS WITH AN SENSITIVE SECTION 4 IN.

PRELIMINARY BITE PLAN

FOR

CATTAIL CORNER RETAIL

A PORTION OF THE NW1/4 OF THE NE1/4 OF
SEC. 8, TWP 34 N., RGE 4 E., W.M.
CITY OF BURLINGTON, SKAGOT COUNTY, WASHINGTON



"A" 20F5

2	4/28/17	Al	CU	CU	REWORKS PER CITY OF BURLINGTON COMMENTS DATED 4/28/17
3	5/15/17	AS	CU	CU	REWORKS PER CITY OF BURLINGTON COMMENTS DATED 5/15/17
No.	Date	By	Chg.	Appr.	Revision

Title

PRELIMINARY SITE PLAN

SWC HWY 20 + NEVITT ROAD

BURLINGTON, WASHINGTON 98223

PRELIMINARY SITE PLAN
SWC HWY 20 + NEVITT ROAD
BURLINGTON, WASHINGTON 98233

CATTAIL CORNER RETAIL
SWC HWY 20 & NEVITT ROAD
BURLINGTON, WASHINGTON 98233

18215 72ND AVENUE SOUTH
KENT, WA 98032
(425)251-6222
(425)251-8782 FAX

CIVIL ENGINEERING, LAND PLANNING,
SURVEYING, ENVIRONMENTAL SERVICES

17488

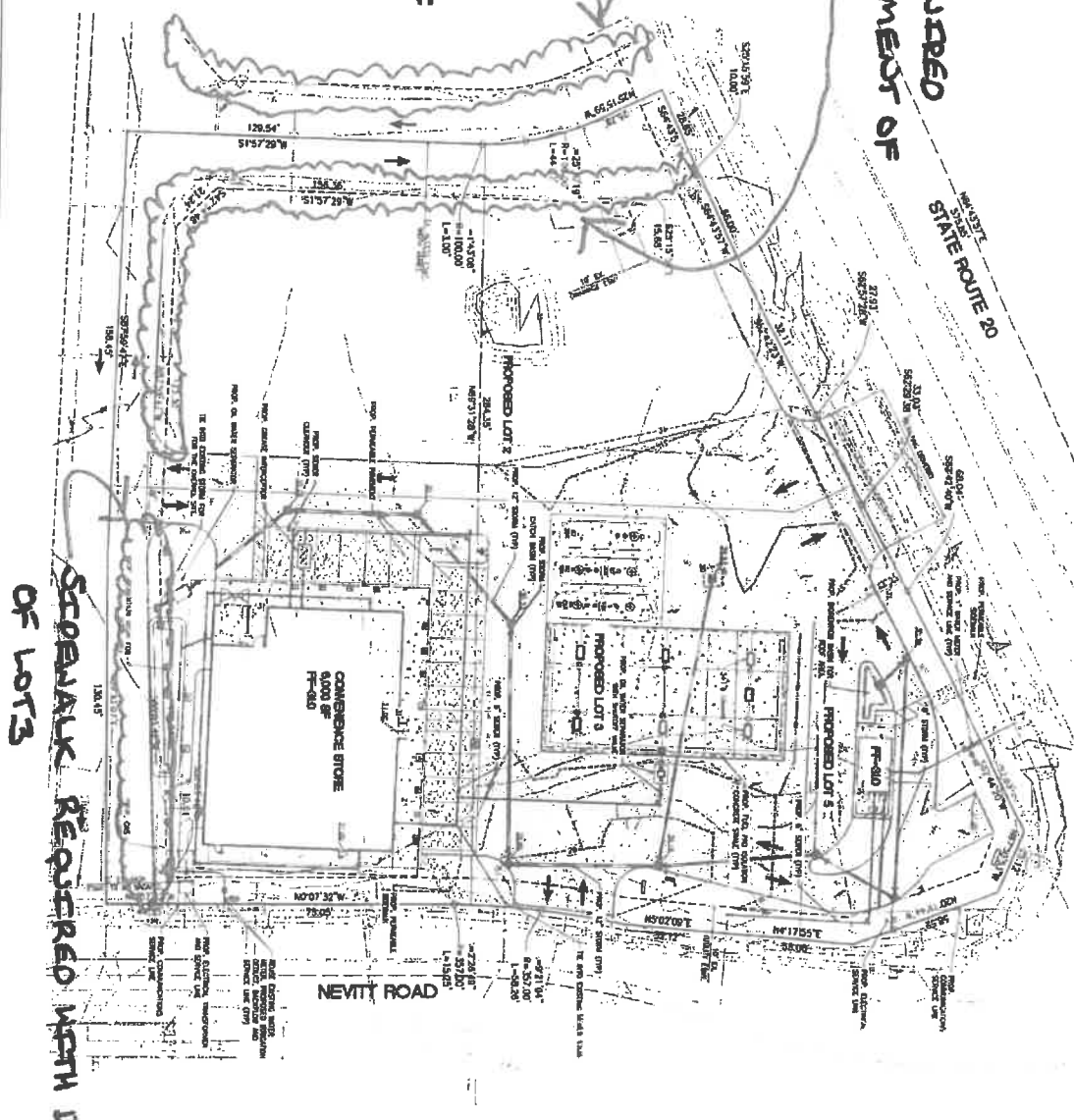
220 3



PRELIMINARY GRADING AND UTILITY PLAN
FOR
CATTAIL CORNER RETAIL
A PORTION OF THE NW1/4 OF THE NW1/4 OF
SEC. 8, TWP 34 N, R2E 4 E, W1A
CITY OF BURLINGTON, BRADY COUNTY, WASHINGTON

SIDEWALK REQUIRED
WITH DEVELOPMENT OF
LOT 2

SIDEWALK
REQUIRED WITH
DEVELOPMENT OF
LOT 1



SIDEWALK REQUIRED WITH DEVELOPMENT
OF LOT 3

"A" 3 OF 5

APPROVED FOR SUBMITTAL TO THE CITY OF BURLINGTON
DATE: 1/28/12

Sheet
17496
C3.9 3



18215 72ND AVENUE SOUTH
ACHT, WA 98032
(425)251-5212
(425)251-8782 FAX
CIVIL, ENGINEERING, LAND PLANNING,
SURVEYING, ENVIRONMENTAL SERVICES

Designer: JCB
Drawn: JCB
Checked: JCB
Approved: JCB
Date: 1/22/12

Scale:
Horizontal: 1"=20'
Vertical: N/A



For: **CATTAIL CORNER RETAIL**
SWC HWY 20 + NEVITT ROAD
BURLINGTON, WASHINGTON 98233

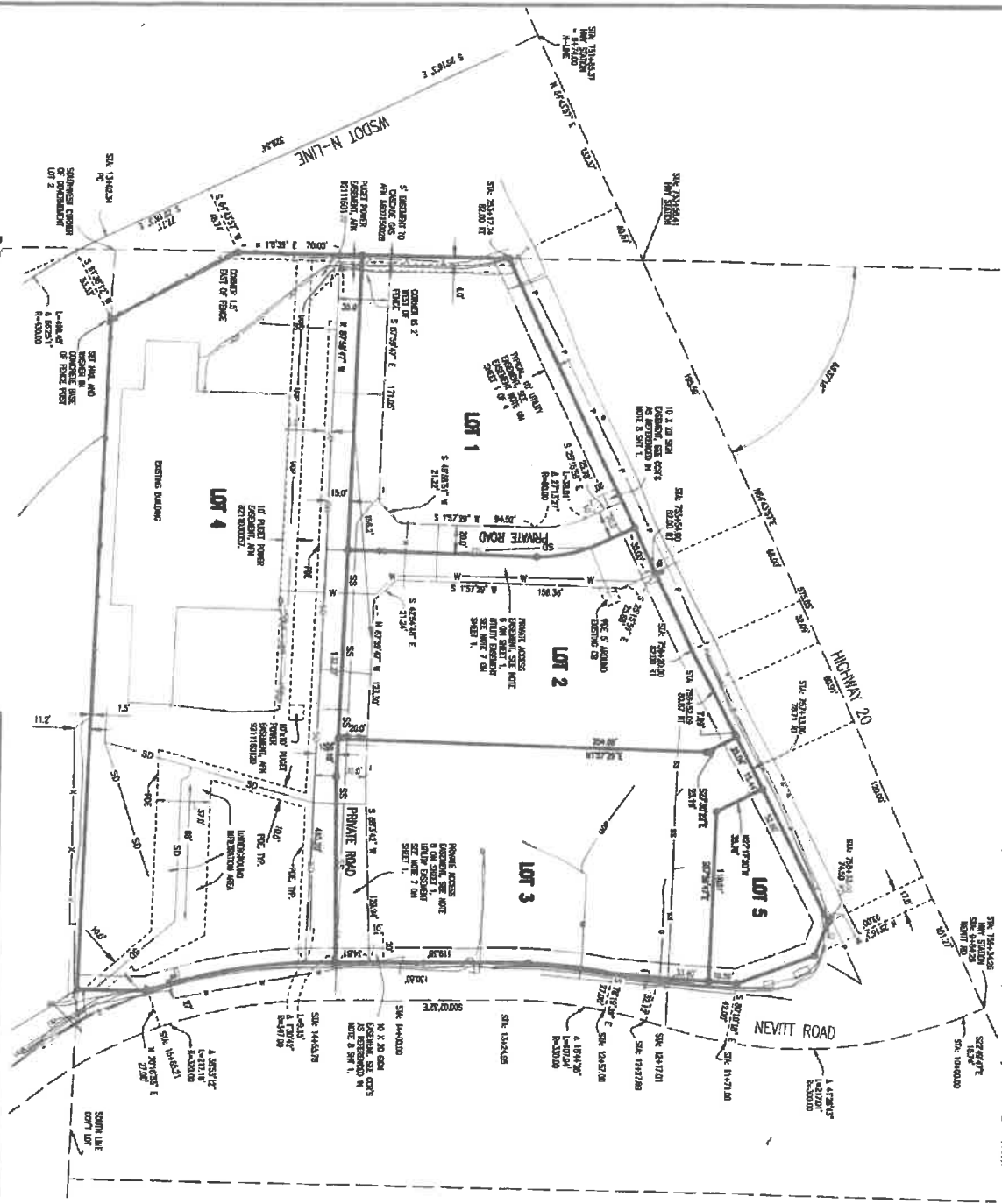
REVISIONS PER CITY OF BURLINGTON COMMENTS DATED 1/28/11			
No.	Date	By	Rev.
1	1/28/11	JCB	CU
2	1/28/11	JCB	CU
3	1/28/11	JCB	CU
4	1/28/11	JCB	CU
5	1/28/11	JCB	CU
6	1/28/11	JCB	CU
7	1/28/11	JCB	CU
8	1/28/11	JCB	CU
9	1/28/11	JCB	CU
10	1/28/11	JCB	CU
11	1/28/11	JCB	CU
12	1/28/11	JCB	CU
13	1/28/11	JCB	CU
14	1/28/11	JCB	CU
15	1/28/11	JCB	CU
16	1/28/11	JCB	CU
17	1/28/11	JCB	CU
18	1/28/11	JCB	CU
19	1/28/11	JCB	CU
20	1/28/11	JCB	CU
21	1/28/11	JCB	CU
22	1/28/11	JCB	CU
23	1/28/11	JCB	CU
24	1/28/11	JCB	CU
25	1/28/11	JCB	CU
26	1/28/11	JCB	CU
27	1/28/11	JCB	CU
28	1/28/11	JCB	CU
29	1/28/11	JCB	CU
30	1/28/11	JCB	CU
31	1/28/11	JCB	CU
32	1/28/11	JCB	CU
33	1/28/11	JCB	CU
34	1/28/11	JCB	CU
35	1/28/11	JCB	CU
36	1/28/11	JCB	CU
37	1/28/11	JCB	CU
38	1/28/11	JCB	CU
39	1/28/11	JCB	CU
40	1/28/11	JCB	CU
41	1/28/11	JCB	CU
42	1/28/11	JCB	CU
43	1/28/11	JCB	CU
44	1/28/11	JCB	CU
45	1/28/11	JCB	CU
46	1/28/11	JCB	CU
47	1/28/11	JCB	CU
48	1/28/11	JCB	CU
49	1/28/11	JCB	CU
50	1/28/11	JCB	CU
51	1/28/11	JCB	CU
52	1/28/11	JCB	CU
53	1/28/11	JCB	CU
54	1/28/11	JCB	CU
55	1/28/11	JCB	CU
56	1/28/11	JCB	CU
57	1/28/11	JCB	CU
58	1/28/11	JCB	CU
59	1/28/11	JCB	CU
60	1/28/11	JCB	CU
61	1/28/11	JCB	CU
62	1/28/11	JCB	CU
63	1/28/11	JCB	CU
64	1/28/11	JCB	CU
65	1/28/11	JCB	CU
66	1/28/11	JCB	CU
67	1/28/11	JCB	CU
68	1/28/11	JCB	CU
69	1/28/11	JCB	CU
70	1/28/11	JCB	CU
71	1/28/11	JCB	CU
72	1/28/11	JCB	CU
73	1/28/11	JCB	CU
74	1/28/11	JCB	CU
75	1/28/11	JCB	CU
76	1/28/11	JCB	CU
77	1/28/11	JCB	CU
78	1/28/11	JCB	CU
79	1/28/11	JCB	CU
80	1/28/11	JCB	CU
81	1/28/11	JCB	CU
82	1/28/11	JCB	CU
83	1/28/11	JCB	CU
84	1/28/11	JCB	CU
85	1/28/11	JCB	CU
86	1/28/11	JCB	CU
87	1/28/11	JCB	CU
88	1/28/11	JCB	CU
89	1/28/11	JCB	CU
90	1/28/11	JCB	CU
91	1/28/11	JCB	CU
92	1/28/11	JCB	CU
93	1/28/11	JCB	CU
94	1/28/11	JCB	CU
95	1/28/11	JCB	CU
96	1/28/11	JCB	CU
97	1/28/11	JCB	CU
98	1/28/11	JCB	CU
99	1/28/11	JCB	CU
100	1/28/11	JCB	CU

3

"B" 4 OF 4

AMENDED STEEN BINDING SITE PLAN PREVIOUS RECORDING NUMBER 201101260089, BEING IN A PORTION OF GOVERNMENT LOT 2 (NW 1/4 OF NE 1/4) OF SECTION 6, T.34 N., R.4 E. WM.

UTILITY MAP



RESEARCH
 SEARCHES ACCORDING TO THE RECORDS OF THE CLERK OF THE SUPERIOR COURT, DISTRICT OF COLUMBIA, AND THE DISTRICT OF COLUMBIA DEPARTMENT OF GENERAL SERVICES, HAVE REVEALED THE FOLLOWING RECORDS:
 RECORD, 1980-1981 AND 1982-1983.

ASBESTOS NOTE
 THIS SURVEY WAS CONDUCTED BY FIELD INSPECTOR WITH A THORNE
 50" X 100" X 100" AND A THORNE 50" X 100" X 100" AND A THORNE 50" X 100" X 100"
 OF EXISTING RECORDS OF SET POINTS IN 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695, 2696, 2697, 2698, 2699, 2700, 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2710, 2711, 2712, 2713, 2714, 2715, 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2723, 2724, 2725, 2726, 2727, 2728, 2729, 2730, 2731, 2732, 2733, 2734, 2735, 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2744, 2745, 2746, 2747, 2748, 2749, 2750, 2751, 2752, 2753, 2754, 2755, 2756, 2757, 2758, 2759, 2760, 2761, 2762, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2774, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2787, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2796, 2797, 2798, 2799, 2800, 2801, 2802, 2803, 2804, 2805, 2806, 2807, 2808, 2809, 2810, 2811, 2812, 2813, 2814, 2815, 2816, 2817, 2818, 2819, 2820, 2821, 2822, 2823, 2824, 2825, 2826, 2827, 2828, 2829, 2830, 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2841, 2842, 2843, 2844, 2845, 2846, 2847, 2848, 2849, 2850, 2851, 2852, 2853, 2854, 2855, 2856, 2857, 2858, 2859, 2860, 2861, 2862, 2863, 2864, 2865, 2866, 2867, 2868, 2869, 2870, 2871, 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, 2883, 2884, 2885, 2886, 2887, 2888, 2889, 2890, 2891, 2892, 2893, 2894, 2895, 2896, 2897, 2898, 2899, 2900, 2901, 2902, 2903, 2904, 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 2943, 2944, 2945, 2946, 2947, 2948, 2949, 2950, 2951, 2952, 2953, 2954, 2955, 2956, 2957, 2958, 2959, 2960, 2961, 2962, 2963, 2964, 2965, 2966, 2967, 2968, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2976, 2977, 2978, 2979, 2980, 2981, 2982, 2983, 2984, 2985, 2986, 2987, 2988, 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3005, 3006, 3007, 3008, 3009, 3010, 3011, 3012, 3013, 3014, 3015, 3016, 3017, 3018, 3019, 3020, 3021, 3022, 3023, 3024, 3025, 3026, 3027, 3028, 3029, 3030, 3031, 3032, 3033, 3034, 3035, 3036, 3037, 3038, 3039, 3040, 3041, 3042, 3043, 3044, 3045, 3046, 3047, 3048, 3049, 3050, 3051, 3052, 3053, 3054, 3055, 3056, 3057, 3058, 3059, 3060, 3061, 3062, 3063, 3064, 3065, 3066, 3067, 3068, 3069, 3070, 3071, 3072, 3073, 3074, 3075, 3076, 3077, 3078, 3079, 3080, 3081, 3082, 3083, 3084, 3085, 3086, 3087, 3088, 3089, 3090, 3091, 3092, 3093, 3094, 3095, 3096, 3097, 3098, 3099, 3100, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, 3112, 3113, 3114, 3115, 3116, 3117, 3118, 3119, 3120, 3121, 3122, 3123, 3124, 3125, 3126, 3127, 3128, 3129, 3130, 3131, 3132, 3133, 3134, 3135, 3136, 3137, 3138, 3139, 3140, 3141, 3142, 3143, 3144, 3145, 3146, 3147, 3148, 3149, 3150, 3151, 3152, 3153, 3154, 3155, 3156, 3157, 3158, 3159, 3160, 3161, 3162, 3163, 3164, 3165, 3166, 3167, 3168, 3169, 3170, 3171, 3172, 3173, 3174, 3175, 3176, 3177, 3178, 3179, 3180, 3181, 3182, 3183, 3184, 3185, 3186, 3187, 3188, 3189, 3190, 3191, 3192, 3193, 3194, 3195, 3196, 3197, 3198, 3199, 3200, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, 3224, 3225, 3226, 3227, 3228, 3229, 3230, 3231, 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, 3242, 3243, 3244, 3245, 3246, 3247, 3248, 3249, 3250, 3251, 3252, 3253, 3254, 3255, 3256, 3257, 3258, 3259, 3260, 3261, 3262, 3263, 3264, 3265, 3266, 3267, 3268, 3269, 3270, 3271, 3272, 3273, 3274, 3275, 3276, 3277, 3278, 3279, 3280, 3281, 3282, 3283, 3284, 3285, 3286, 3287, 3288, 3289, 3290, 3291, 3292, 3293, 3294, 3295, 3296, 3297, 3298, 3299, 3300, 3301, 3302, 3303, 3304, 3305, 3306, 3307, 3308, 3309, 3310, 3311, 3312, 3313, 3314, 3315, 3316, 3317, 3318, 3319, 3320, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329, 3330, 3331, 3332, 3333, 3334, 3335, 3336, 3337, 3338, 3339, 3340, 3341, 3342, 3343, 3344, 3345, 3346, 3347, 3348, 3349, 3350, 3351, 3352, 3353, 3354, 3355, 3356, 3357, 3358, 3359, 3360, 3361, 3362, 3363, 3364, 3365, 3366, 3367, 3368, 3369, 3370, 3371, 3372, 3373, 3374, 3375, 3376, 3377, 3378, 3379, 3380, 3381, 3382, 3383, 3384, 3385, 3386, 3387, 3388, 3389, 3390, 3391, 3392, 3393, 3394, 3395, 3396, 3397, 3398, 3399, 3400, 3401, 3402, 3403, 3404, 3405, 3406, 3407, 3408, 3409, 3410, 3411, 3412, 3413, 3414, 3415, 3416, 3417, 3418, 3419, 3420, 3421, 3422, 3423, 3424, 3425, 3426, 3427, 3428, 3429, 3430, 3431, 3432, 3433, 3434, 3435, 3436, 3437, 3438, 3439, 3440, 3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449, 3450, 3451, 3452, 3453, 3454, 3455, 3456, 3457, 3458, 3459, 3460, 3461, 3462, 3463, 3464, 3465, 3466, 3467, 3468, 3469, 3470, 3471, 3472, 3473, 3474, 3475, 3476, 3477, 3478, 3479, 3480, 3481, 3482, 3483, 3484, 3485, 3486, 3487, 3488, 3489, 3490, 3491, 3492, 3493, 3494, 3495, 3496, 3497, 3498, 3499, 3500, 3501, 3502, 3503, 3504, 3505, 3506, 3507, 3508, 3509, 3510, 3511, 3512, 3513, 3514, 3515, 3516, 3517, 3518, 3519, 3520, 3521, 3522, 3523, 3524, 3525, 3526, 3527, 3528, 3529, 3530, 3531, 3532, 3533, 3534, 3535, 3536, 3537, 3538, 3539, 3540, 3541, 3542, 3543, 3544, 3545, 3546, 3547, 3548, 3549, 3550, 3551, 3552, 3553, 3554, 3555, 3556, 3557, 3558, 3559, 3560, 3561, 3562, 3563, 3564, 3565, 3566, 3567, 3568, 3569, 3570, 3571, 3572, 3573, 3574, 3575, 3576, 3577, 3578, 3579, 3580, 3581, 3582, 3583, 3584, 3585, 3586, 3587, 3588, 3589, 3590, 3591, 3592, 3593, 3594, 3595, 3596, 3597, 3598, 3599, 3600, 3601, 3602, 3603, 3604, 3605, 3606, 3607, 3608, 3609, 3610, 3611, 3612, 3613, 3614, 3615, 3616, 3617, 3618, 3619, 3620, 3621, 3622, 3623, 3624, 3625, 3626, 3627, 3628, 3629, 3630, 3631, 3632, 3633, 3634, 3635, 3636, 3637, 3638, 3639, 3640, 3641, 3642, 3643, 3644, 3645, 3646, 3647, 3648, 3649, 3650, 3651, 3652, 3653, 3654, 3655, 3656, 3657, 3658, 3659, 3660, 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, 3672, 3673, 3674, 3675, 3676, 3677, 3678, 3679, 3680, 3681, 3682, 3683, 3684, 3685, 3686, 3687, 3688, 3689, 3690, 3691, 3692, 3693, 3694, 3695, 3696, 3697, 3698, 3699, 3700, 3701, 3702, 3703, 3704, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3719, 3720, 3721, 3722, 3723, 3724, 3725, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3733, 3734, 3735, 3736, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 3762, 3763, 3764, 3765, 3766, 3767, 3768, 3769, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 3782, 3783, 3784, 3785, 3786, 3787, 3788, 3789, 3790, 3791, 3792, 3793, 3794, 3795, 3796, 3797, 3798, 3799, 3800, 3801, 3802, 3803, 3804, 3805, 3806, 3807, 3808, 3809, 3810, 3811, 3812, 3813, 3814, 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864, 3865, 3866, 3867, 3868, 3869, 3870, 3871, 3872, 3873, 3874, 3875, 3876, 3877, 3878, 3879, 3880, 3881, 3882, 3883, 3884, 3885, 3886, 3887, 3888, 3889, 3890, 3891, 3892, 3893, 3894, 3895, 3896, 3897, 3898, 3899, 3900, 3901, 3902, 3903, 3904, 3905, 3906, 3907, 3908, 3909, 3910, 3911, 3912, 3913, 3914, 3915, 3916, 3917



ITEM #: 4

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13, 2017 Subject: Minor contract for disposal of Bio-Hazard evidence
Mike Luvera, Police Chief

Attachments: Contract with Stericycle Public Hearing Required: YES () NO (X)

SUMMARY

The police department has a back log of Bio-Hazard evidence that needs to be disposed of; past outlets for disposal of these items are no longer available. Stericycle is used by several surrounding jurisdictions with good results. This contract has been reviewed by our legal department.

RECOMMENDATION

Move to approve the contract with Stericycle for disposal of bio-hazard waste evidence and authorize the Mayor's signature.



**SERVICE AGREEMENT FOR
WASHINGTON STATE CUSTOMERS ONLY**

Service Address:

Name: BURLINGTON POLICE DEPT
Address 1: 311 Cedar Street Suite B
Address 2:
City/State/Zip: Burlington, WA 98233
E-Mail: janeb@burlingtonwa.gov
Phone#: (360) 755-2303
Sales Rep: Kody Hoffman
Generated By: Kody Hoffman

Billing Address:

Name: BURLINGTON POLICE DEPT
Address 1: 311 Cedar Street Suite B
Address 2:
City/State/Zip: Burlington, WA 98233
E-Mail: janeb@burlingtonwa.gov
Fax#: na
GeneratorID #:
Contract Number: SRCL-01109126

Route# _____ SEG CODE: _____ SERVICE AREA: Seattle SFDC#: SRCL-01109126

CONTAINER CODE: WS43 SIZE(Gallons):Medium QTY: 1.0

PICKUP FREQUENCY: 4 Stops Per Year

☒ M:9am-5pm ☒ T:9am-5pm ☒ W:9am-5pm ☒ TH:9am-5pm ☒ F:9am-5pm ☐ SA: _____ ☐ S: _____

Service Description: Medical Waste transportation, treatment, and disposal

Rate Structure: PER CURRENT WUTC TARIFF

(Tariff rates include: minimum monthly fee of \$10 and minimum stop fee of \$20)

Date of Service Agreement: 7-1-2017

Special Instructions on Manifest: _____

Cycle Begin Date: _____

By signing in the Space provided below, the Customer acknowledges having read and understood that customer is bound by the terms and conditions on all the pages of this Medical Waste Services Agreement

CUSTOMER: X

Name
Date

Title

STERICYCLE: X

Name **Kody Hoffman** Title

Date

TERMS AND CONDITIONS

Article I Regulated Medical Waste Services (a) Stericycle, Inc. shall collect, transport, treat and dispose of all Regulated Medical Waste (except Non-conforming Waste) generated by Customer during the term of this Agreement. (b) Responsibility for transportation of Regulated Medical Waste collected from Customer shall transfer and vest in Stericycle at the time it is loaded onto Stericycles vehicle. Customer shall have title to Regulated Medical Waste at all prior times. Customer shall hold title to any Non-Conforming Waste at all times, whether refused for collection or returned to the customer for proper disposal after collection. All Regulated Medical Waste must be accompanied by a properly completed shipping document pursuant to 49 CFR 172.202 (Manifest). (c) Stericycle employees may refuse containers that are determined to be Non-Conforming Waste as identified in the Waste Acceptance Policy (WAP). Customer shall place only Regulated Medical Waste as defined by 49 CFR 173.134 or by any other federal, state and local regulations. (d) Customer represents and warrants that i) the waste presented for disposal will not contain any hazardous, toxic, radioactive or Non-Conforming Wastes as defined by all applicable laws, regulations and the WAP, ii) the waste strictly conforms to Stericycles WAP and their local laws and regulations concerning Regulated Medical Waste and iii) they have reviewed the attached WAP and its complete definitions and requirements. (e) Customer shall be liable for any and all injuries, losses and damages resulting from Non-Conforming Waste. (f) All lab wastes or materials which contain or have the potential to contain infectious substances arising from those agents listed under 42 CFR 72.3 are strictly prohibited from medical waste by federal law and must be pretreated prior to disposal. (g) Further definitions are included under the current WAP, which is attached and made a part of this Agreement and specifically incorporated herein. Stericycle reserves the right to change the WAP at any time to ensure compliance with applicable laws or regulations. A copy of Stericycles Waste Acceptance Policy may also be obtained from your local Stericycle representative. Weight limits for containers are listed in Stericycles current Washington Utilities and Transportation Commission (WUTC) tariff.

Article II Term and Payment for Service This Agreement is for 36 months, unless earlier terminated in accordance with applicable law. This agreement shall be automatically renewed for successive terms equal to original terms of this agreement unless either party has notified the other party in writing, per commencing on the relevant renewal date of its desire to terminate this Agreement. Each such automatic renewal shall be for the original term of this agreement, commencing on the relevant renewal date and ending at the completion of the relevant renewal term. All automatic renewals shall be subject to the same terms and conditions as the original agreement. Stericycle shall provide Customer with monthly invoices that are due upon receipt. Customer agrees to pay a late charge on any accounts that are more than 30 days old, at a rate equal to the lesser of 1% per month or the maximum rate permitted by law. In addition to Stericycles charges for services and products under this Agreement, the Customer shall pay all taxes imposed or levied by any governmental authority with respect to such services or products. These taxes include all sales, use, excise, occupation, franchise and similar taxes and tax-like fees and charges (but do not include any taxes on Stericycles net income). Stericycle shall cooperate with the Customer to determine the applicability of any exemption certificates that the Customer provides to Stericycle in a timely manner.

Article III Title Title to Biomedical Waste collected from Customer shall be transferred to and vested in Stericycle at the same time the Biomedical Waste is fully loaded into Stericycles truck. Prior thereto, all title to Biomedical Waste shall be in Customer. Title to Non-Conforming Waste and any waste other than Biomedical Waste shall remain with Customer at all times.

Article IV Liability for Equipment Customer acknowledges that it has the care, custody and control of containers and other equipment owned by Stericycle and accepts responsibility and liability for the equipment and its contents except when it is being physically handled by employees of Stericycle. Therefore, Customer expressly agrees to defend, indemnify and hold harmless Stericycle from and against any and all claims for loss or damage to property, or personal injury or death, resulting from or arising in any manner out of Customers use, operation or possession of any containers and other equipment furnished under this Agreement.

Article V Force Majeure Except for the obligation to pay for services rendered, neither party shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, including, but not limited to, strikes, riots, fire, acts of God, injunction, compliance with any law, regulation, guideline or order of any governmental body or any instrumentality thereof, whether now existing or hereafter created.

Article VI Assignment This Agreement is assignable with the written consent of both parties and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Such consent shall not be unreasonably withheld, nor required in the event of assignment to a wholly owned affiliate or subsidiary of Stericycle or an assignment by operation of law.

Article VII Insurance Stericycle and Customer shall procure and maintain the following insurance coverages and limits for the duration and purpose of this Agreement: Workers Compensation Statutory; Employers Liability - \$100,000 each occurrence; Comprehensive General Liability (including Contractual Liability) - \$1,000,000 each occurrence combined single limit; Comprehensive Automobile Liability (Contractor only) - \$1,000,000 each occurrence, combined single limit; Environmental Impairment Liability (Contractor only) as required by applicable law or regulation. To the extent permitted by law, the above insurance requirements may be met, in whole or in part, by a plan of self insurance. Customer and Stericycle agree to furnish, upon request, certificates of insurance attesting to the insurance coverages and limits above. Each such certificate shall contain a statement requiring the insurer to notify the certificate holder at least thirty days prior to cancellation of any policy covered thereunder.

Article VIII Provision of Services and Payment for services Stericycle shall provide the services specified in its tariff as filed with the Washington Utilities and Transportation Commission (WUTC). Generator will pay for these services at the rates specified in the Tariff, as amended from time to time, and on the terms stated in Stericycles invoices. In addition: (a) Generator shall grant Stericycle safe and unobstructed access to its premises to permit Stericycle to perform its obligations under this Agreement. (b) If Stericycle determines that a shipment contains materials other than Medical Waste and/or materials that Stericycle is not authorized to receive, Stericycle may reject the shipment. Stericycle may assist Generator in the safe disposal of such materials but Generator shall bear all responsibility for such disposal. (c) Medical Waste shall become the property of Stericycle, subject to applicable laws governing such material, upon treatment by Stericycle. (d) Stericycle shall maintain all necessary permits and other authorization required for it to perform its obligations under this agreement. (e) Under this agreement, the actual price of any and all sharps containers purchased by the customer through Stericycle are not price protected for the term of this agreement.

Article IX Indemnity Stericycle will indemnify Customer from any and all loss, damages, suits, penalties, costs, liabilities and expenses (including but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss or damage to property, including Customers property and injuries to or death of person or persons, including Customers employees, caused by or resulting from Stericycles negligence or willful misconduct or Stericycles breach of this Agreement. The foregoing indemnity from Stericycle to Customer under this Article shall be inapplicable to the extent that the loss, damages, suits, penalties, costs, liabilities and/or expenses result from the Customers tender of Non-Conforming Waste. In any instance in which Customer claims indemnity under this Article, Stericycle shall have the right, but not the duty to defend (and control the defense of), Customer in any litigation arising out of the occurrence from which Customer claims that Stericycles indemnity obligation exists. Customer hereby agrees to indemnify Stericycle harmless from any and all loss, damages, suits, penalties, costs, liabilities and expenses (including, but not limited to, reasonable investigation and legal expenses) arising out of any claim for loss of or damage to property, including Stericycles property, and injuries or death to person or persons, including Stericycles employees caused by or resulting from Customers negligence or willful misconduct, Customers tender of Non-Conforming Waste or Customers breach of this Agreement. With respect to any claim for indemnification, the party claiming a right to indemnity shall (i) give written notice thereof within a reasonable period following the event or occurrence as to which the right to indemnification is or may be asserted and (ii) allow the other party (including its employees, agents and counsel) reasonable access to any of its employees, property and records for the purpose of

conducting an investigation of such claim and for the purpose of obtaining statements, photographs, and chemical analyses and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based. If the party claiming a right to indemnity denies the other party reasonable access as set forth above, the party claiming a right to indemnity shall assume sole responsibility for the claim for which indemnification is sought and shall not be entitled to indemnity.

Article X Notices Except as otherwise provided in Article II, all notices required or desired to be given hereunder shall be given in writing to the parties at the address indicated in the first part of this Agreement.

Article XI Independent Contractor Stericycle's relationship to Customer under this Agreement shall be that of independent contractor. Stericycle is to exercise its own discretion on the method and manner of performing its duties, and Customer will not exercise control over Stericycle or its employees except insofar as may be reasonably necessary to ensure performance and compliance with this Agreement. The employees, methods, equipment and facilities used by Stericycle shall at all times be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate Stericycle, or any of its employees, as employees, agents, joint venturers, or partners of Customer.

Article XII Amendment and Waiver Except as otherwise provided in Article II, this Agreement may be amended from time to time only by an instrument in writing signed by the parties to this Agreement at the time of such amendment. No provision of this Agreement can be waived except by a written instrument signed by the party waiving such provision, nor shall failure to object to any breach of a provision of this Agreement waive the right to object to a subsequent breach of the same or any other provision.

Article XIII Entire Agreement This Agreement (including any attachments, exhibits, and amendments thereto) constitutes the entire understand between the parties hereto and cancels and supercedes all prior negotiations, representations, understandings, and agreements, whether written or oral, with respect to the subject matter h e r e o f

Article XIV Purchase Orders Any terms or conditions contained in any Purchase Order, Purchase Order Agreement, or other invoice acknowledgment, Order by Customer or proposed at any time by Customer in any manner, which vary from, or conflict with the terms and conditions in the Stericycle Service Agreement are deemed to be material alterations and are objected to by Stericycle without need of further notice of objection and shall be of no effect nor in any circumstances binding upon Stericycle unless expressly accepted in writing. If Customer's standard purchase order form is provided to Stericycle in connection with this Agreement, the terms and conditions for that Purchase Order will be superseded by the provisions of this Agreement and the use of the purchase order shall be only to facilitate Customers payment of fees to Stericycle. Written acceptance or rejection by Stericycle of any such terms or conditions shall not constitute an acceptance of any other additional terms or conditions.

Article XV Waste Brokers Stericycle reserves the right to deal solely with the Customer and not with any third party agents of the customer for all purposes relating to this Agreement. Customer represents and warrants to Stericycle that it is the medical waste generator and is acting for its own account and not through a broker or agent. Stericycle shall be entitled to terminate this agreement and seek all available legal remedies, for Customers breach of this representation and warranty.



REGULATED MEDICAL WASTE ACCEPTANCE POLICY

Stericycle policy requires compliance with all applicable regulations regarding the collection, transportation and treatment of regulated medical waste. Federal Department of Transportation (DOT) Regulations require the generator of regulated medical waste to certify that the packaging and documentation of transported regulated medical waste complies with DOT regulations regarding waste classification, packaging, labeling and shipping documentation. To ensure that neither Stericycle nor the generator of regulated medical waste violates applicable regulations, it is imperative that all parties understand the rules regarding proper identification, classification, segregation and packaging of regulated medical waste. The purpose of this policy is to summarize the minimum requirements for preparing your medical waste for collection, transportation and treatment. Additional facility or state-specific waste acceptance policies may apply based on permit specifications. Please contact your local representative for further information. You may also call (866) 783-7422.

REGULATED MEDICAL WASTE

Stericycle accepts medical waste generated in a broad range of medical, diagnostic, therapeutic and research activities. The term "medical waste" includes biohazardous, biomedical, infectious or regulated medical waste as defined under federal, state or local laws, rules, regulations and guidelines. Except as defined by specific state regulations, this **excludes** RCRA hazardous waste pharmaceuticals, all DEA scheduled drugs including *controlled substances, bulk chemotherapy, waste containing mercury or other heavy metals, batteries of any type, cauterizers, non-infectious dental waste, chemicals such as solvents, reagents, corrosives or ignitable materials classified as hazardous waste under Federal and State EPA Regulations. In addition, Stericycle **cannot accept** bulk liquids, radioactive materials, or complete human remains (including heads, full torsos and fetuses). Stericycle **cannot accept** these excluded materials packaged as regulated medical waste. All lab wastes or materials which contain or have the potential to contain infectious substances arising from those agents listed under 42 CFR 72.3 are strictly prohibited from medical waste by federal law and must be pretreated prior to disposal. Separate protocol and packaging requirements apply for the disposal of non-hazardous pharmaceuticals. Hazardous waste transportation services may be offered in certain geographical locations, under separate contract. Please contact your local representative for details and packaging specifications.

* Un-dispensed from DEA Registrant

WASTE SEGREGATION AND PACKAGING

The generator is solely responsible for properly segregating, packaging and labeling of regulated medical waste. Proper segregation and packaging reduces the potential for accidental release of the contents and exposure to employees and the general public. DOT regulations require (49 CFR 173.197) that all packages of regulated medical waste be prepared for transport in containers meeting the following requirements: 1) rigid; 2) leak resistant; 3) impervious to moisture; 4) of sufficient strength to prevent tearing or bursting under normal conditions of use and handling; 5) sealed to prevent leakage during transport; and 6) puncture resistant for sharps. All regulated medical waste must be accompanied by a properly completed shipping document (See 49 CFR 172.202).

MANAGEMENT OF NON-CONFORMING WASTE

As required by regulation and company policy, Stericycle employees may refuse containers that are non-conforming because of their contents or are improperly packaged, leaking, damaged or likely to create a risk of exposure to employees or the general public. Any waste found to be non-conforming to this Waste Acceptance Policy identified in route to, or at a Stericycle location, may be returned to the generator for proper packaging and disposal, or may be rerouted for appropriate destruction; this may include improperly marked regulated medical waste which should have been identified for incineration (i.e. pathological, chemotherapy or non-hazardous pharmaceuticals). Proper segregation and packaging is essential to ensure compliant and safe handling, collection, transportation and treatment of regulated medical waste.

STERICYCLE REGULATED MEDICAL WASTE ACCEPTANCE POLICY CHECKLIST

ACCEPTED REGULATED MEDICAL WASTE

- **Sharps** - Means any object contaminated with a pathogen or that may become contaminated with a pathogen through handling or during transportation and also capable of cutting or penetrating skin or packaging material. Sharps includes needles, syringes, scalpels, broken glass, culture slides, culture dishes, broken capillary tubes, broken rigid plastic, and exposed ends of dental wires.
- **Regulated Medical Waste or Clinical Waste or (Bio) Medical Waste** - Means a waste or reusable material derived from the medical treatment of an animal or human, which includes diagnosis and immunization, or from biomedical research, which includes the production and testing of biological products.

ACCEPTED REGULATED MEDICAL WASTE WHICH MUST BE IDENTIFIED AND SEGREGATED FOR INCINERATION

- **Trace Chemotherapy Contaminated Waste** - RCRA Empty drug vials, syringes and needles, spill kits, IV tubing and bags, contaminated gloves and gowns, and related materials as defined in applicable laws, rules, regulations or guidelines
- **Pathological Waste** - Human or animal body parts, organs, tissues and surgical specimen (decanted of formaldehyde, formalin or other preservatives as required per hazardous waste rules).
- **Non-RCRA Pharmaceuticals** - Must be characterized and certified as non-RCRA hazardous material by the generator. Excludes: all DEA scheduled drugs, including controlled substances*
- **California Only** - Solidified Suction Canisters - Suction canisters that have been injected with solidifier materials to control liquids or suction canisters made of high heat resistant plastics such as polysulfone

REGULATED MEDICAL WASTE NOT ACCEPTED BY STERICYCLE

- **Untreated Category A Infectious Substances**
- **Complete Human Remains** (including heads, full torsos, and fetuses)
- **Bulk Chemotherapy Waste**
- **Mercury-Containing Dental Waste** - Non-contact and contact amalgam and products, chairside traps, amalgam sludge or vacuum pump filters, extracted teeth with mercury fillings and empty amalgam capsules
- **Any Mercury Containing Material or Devices** - Any mercury thermometers, Sphygmomanometers, lab or medical devices
- **RCRA Hazardous Pharmaceutical Waste** and all DEA Federal and State controlled substances*
- **Chemicals** - Formaldehyde, formalin, acids, alcohol, waste oil, solvents, reagents, fixer developer, fluorescein
- **Compressed Gas Cylinders, Canisters, Inhalers and Aerosol Cans**
- **Hazardous or Universal Waste** - any other waste determined by Federal or State EPA regulations including but not limited to batteries, bulbs, heavy metals, etc.
- **Radioactive Waste** - Any container with a radioactivity level that exceeds regulatory or permitted limits; lead-containing materials

*Consult Stericycle Representative for specific requirements

Additional waste acceptance policies may apply based on state or permit specific requirements. Hazardous waste transportation services may be offered in certain geographical locations, under separate contract. Please refer to your local Stericycle Representative for additional information and options for possible hazardous waste handling. For additional information on container and labeling requirements contact our Stericycle Customer Service Department at (866) 783-7422.

Move to authorize the above changes to the Fiber Telecommunications Fee Schedule.



ITEM #: 6

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13th, 2017 Subject: Fiber contractor amendment for 0.09 grant
Geoff Hawes, IT Manager

Attachments: 2017-6-16 COB Fiber Professional Services Agreement Integrity amendment .doc
2017-06-16 COB Fiber Professional Services Agreement Diversified amendment.doc Public Hearing Required: YES () NO (X)

SUMMARY

The City has received \$295,000 for fiber expansion from the Skagit County 0.09 funding grant. The City has recently been granted an additional \$425,000 for phase 2 of the fiber expansion. The fiber contractor portion has reached the annual \$30,000 maximum and needs to be temporarily expanded to \$80,000 for the duration of the funding grant for each fiber contractor. Each contractor is bidding portions of the work so we are not sure if the award will go to one of the contractors or will be used between each of them.

RECOMMENDATION

Move to approve the amended agreements and authorize the Mayor's signature on amended agreements.

CITY OF BURLINGTON PROFESSIONAL SERVICES FIBER AGREEMENT

THIS AGREEMENT made and entered into on this ~~July 5, 2015~~ July 13, 2017, by and between the **CITY OF BURLINGTON**, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "**City of Burlington**," and **Integrity Networks**, whose address is 2220 Lind Ave SW #106, Renton, WA 98057, hereinafter referred to as the "Contractor".

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

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

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

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

1. **Engagement of Contractor**. The City of Burlington hereby agrees to engage the Contractor, and the Contractor hereby agrees to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City of Burlington, the Contractor shall not perform any services that are in addition to or beyond the scope of the Work. If the Contractor's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Contractor expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City of Burlington and Contractor. If the Work includes the design of a public work or improvement, in whole or in part, Contractor's design shall be reasonably accurate, adequate and suitable for its intended purpose.
2. **Intellectual Property Rights**. Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City of Burlington for all purposes, whether the project for which they are made is executed or not, and may be used by the City of Burlington for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Burlington, belong to the City of Burlington. Contractor retains any intellectual property rights in documents and intangible property created by Contractor prior to engagement, or not created by Contractor for its performance of this Agreement.
3. **Time of Beginning and Completion of Performance**. This Agreement shall commence as of the date of execution of this Agreement and shall be completed by ~~31st day of December, 2015~~ 31st day of December, 2017, with an automatic annual renewal at the discretion of the City, unless notified pursuant to Section 7 ("Termination of Contract") of this Agreement. Contractor shall have the right to change the hourly rates charged under this agreement, upon renewal by the City, so that such rates are consistent with prevailing wages and existing union wages.

4. **Compensation.**

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

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

C. Contractor may receive payment as reimbursement for Reimbursable Expenses actually incurred. "Reimbursable Expenses" means those types and amounts of expenses either listed in Exhibit C or such expenses as are approved for reimbursement by the City of Burlington in writing prior to the expense being incurred. If Exhibit C is either blank or not attached, expenses may not be reimbursed unless prior written approval was obtained from the City of Burlington. An expense shall not be reimbursed if: (1) the expense is not identified in Exhibit C; (2) the expense exceeds the per item or cumulative limits for such expense if it is identified in Exhibit C; or (3) the expense was not approved in writing by an authorized City of Burlington representative prior to the Contractor incurring the expense. If, and to the extent, overnight lodging in western Washington is authorized, Contractor is strongly encouraged to lodge within the corporate limits of City of Burlington. When authorized, Contractor will be reimbursed 100% of lodging expense, if lodged within the corporate limits of the City of Burlington, but Contractor will be reimbursed 50% of lodging expense when lodged outside the corporate limits of the City of Burlington. If authorized, the City of Burlington may (at its sole option) obtain or arrange air travel for the Contractor.

D. Total compensation, including all services and expenses, shall not exceed a maximum of ~~thirty~~ **eighty** thousand dollars. (~~\$380,000~~).

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

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

5. **Method of Payment.**

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

B. All requests for payment should be sent to:

City of Burlington
Attn: IT department

833 South Spruce St
Burlington, WA 98233

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

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

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

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

10. **Indemnification.** Except as otherwise provided in this paragraph, the Contractor hereby agrees to defend and indemnify the City of Burlington from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor (or its employees, agents, representatives subcontractors/subconsultants) relating to this Agreement. The Contractor is obligated to defend and indemnify the City of Burlington pursuant to this paragraph whether a Claim is asserted directly against the City of Burlington, or whether it is asserted indirectly against the City of Burlington, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City of Burlington. The Contractor's duty to defend and indemnify pursuant to this paragraph is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Contractor. The Contractor shall not indemnify the City of Burlington for Claims caused solely by the negligence of the City of Burlington. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or

damage to property for which the Contractor is to indemnify the City of Burlington is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City of Burlington, then the Contractor's duty to indemnify shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City of Burlington, the Contractor specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW. The Contractor recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City of Burlington" includes the City of Burlington's officers, employees, agents, and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Contractor employs or engages subconsultants or subcontractors, then Contractor shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City of Burlington to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph.

11. Insurance.

A. Contractor shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City of Burlington.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City of Burlington authorizes sublet work, the Contractor shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Contractor covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claims made basis. If both parties agree that the Work does not warrant Contractor providing Professional Errors and Omissions Insurance, this paragraph may be stricken and initialed by both parties.

B. The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice to the City of Burlington. No

cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City of Burlington, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Contractor performing any Work, Contractor shall provide the City of Burlington with a Certificate of Insurance acceptable to the City of Burlington Attorney evidencing the required insurance. Contractor shall also provide the City of Burlington with either (1) a true copy of an endorsement naming the City of Burlington, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of Burlington of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.

E. If the policy listed in paragraph 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claim made policy form shall not be less than thirty six (36) months following expiration of the policy. (This paragraph shall not apply if paragraph 11.A.4. above is stricken.)

F. Contractor certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Contractor shall provide the City of Burlington with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

C. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City of Burlington free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

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

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

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

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

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

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

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

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

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

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

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

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

23. **Notices.**

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

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

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

Integrity Networks
2220 Lind Avenue SW #106
Renton, WA 98057

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

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

CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.	
CITY OF BURLINGTON WASHINGTON By: _____ Steve Sexton, Mayor Date: _____	Corporation Integrity Networks By _____ Typed/Printed Name: _____ Its _____ Date: _____
ATTEST: _____ Crystal Wooldridge, Finance Director Renee Sinclair Director of Budget & Accounting Date: _____	Partnership (general) _____ [Contractor's Complete Legal Name] a Washington general partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: _____ Leif Johnson, Attorney Date: _____	Partnership (limited) _____ [Contractor's Complete Legal Name] a Washington limited partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: _____ Marv Pulst, Public Works Director Date: _____	Sole proprietorship _____ Typed/Printed Name: _____ Sole proprietor Date: _____
	Limited Liability Company _____ [Contractor's Complete Legal Name] a Washington limited liability company

EXHIBIT A

SCOPE OF WORK

WORK TO BE PERFORMED

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

Fiber Optic Installation, Maintenance, Emergency Repair and Design:

Design – Help with job costing and design.

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

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

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

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

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

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

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

Able to meet CJIS requirements.

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

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

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

Able to provide costs based on time and material.

FIBER SPLICING:

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

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

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

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

Able to provide fiber splicing capabilities including:

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

EXHIBIT A
SCOPE OF WORK

FIBER TERMINATION / MAINTENANCE

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

Able to provide splicing capabilities including:

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

Cost Estimate:

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

EXHIBIT B
COMPENSATION

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

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

Name	Responsibility	Rate	Est. Hours	Extension
OSP PM/Design/Repair	Maintenance, Design, Splicing, Installation and Repair	\$66.50/HR		
OSP Foreman	Installation, Maintenance and Repair	\$63.50/HR		
OSP Lineman	Installation, Maintenance and Repair	\$58.50/HR		
OSP Groundman	Installation, Maintenance and Repair	\$45.00/HR		
OSP Flagger	Traffic Control	\$45.00/HR		
OSP Splicer	Splice/Test Fiber Cable	\$66.50/HR		

EXHIBIT C
REIMBURSABLE EXPENSES

Type of Expense	Maximum Per Item	Cumulative Maximum
Bucket Truck	\$250.00/Day	
OSP Vehicle w/Equipment	\$75.00/Day	
Misc. Materials	Cost + 17%	
Rental Equipment if needed	Cost + 17%	

CITY OF BURLINGTON PROFESSIONAL SERVICES FIBER AGREEMENT

THIS AGREEMENT made and entered into on this 13th day of July, 2017, by and between the CITY OF BURLINGTON, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "**City of Burlington,**" and **Diversified Northwest** whose address is WA 98204, hereinafter referred to as the "**Contractor**".

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

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

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

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

1. **Engagement of Contractor.** The City of Burlington hereby agrees to engage the Contractor, and the Contractor hereby agrees to perform the work in a competent and professional manner and provide the services described in the attached "Exhibit A - Scope of Work". The Scope of Work so identified is hereafter referred to as "Work". Without a written directive of an authorized representative of the City of Burlington, the Contractor shall not perform any services that are in addition to or beyond the scope of the Work. If the Contractor's proposal is attached as an exhibit, and if such proposal contains or incorporates any conditions or terms in addition to or different from the terms of this Agreement, then the Contractor expressly agrees that such conditions or terms are neither incorporated nor included into this Agreement between the City of Burlington and Contractor. If the Work includes the design of a public work or improvement, in whole or in part, Contractor's design shall be reasonably accurate, adequate and suitable for its intended purpose.

2. **Intellectual Property Rights.** Reports, drawings, plans, specifications and any other intangible property created in furtherance of the Work are property of the City of Burlington for all purposes, whether the project for which they are made is executed or not, and may be used by the City of Burlington for any purpose. Unless otherwise expressly agreed in writing, all intellectual property rights in such documents or intangible property created pursuant to this Agreement, or for the City of Burlington, belong to the City of Burlington. Contractor retains any intellectual property rights in documents and intangible property created by Contractor prior to engagement, or not created by Contractor for its performance of this Agreement.

3. **Time of Beginning and Completion of Performance.** This Agreement shall commence as of the date of execution of this Agreement and shall be completed by **31st day of December, 2017**, with an automatic annual renewal at the discretion of the City, unless notified pursuant to Section 7 ("Termination of Contract") of this Agreement. Contractor shall have the right to change the hourly rates charged under this agreement, upon renewal by the City, so that such rates are consistent with prevailing wages and existing union wages.

4. **Compensation.**

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

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

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

D. Total compensation, including all services and expenses, shall not exceed a maximum of ~~thirtyeighty~~ thousand dollars. (~~\$3080~~,000).

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

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

5. **Method of Payment.**

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

B. All requests for payment should be sent to:

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

6. **Submission of Reports and Other Documents.** The Contractor shall submit all reports and other documents as and when specified in "Exhibit A". Said information shall be subject to review by the City of Burlington, and if found to be unacceptable, Contractor shall correct and deliver to the City of

Burlington any deficient Work at Contractor's expense within a reasonable period of time. Contractor shall abide by the City of Burlington's determinations concerning acceptability of Work.

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

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

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

10. **Indemnification.** Except as otherwise provided in this paragraph, the Contractor hereby agrees to defend and indemnify the City of Burlington from any and all Claims arising out of, in connection with, or incident to any acts, errors, omissions, or conduct by Contractor (or its employees, agents, representatives subcontractors/subconsultants) relating to this Agreement. The Contractor is obligated to defend and indemnify the City of Burlington pursuant to this paragraph whether a Claim is asserted directly against the City of Burlington, or whether it is asserted indirectly against the City of Burlington, e.g., a Claim is asserted against someone else who then seeks contribution or indemnity from the City of Burlington. The Contractor's duty to defend and indemnify pursuant to this paragraph is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of the Contractor. The Contractor shall not indemnify the City of Burlington for Claims caused solely by the negligence of the City of Burlington. If (1) RCW 4.24.115 applies to a particular Claim, and (2) the bodily injury or damage to property for which the Contractor is to indemnify the City of Burlington is caused by or results from the concurrent negligence of (a) the Contractor, its employees, subcontractors/subconsultants or agents and (b) the City of Burlington, then the Contractor's duty to indemnify shall be valid and enforceable only to the extent allowed by RCW 4.24.115. Solely and expressly for the purpose of its duties to indemnify and defend the City of Burlington, the Contractor specifically waives any immunity it may have under the State Industrial Insurance Law, Title 51 RCW.

The Contractor recognizes that this waiver of immunity under Title 51 RCW was specifically entered into pursuant to the provisions of RCW 4.24.115 and was the subject of mutual negotiation. As used in this paragraph: (1) "City of Burlington" includes the City of Burlington's officers, employees, agents, volunteers and representatives and (2) "Claims" include, but is not limited to, any and all losses, claims, demands, expenses (including, but not limited to, attorney's fees and litigation expenses), suits, judgments, or damage, irrespective of the type of relief sought or demanded, such as money or injunctive relief, and irrespective of whether the damage alleged is bodily injury, damage to property, economic loss, general damages, special damages, or punitive damages. If, and to the extent, Contractor employs or engages subconsultants or subcontractors, then Contractor shall ensure that each such subconsultant and subcontractor (and subsequent tiers of subconsultants and subcontractors) shall expressly agree to defend and indemnify the City of Burlington to the extent and on the same terms and conditions as the Contractor pursuant to this paragraph.

11. **Insurance.**

A. Contractor shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable to the City of Burlington.

1. Workers' Compensation Insurance as required by Washington law and Employer's Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City of Burlington authorizes sublet work, the Contractor shall require each subcontractor to provide Workers' Compensation Insurance for its employees, unless the Contractor covers such employees.

2. Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: premises/operations (including off-site operations), blanket contractual liability and broad form property damage.

3. Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.

4. Professional Errors and Omissions Insurance in an amount not less than \$1,000,000 per occurrence and \$1,000,000 in the annual aggregate. Such coverage may be written on a claim made basis. If both parties agree that the Work does not warrant Contractor providing Professional Errors and Omissions Insurance, this paragraph may be stricken and initialed by both parties.

B. The above liability policies shall contain a provision that the policy shall not be canceled or materially changed without thirty (30) days prior written notice to the City of Burlington. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the Contractor to furnish the required insurance during the term of this Agreement.

C. Upon written request by the City of Burlington, the insurer or his/her agent will furnish, prior to or during any Work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.

D. Prior to the Contractor performing any Work, Contractor shall provide the City of Burlington with a Certificate of Insurance acceptable to the City of Burlington Attorney evidencing the required insurance. Contractor shall also provide the City of Burlington with either (1) a true copy of an endorsement naming the City of Burlington, its officers, employees and agents as Additional Insureds on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of Burlington of any certificate showing less coverage than required is not a waiver of the Contractor's obligations to fulfill the requirements.

E. If the policy listed in paragraph 11.A.4. above, Professional Errors and Omissions Insurance, is on a claims made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claim made policy form shall not be less than thirty six (36) months following expiration of the policy. (This paragraph shall not apply if paragraph 11.A.4. above is stricken.)

F. Contractor certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington that requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Contractor shall provide the City of Burlington with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.

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

12. Independent Contractor.

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

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

C. Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and other legislation affecting its employees and the rules and regulations issued thereunder insofar as applicable to its employees and shall at all times save the City of Burlington free, clear and harmless from all actions, claims, demands and expenses arising out of said act, and rules and regulations that are or may be promulgated in connection therewith.

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

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

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

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

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

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

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

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

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

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

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

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

23. **Notices**.

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

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

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

Diversified Northwest

Everett WA 98204

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

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

	CONTRACTOR: Please fill in the spaces and sign in the box appropriate for your business entity.	
CITY OF BURLINGTON WASHINGTON By: _____ Steve Sexton, Mayor Date: _____	Corporation	XXXXX By _____ Typed/Printed Name: _____ Its _____ Date: _____
ATTEST: Renee Sinclair Budget and Accounting Director Date: _____	Partnership (general)	_____ [Contractor's Complete Legal Name] a Washington general partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: Leif Johnson, Attorney Date: _____	Partnership (limited)	_____ [Contractor's Complete Legal Name] a Washington limited partnership By _____ Typed/Printed Name: _____ General Partner Date: _____
APPROVED AS TO FORM: Marv Pulst, Public Works Director Date: _____	Sole proprietorship	_____ Typed/Printed Name: _____ Sole proprietor Date: _____
	Limited Liability Company	_____ [Contractor's Complete Legal Name] a Washington limited liability company

“EXHIBIT A”
SCOPE OF WORK

WORK TO BE PERFORMED

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

Fiber Optic Installation, Maintenance, Emergency Repair and Design:

Design – Help with job costing and design.

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

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

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

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

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

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

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

Able to meet CJIS requirements.

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

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

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

Able to provide costs based on time and material.

FIBER SPLICING:

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

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

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

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

Able to provide fiber splicing capabilities including:

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

“EXHIBIT A”
SCOPE OF WORK

FIBER TERMINATION / MAINTENANCE

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

Able to provide splicing capabilities including:

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

Cost Estimate:

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

“EXHIBIT B”
COMPENSATION

ALTERNATE A [HOURLY RATE UP TO A MAXIMUM AMOUNT]

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

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

“EXHIBIT C”
REIMBURSABLE EXPENSES

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



ITEM #: 7

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13th, 2017 Subject: Skagit Transit Fiber Inter-Local agreement
Geoff Hawes, IT Manager

Attachments: SKT-COB Dark Fiber Draft 061617.docx Public Hearing Required: YES () NO (**X**)

SUMMARY

Skagit Transit is requesting the use of certain City 'dark' fiber strands, from their Chuckanut location, and the current MOA location on County Shop lane to the City of Burlington fiber head end at the Public Safety Building. They also need a shared City of Mount Vernon dark fiber strand from their MV transit station and a shared Port of Skagit dark fiber strand (shared with City of Burlington) both to be run back to the City of Burlington fiber head end location at the Public Safety building. They also want to utilize some of our vacant rack space for their equipment to power the dark fiber strands and to connect to one of our licensed ISP's.

RECOMMENDATION

Move to approve the proposed interlocal agreement with Skagit Transit and authorize the Mayor's signature.

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
THE SKAGIT TRANSIT SYSTEM
AND
THE CITY OF BURLINGTON**

THIS AGREEMENT ("Agreement") is made in duplicate and entered into this _____ day of _____, 2017, by and between the SKAGIT TRANSIT SYSTEM, a municipal corporation of the State of Washington ("Skagit Transit"), and the CITY OF BURLINGTON, a municipal corporation of the State of Washington ("the City"), pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act. Skagit Transit and the City may be individually referred to herein as "Party" and may be collectively referred to herein as the "Parties".

WITNESS THAT:

WHEREAS, Skagit Transit desires a single dark fiber optic connection from the City's Fiber System networking head end to Skagit Transit's Chuckanut Park and Ride facility located at 321 Hansen Place, Burlington, Washington; and

WHEREAS, Skagit Transit desires a single dark fiber optic connection from the City of Burlington Fiber System networking head end to Skagit Transit's, Skagit Station facility located at 105 E. Kincaid Street, Mount Vernon, Washington, utilizing both the City of Burlington's fiber system and the City of Mount Vernon's fiber system through a dark fiber agreement between the City of Burlington and the City of Mount Vernon; and

WHEREAS, Skagit Transit desires a single dark fiber optic connection from the City of Burlington Fiber System networking head end to Skagit Transit's new Maintenance, Operations and Administrative (MOA2) base located at 11784 Bay Ridge Drive, Burlington, Washington, utilizing both the City of Burlington's fiber system and the Port of Skagit fiber system through a dark fiber agreement between the City of Burlington and the Port of Skagit; and

WHEREAS, Skagit Transit desires quantity 2, 1U (one unit = 1.75 inches) UPS powered rack space from the City of Burlington for Skagit Transit Fiber System equipment; and

WHEREAS, The City has the authority to construct and maintain various wire line facilities within the City's Right of Way; and

WHEREAS, The Parties desire to reduce to writing their agreements relating to the City's provision of certain dark fiber optic connectivity between locations within the City's Fiber System, and unrestricted bandwidth, for monthly compensation from Skagit Transit which may be adjusted from time to time.

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. DEFINITIONS:

- A. "City's Fiber System" means all facilities related to the City's operation of its fiber lines which are owned, operated, controlled and maintained by the City, including but not limited to fiber optic cables, equipment and all associated hardware utilized by the City.

- B. "Dark Fiber" means unlit optical fiber cable strands, with connectivity from end-to-end and meeting generally accepted industry loss and performance standards, where Skagit Transit is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.
- C. "Fiber" means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.
- D. "Non-recurring Charges" means work done by the City in order to install and connect the City's Fiber System to the City's Demarc location at Skagit Transit premises, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overhead. The City's standard billing rates (Reference the City Fiber Fee Schedule) for having personnel on site shall apply and the City's cost accounting systems used for recording capital and expense activities shall be used.
- E. "Maintenance Charges" means any work done by the City in order to maintain and repair the fiber system located on Skagit Transit property or Skagit Transit's side of the demarcation point shall be included as non-recurring charges.
- F. "Plant Maintenance" means the City's Fiber System owned operated and maintained by the City ending at Skagit Transit's demarcation point.

2. RESPONSIBILITIES:

2.1 Skagit Transit:

- A. Will install, operate, maintain or repair, at its sole expense, Skagit Transit's portion of each demarcation point identified in **Exhibit A** attached to this Agreement, including any necessary repairs to the City's fiber connection due to the wrongful or negligent acts of Skagit Transit, its officers, agents, employees, or contractors.
- B. Will provide the City written permission to access any Skagit Transit building, or the interior areas of any structures containing City fiber or fiber related equipment on Skagit Transit's side of the demarcation point, in order for the City to install, maintain or repair its Fiber System, as necessary, including any inspections required by the City to determine the location or nature of the cause of any disruption of the Fiber Service to Skagit Transit. Such access shall be promptly facilitated by Skagit Transit on a 24/7 escorted basis.
- C. Will compensate the City for any and all installation and NRC expenses related to Skagit Transit's use of the City's Fiber System.
- D. Will not use the City's Fiber System for profit purposes and will not sublet, lease or otherwise grant access of use to any entity other than that which is authorized in writing by the City.

2.2 The City:

- A. Will arrange for, install, own, operate and maintain the City's facilities necessary to provide non-exclusive rights to Skagit Transit to utilize dark fiber from the City's

Fiber System between the demarcation point for specific site locations and under specific terms and conditions for each site location described in **Exhibit A** attached to this Agreement.

- B. Will establish the demarcation point which shall be the point of separation of responsibility between the City and Skagit Transit.
- C. Will secure and maintain any and all necessary franchises, permits, easements, or agreements necessary for the use of property including, the use of utility poles for the construction and maintenance of the City's Fiber System.
- D. Will deploy a standard single mode dark fiber optic product terminating in the City's colocation closet and will perform all work using industry standards.
- E. Will provide two (2) rack spaces with UPS battery backup on the City's generator circuit in the City's colocation closet.
- F. Will provide Skagit Transit at least 24-hours prior written notice requesting access to any building or structure necessary to install, maintain and repair Fiber Service as necessary.
- G. Will notify Skagit Transit in writing when the fiber has been installed and is ready for use. The date of such notification ("State Date") shall be the first day of actual service under this Agreement.

3. **TERM:** The term of this Agreement shall be five (5) years from _____ to _____, with automatic term renewals in successive five (5) year increments, unless sooner terminated as provided for elsewhere in this Agreement.

4. **COMPENSATION:** Skagit Transit shall compensate the City the current Council approved Fiber Telecommunications Fee Schedule amounts based on **Exhibit B** which may be adjusted from time to time. The City will provide Skagit Transit a minimum of ninety (90) days' notice of any fee change. Skagit Transit will pay the City for actual fiber services usage, as set forth in **Exhibit A** attached to this Agreement, including any and all non-recurring charges to establish on-site connectivity. If necessary, the first invoice for service commencing on the Start Date shall be prorated. Skagit Transit shall pay the City within thirty (30) days after approval of a satisfactory invoice. Any delinquency of 120 days may result in the immediate termination of this Agreement, at the discretion of the City.

5. **RELATIONSHIP OF THE PARTIES:** The Parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No partnership or joint venture exists between the Parties and no partnership or joint venture is created by and between the Parties by virtue of this Agreement. No agent, employee, servant or representative of Skagit Transit shall be deemed to be an employee, agent, servant, or representative of the City for any purpose; and vice versa. Each Party agrees to aid and assist the other in accomplishing the objectives of this Agreement.

6. **TREATMENT OF ASSETS AND PROPERTY:** No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. **INDEMNIFICATION:** Each Party expressly agrees to be responsible and assume liability for its own wrongful 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 indemnify, defend, and hold the other Party harmless from any such liability. No liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.
8. **LIMITATIONS OF LIABILITY:** Notwithstanding any provision of this Agreement to the contrary, and except to the extent caused by its own willful misconduct, the Parties shall not be liable for any special, incidental, indirect, punitive or consequential damages, including but not limited to: loss of profits or revenue, cost of capital, or claims of the other Party (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise) whether foreseeable or not, arising out of, or in connection with either Party's performance or non-performance of its respective obligations under this Agreement, or any other cause or nature whatsoever and all claims with respect to which such special, incidental, indirect, punitive, or consequential damages are hereby specifically waived.
9. **FORCE MAJEURE:** Except for payment of sums due, neither Party shall be liable to the other or deemed in default of this Agreement if, and to the extent that, such Party's performance of one or more of its obligations hereunder is prevented by reason of Force Majeure which includes, without limitation: any act of nature, fire, epidemics, and the adoption or amendment of government codes, ordinances, laws, rules, regulations, or restrictions that materially impair the affected Party's performance hereunder, including lack of funding, war or civil disorder, riots, strikes, lock-outs, or other labor disputes. The affected Party agrees to perform one or more of its obligations as soon as practicable or immediately assist the other Party in whatever reasonable manner to gain access to Fiber Service or offer limited substitutions for consideration. If the initial connectivity date is affected, the Start Date shall be excused and extended for and during the period of any such delay.
10. **FILING AGREEMENT:** Notwithstanding any provision herein to the contrary, and in compliance with RCW 39.34.040, this Agreement and any modification thereof shall be posted on each Parties website and, if not, a copy hereof shall be filed in accordance with RCW 39.34.040; PROVIDED, that any delay in effecting compliance with this Section shall not affect the stated term and conditions contained herein.
11. **RESPONSIBLE PERSONS:** The following individuals are designated as representatives of the respective Parties and shall be responsible for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other party.

Geoff Hawes, IT Manager
City of Burlington
833 S. Spruce St.
Burlington, WA 98233
Ph: 360-755-2398
E-mail: ghawes@burlingtonwa.gov

Chris Chidley, IT Manager
Skagit Transit
600 County Shop Lane
Burlington, WA 98233
Ph: 360-757-8801
E-mail: cchidley@itservices.org

12. **COMPLIANCE WITH LAWS:** The Parties agree to comply with all applicable federal, State, and local laws, ordinances, and regulations.

13. TERMINATION: This Agreement may be terminated by either Party for any reason upon the giving of sixty (60) days advance written notice to the other, 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, Skagit Transit will be responsible for any fees incurred with removal of any City fiber system and equipment. 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.

14. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: No changes or modifications of this Agreement shall be valid or binding upon either Party to this Agreement unless such changes or modifications are made by written Amendment and executed by the Parties hereto. Waiver of any default or breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such in writing signed by an authorized representative of the Party and attached to the original Agreement.

15. DISPUTES:

15.1 The Parties shall attempt to resolve any disputes as to the validity or enforcement of any term or provision of this Agreement by negotiation and compromise at the management level. Failing such compromise, such claim or assertion shall be elevated to the equivalent director levels of each Party, and if necessary, to each Party's respective attorneys.

15.2 In the event that a dispute cannot be resolved in the manner described above, it shall be determined by a Dispute Board in the following manner: Each Party shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, terms, applicable statutes, and rules before making a determination of the dispute which shall be final and binding on the Parties.

15.3 The duties and obligations imposed by this Agreement and the rights and remedies herein shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by either Party shall constitute a waiver of any right or duty afforded the Party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing. All claims, counterclaims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its breach will be decided by mediation. Either Party may request in writing that a dispute be submitted to mediation. The Parties shall be equally responsible for the cost of any mediation. Mediation is optional and neither Party is compelled to participate.

16. NOTICES:

16.1 All notices hereunder may be delivered or mailed, unless required otherwise within this Agreement. In the event such representatives are changed, the Party making the

change shall notify the other Party. All correspondence, letters, or other notices shall be directed to the foregoing Parties at the following addresses/phone numbers:

City of Burlington
Attn: Leif Johnson, City Attorney
833 S. Spruce St
Burlington, WA 98233
E-mail: leifj@burlingtonwa.gov

Skagit Transit
Attn: Dale O'Brien, Executive Director
600 County Shop Lane
Burlington, WA 98233
E-mail: dobrien@skagittransit.org

16.2 All notices mailed by regular post (including first class) shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. Notices sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. For e-mail, delivery shall be the next business day after the day sent; a delivery or a read receipt shall be conclusive evidence of the date of mailing.

17. NO THIRD PARTY BENEFICIARIES: This Agreement is not entered into with the intent that it shall benefit another entity or person or that such other person or entity shall be entitled to be treated as a third party beneficiary of this Agreement.

18. ASSIGNMENT: Unless otherwise expressly provided herein, no portion of this Agreement may be assigned, contracted, or subcontracted to any other individual, firm, company or other entity without the express and prior written approval of the Parties.

19. SEVERABILITY: If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality, or enforceability of the remainder of this Agreement.

20. GOVERNING LAW AND VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any legal action arising herefrom shall be brought only in Skagit County Superior Court, Skagit County, Washington, which forum shall have sole and exclusive jurisdiction and venue.

21. OTHER PROVISIONS:

21.1 Fiber Route: The City shall have, at all times, the sole discretion to choose the route of the fiber optic lines including routes which may not be the most direct route between the locations desired by Skagit Transit.

21.2 Fiber Connectivity Restoration, Repair & Maintenance:

A. The City shall employ a reasonable standard of care to maintain continuity of the City's Fiber System whenever possible. If Skagit Transit becomes aware that fiber continuity is lost, Skagit Transit shall notify the City or the City's emergency designate immediately. If during off hours, Skagit Transit shall notify the City by contacting the number provided in Part 11(E) above. Once the City is notified, City shall inspect the City's Fiber System and all fiber and associated equipment on Skagit Transit's side of the demarcation point in order to determine the cause of loss of service. After its inspection, the City shall report back to Skagit Transit.

The City shall be responsible to re-establish continuity to Skagit Transit in the event lack of continuity exists on the City side of the demarcation point. Skagit Transit shall be responsible to re-establish continuity of the fiber in the event lack of continuity exists on Skagit Transit's side of the demarcation point. The City shall notify Skagit Transit if problems encountered are not due to lack of fiber continuity or is due to a lack of continuity on Skagit Transit's side of the demarcation point.

- B. The City shall perform, or be caused to perform, emergency and regular maintenance of the City's Fiber System, including fiber continuity disruptions to Skagit Transit for a reasonable period of time. The City shall coordinate with Skagit Transit to schedule regular maintenance at times that are mutually convenient to both Parties when such maintenance is likely to cause disruption of fiber service to Skagit Transit.
- C. Skagit Transit will be allowed managed access to any Skagit Transit equipment at the City Fiber Head end site. Skagit Transit personnel must pass CJIS requirements for access to the City's fiber room.

21.3 Credits for Loss of Continuity: Credits for loss of continuity will not be issued by the City.

21.4 Notification of Loss of Service: In the event Skagit Transit experiences loss of fiber continuity as set forth above, Skagit Transit shall notify the City by calling the phone numbers listed below. Notices regarding loss of fiber continuity under this subsection may be hereafter changed from time to time by the City if such notice of the changes is provided in writing.

- a) During Regular Business Hours (Mon-Fri 8-5pm): 360-755-2398
- b) During Off Hours number: (TBD)

22. ENTIRE AGREEMENT: This Agreement contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and by their duly authorized representatives have thus executed this Agreement as of the day and year first above written.

SKAGIT TRANSIT SYSTEM

CITY OF BURLINGTON

By: _____
Dale S. O'Brien, Executive Director

By: _____
Steve Sexton, Mayor

Date: _____

Date: _____

Attest: _____
Motoko Pleasant
Manager of Finance and Administration

Attest: _____
Dr. Renée C. Sinclair, CPFO
Director of Budget & Accounting

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Richard J. Langabeer, Skagit Transit Attorney

Leif Johnson, City Attorney

Date: _____

Date: _____

EXHIBIT A

INTERLOCAL COOPERATIVE AGREEMENT BETWEEN THE SKAGIT TRANSIT SYSTEM AND THE CITY OF BURLINGTON

LOCATIONS / WORK PROVIDED

- 1) **Dark Fiber Provided:** One strand of single mode dark fiber optic connectivity between the building located at the Skagit Transit site and the City location below:

From: City Location	To: Skagit Transit Site	Monthly Rate
City of Burlington Public Safety Building 311 Cedar St. Burlington, WA 98233	Chuckanut Park and Ride 321 Hansen Place Burlington, WA	\$200.00
City of Burlington Public Safety Building 311 Cedar St. Burlington, WA 98233	Skagit Station 105 E. Kincaid St. Mount Vernon, WA (shared fee with MV)	\$100.00
City of Burlington Public Safety Building 311 Cedar St. Burlington, WA 98233	MOA-2 11784 Bay Ridge Dr. Burlington, WA (shared fee with Port of Skagit	TBD

- 2) **Non-Recurring Expenses:** [include any costs borne upon the City to install]
- 3) **Other Expenses:**

From: City Location	Equipment Rack Space	Monthly Rate
City of Burlington Public Safety Building 311 Cedar St. Burlington, WA 98233	QTY 2, 1U rack spaces with single UPS AC power on standby generator	\$35.00 ea

Misc Expenses: Any additional building entry fees charged by the building owner or property management will be the responsibility of Skagit Transit.

Call Out Numbers For Loss of Continuity:

Fiber call out pager number: 360.336.4915

Fiber Callout cell number: 360.840.5485

EXHIBIT B

City of Burlington, Skagit County, Washington

FIBER LICENSEE TELECOMMUNICATIONS FEE SCHEDULE

<u>Application Fee Exclude ISP</u> This is a one-time billable charge to pay for application to acquire fiber or telecommunication services and to cover engineering costs. Does not include permitting fees.	\$75
<u>Inspection Fee Exclude ISP</u> This is a one-time billable charge to pay for a post installation fiber connection inspection if required.	\$125
<u>Dark Fiber CoB to MV Commercial</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2 year lease.	\$175
<u>Dark Fiber CoB to MV Local Government Agency</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2 yr lease.	\$100
<u>Dark Fiber within CoB Commercial Use</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Subject to City approval or availability. Minimum 2 year lease.	\$350
<u>Dark Fiber Local Government Agency</u> This is monthly billable fee per fiber, of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. This fiber is not for resale, reuse or sublease to any other organization. Subject to City approval or availability. Minimum 2 year lease.	\$200
<u>City Lit Fiber Strand on a VLAN, Commercial Use, Exclude ISP</u> This is billable per fiber strand, per splitter port, per wavelength channel of lit CWDM or DWDM fiber, leased from the city if an ISP contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 3 year lease, Excludes the City GPON equipment.	\$275
<u>City Lit Fiber Strand on a VLAN, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM fiber, leased from the city. This is a monthly	\$75

recurring fee. This fee includes maintenance. Minimum 4 year lease.	
<u>CWDM or DWDM Fiber Strand, Commercial Use, Exclude ISP</u> This is billable, per fiber strand, per splitter port, per wavelength channel of commercial lit CWDM or DWDM fiber, if an ISP service contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 2 year lease, Excludes the City GPON equipment.	\$125
<u>CWDM or DWDM Fiber Strand, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM lit fiber, if an interlocal agreement does not exist. This is a monthly recurring fee. This fee includes maintenance. Excludes the City GPON equipment.	\$55
<u>Full Cabinet Space Commercial</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3 yr lease.	\$400
<u>Full Cabinet Space Local Government Agency</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2 yr lease.	\$200
<u>Half-Cabinet Space Commercial</u> This includes a half 19" cabinet, restricted entry, 20 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3 yr lease.	\$300
<u>Half Cabinet Space Local Agency</u> This includes a 19" cabinet, restricted entry, 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2 yr lease.	\$150
<u>One-Third Cabinet Space Commercial</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3 yr lease.	\$175
<u>One-Third Cabinet Space Local Agency</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3 yr lease.	\$75
<u>Rack-Unit Cabinet Space Commercial</u> This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous.	\$50

This is a monthly recurring fee, or AC UPS Powered up to 100W \$100.00.	
<u>Rack-Unit Cabinet Space Local Agency</u> This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous. This is a monthly recurring fee, or AC UPS Powered up to 100W \$35.00.	\$25/\$35
<u>Cabinet Setup Fee – Full</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.	\$300
<u>Cabinet Setup Fee -- 1/2</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.	\$200
<u>Cabinet Setup Fee – 1/3</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.	\$100
<u>Rack Unit Setup Fee – per RU (Rack Unit)</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee, does not include terminations or installs.	\$100
<u>Interconnect Fees</u> This is billable per each cable (Simplex, Duplex, CAT5, or CAT6) installed between units, beyond initial setup fee. This is a per incidence fee. The City reserves the right to modify these fees on a per incidence basis, based on any special needs or circumstances.	\$10
<u>Labor – Standard</u> This is beyond initial setup fee and is billable per hour. This requires a 1hr minimum.	\$85
<u>Labor – Overtime</u> This is beyond initial setup fee and is billable per hour. 2hr minimum. Applies to work from 4:30 pm to 8 am on workdays and any time on weekends and holidays.	\$150



ITEM #: 8

CHECK ONE:

NEW BUS. X

OLD BUS.

AGENDA ITEM

Council Date: July 13, 2017 Subject: Contract Extension for Public Defense Supervisor through June 30, 2017

Attachments: Mutual Agreement of Contract Extension Public Hearing Required: YES () NO (X)
Order Extending Time of Supervision

SUMMARY

On April 20, 2017 Judge Robert Lasnik, U.S. District Court Western District of Washington, Seattle, signed an order extending the period of supervision over the Burlington and Mount Vernon Municipal Courts' public defense systems until July 1, 2017. Attached is a Mutual Agreement of Contract Extension between the cities of Mount Vernon and Burlington and Eileen Farley, Public Defense Supervisor, extending Ms. Farley's contract through June 30, 2017. Both Ms. Farley and the City of Mount Vernon have approved this contract extension.

RECOMMENDATION

Move to approve the Mutual Agreement of Contract Extension and authorize the Mayor to sign.

MUTUAL AGREEMENT OF CONTRACT EXTENSION

WHEREAS, Eileen Farley is the court appointed supervisor performing services for the Cities of Mount Vernon and Burlington by contract; and

WHEREAS, her appointment was extended by the Court for a period requiring additional service during the months of April and June 2017 by order of the U.S. District Court; and

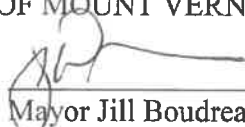
WHEREAS, the contract between the parties provides for its extension on mutual agreement, NOW, THEREFORE,

In consideration of the mutual benefits to be derived, the parties agree to the extension of the underlying contract for a period of one month from April 1, 2017 to April 30, 2017, and also one month from June 1, 2017 through June 30, 2017, under the terms and conditions set forth therein. This extension shall expire on its own terms on June 30, 2017.

DONE THIS 29th day of June, 2017.

Eileen Farley, Public Defense Supervisor

CITY OF MOUNT VERNON

By: _____
Mayor Jill Boudreau

CITY OF BURLINGTON

By: _____
Mayor Steve Sexton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH JEROME WILBUR, *et al.*,

Plaintiffs,

v.

CITY OF MOUNT VERNON, *et al.*,

Defendants.

No. C11-1100RSL

ORDER EXTENDING TIME OF
SUPERVISION

This matter comes before the Court on the Public Defense Supervisor's "Motion to Extend Supervision." Dkt. # 377. The period of supervision and the Public Defense Supervisor's authority under the Memorandum of Decision (Dkt. # 325) is hereby extended until July 1, 2017, in order to allow a smooth transition from the Supervisor to the newly-appointed Public Defense Auditor. The Auditor shall be subject to the protections and prohibitions of paragraphs 3-7, 9, and 12 of this Court's April 22, 2014, protective order (Dkt. # 356) during the remainder of the period of supervision (and shall have access to client information in order to assist Mountain Law in carrying out the representation thereafter as agreed between the Auditor, the Cities, and Mountain Law).

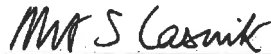
Although the conditions that warranted imposition of an injunction no longer prevail in the Cities of Mount Vernon and Burlington, the Supervisor's concerns regarding the durability of the remedy achieved in this case are legitimate. The Court accepts the Cities' representation that they will continue their efforts to guarantee a constitutionally adequate system of public

ORDER EXTENDING TIME OF SUPERVISION

1 defense and encourages them to implement policies, procedures, and/or contractual provisions
2 that reduce attorney turnover in the public defender office, allow adequate municipal supervision
3 of the public defense system, and govern the selection and removal of independent conflict
4 counsel.

5
6 As the Court noted at oral argument, the quality of the advocacy in this litigation and the
7 willingness of the Cities to address the constitutional deficits in their public defense system over
8 the past three years are to be commended.

9
10 Dated this 20th day of April, 2017.

11
12 

13 Robert S. Lasnik
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26