

**CITY COUNCIL AGENDA**  
**7:00 p.m. January 28, 2021**

**MEETING TO BE HELD REMOTELY**  
**VIA TELEPHONE: 1-774-777-4255**  
**CONFERENCE ID No.: 589-8786**

**Workshop: January 28, 2021 @ 6:00 PM – Preferred Approach to 2022 Budget Development**

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**CALL TO ORDER:**

Mayor Sexton

Council Members: Aslett, Chaplin, J. DeGloria, R. DeGloria, Green, Loving, and Stavig

Staff: Blaine, Burwash, Dempsey, Erickson, Hampton, Hawes, B. Johnson, L. Johnson, Jongsma, Luvera, Morrison, Pulst, Rabenstein, Schwetz, Stewart, Toth, Ward, and Young.

**MINUTES:**

[City Council Meeting January 14, 2021](#)

**AUDIT OF BILLS:**

**PUBLIC COMMENTS:**

**COUNCIL COMMENTS:**

**MAYOR'S UPDATE:**

**PROCLAMATION:**

**SPECIAL PRESENTATION:**

**COMMITTEE & BOARD REPORTS:**

**OFFICERS REPORTS:**

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**UNFINISHED BUSINESS:**

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**CONSENT AGENDA:**

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**NEW BUSINESS:**

- 1) [2021 Cascade Natural Gas Franchise Agreement](#)
- 2) [2021 Contract for Prosecution Services by Kailin James](#)
- 3) [Professional Services Agreement with Lana Reichert of Skagit County Investigations, LLC](#)
- 4) [Purchase New John Deere 997 Z-Trak Mower](#)

**DISCUSSION:**

**FUTURE WORKSHOP:**

- 1) [Burlington Fiber System](#)

**Thursday February 18, 2021** 6:00 p.m.  
MEETING TO BE HELD REMOTELY  
VIA TELEPHONE: 1-774-777-4255  
CONFERENCE ID No.: 589-8786

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**EXECUTIVE SESSION:**

**ADJOURNMENT:**

**MEETINGS:**

- 1) AUDIT & FINANCE COMMITTEE:

**Thursday January 28, 2021** 4:00 p.m.  
MEETING TO BE HELD REMOTELY  
VIA TELEPHONE: 1-774-777-4255  
CONFERENCE ID No.: 589-8786

**DUE TO THE COVID-19 PANDEMIC, AS OF MARCH 20, 2020, ALL OTHER COUNCIL COMMITTEE MEETINGS ARE SUSPENDED UNTIL EMERGENCY PROCLAMATION 2020-03 HAS BEEN RESCINDED, OR UNTIL FURTHER NOTICE**

Next Regular Council Meeting: Thursday, February 11, 2021 *Americans with Disabilities Act Accommodations Provided upon Request*



## **FUTURE COUNCIL AGENDA**

### **February 11, 2021 Council Meeting**

Presentation – Prior Month’s Financial Results – Cash Position, Sales Tax, & Other Data

Design Contract – Costco Lane Addition

Contract for Fire Hall Architectural Services

Contract for Carnegie Library Architectural Services

Possible Revisions to Fire, Park, and Transportation Impact Fees – Discussion of Process

Revision to Cemetery Fees – Discussion Only

Revision to Park and Recreation Fees – Discussion Only

### **City Council STUDY SESSION – February 18, 2021 – 6PM**

#### **Burlington Fiber System**

Presentation – What is Fiber and how does it compare to cable

Map of Burlington Fiber Infrastructure

Map/Review of Port, Skagit Net, and Mount Vernon Fiber Systems

Presentation/Discussion – Burlington Fiber Pricing vs. Other System’s Pricing

Presentation/Discussion - Revised ISP Master Agreement

Presentation/Discussion - Revision of Fiber Fees

Potential Ordinance Revising Fiber Fees

### **February 25, 2021 Council Meeting**

Update on Private Development in the City – Highlighting a Current Project – Comm. Dev Director

Presentation of Parks Board 2021 PROS Plan Park Improvement Prioritization

Presentation of Parks Board Preferred New Park Signage Design

Revision to Historical Commission Membership

Bid Award – City Fuel Supply

Review of Year End 2020 Current Expense Fund Results

Ordinance Revising Cemetery Fees

Ordinance Revising Parks and Recreation Fees

**March 11, 2021 Council Meeting**

Presentation – Prior Month’s Financial Results – Cash Position, Sales Tax, & Other Data

Revision to 2021 CIP Based on Parks Board Recommendations

Resolution Accepting the Planning Commission Recommendations for the Utilities and Capital Facilities Element Revisions to the Comprehensive Plan

**March 25, 2021 Council Meeting**

Update on Private Development in the City – Highlighting a Current Project – Comm. Dev Director

Update on Fiber Final Foot Connection Program

2% PUD Water Utility Tax – Discussion Only

Possible 2021 City Council Retreat Post-COVID Discussion – Scope, Location, and Date

**April 8, 2021 Council Meeting**

Presentation – Community Rating System (CRS) Program

Presentation – Prior Month’s Financial Results – Cash Position, Sales Tax, & Other Data

**April 22, 2021 Council Meeting**

Update on Private Development in the City – Highlighting a Current Project – Comm. Dev Director

1<sup>st</sup> Quarter 2021 Budget Review and Discussion

Award of Construction Contract – George Hopper Signal Project

# January 2021

January 2021

February 2021

Su	Mo	Tu	We	Th	Fr	Sa
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28						

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 27	28	29	30	31	Jan 1, 21	2
3	4	5 6:00pm Library Board (Telephonic)	6	7	8	9
10	11	12 2:00pm SUSPENDED: Historical 4:00pm SUSPENDED: 5:30pm Parks Board	13	14 4:00pm Audit & Finance Committee 6:00pm Workshop- 7:00pm Council	15	16
17	18	19 4:00pm SUSPENDED: Public Works Committee (Engineering Conf	20 1:00pm SUSPENDED: SKAT Board 5:30pm SUSPENDED: 7:00pm Planning	21 6:00pm Budget & Finance Council Workshop (Telephonic)	22	23
24	25	26	27 9:00am SUSPENDED: Downtown Burlington Association (Visitor Information	28 4:00pm Audit & Finance Telephonic (City Hall) 6:00pm Council Study 7:00pm Council	29	30
31	Feb 1	2	3	4	5	6

# February 2021

February 2021

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March 2021

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jan 31	Feb 1	2 6:00pm Library Board (Telephonic)	3	4	5	6
7	8	9 4:00pm SUSPENDED: Public Safety Committee (Public Telephonic) Parks Board, 5:30pm Parks Board, Telephonic (Parks &...	10	11 4:00pm Audit & Finance Committee (Telephonic) 7:00pm Council Meeting, Telephonic	12	13
14	15	16 4:00pm SUSPENDED: Public Works Committee (Engineering Conf Room)	17 1:00pm SUSPENDED: SKAT Board 5:30pm SUSPENDED: Planning Commission 7:00pm Planning	18 6:00pm Budget & Finance Council Workshop- Fiber System (Telephonic)	19	20
21	22	23	24 9:00am SUSPENDED: Downtown Burlington Association (Visitor Information Center/Chamber of	25 4:00pm Audit & Finance Telephonic (City Hall) 7:00pm Council Meeting, Telephonic	26	27
28	Mar 1	2	3	4	5	6

January 14, 2021

**MEETING HELD TELEPHONICALLY DUE TO THE COVID-19 PANDEMIC**

**Mayor Steve Sexton** called the meeting to order at 7:01 p.m. with the Pledge of Allegiance. Council members present: Bill Aslett, Keith Chaplin, J. DeGloria, Scott Green, Chris Loving and James Stavig. Staff present: Janice Burwash, Geoff Hawes, Brad Johnson, Leif Johnson, Mike Luvera, Katie Olafson, Marv Pulst, Jim Rabenstein, Joe Stewart, Rob Toth, Sarah Ward and Greg Young.

A motion was made to excuse **Councilor Rick DeGloria** by **Councilors J. DeGloria/Aslett**. All in favor; motion carried.

**MINUTES:**

A motion was made to approve the minutes of the December 10, 2020 Council meeting by **Councilors R. DeGloria/Green**. All in favor; motion carried.

**AUDIT OF BILLS:**

A motion was made by **Councilors Aslett/Loving** to approve Accounts Payable invoices to be paid as of December 17, 2020 in the amount of \$2,750.00, December 30, 2020 in the amount of \$249,235.99, December 31, 2020 in the amount of \$292,651.50, January 14, 2021 in the amount of \$555,441.91 and Payroll Expenses for Pay Period ending December 15, 2020 in the amount of \$694,899.23 and December 31, 2020 in the amount of \$502,273.30. All in favor; motion carried.

**PUBLIC COMMENTS:**

**City Attorney Leif Johnson** stated that a public comment has not been submitted. **L. Johnson** stated that members of the public may submit comments or questions by mail to City Hall at 833 S. Spruce Street, ATTN: Greg Young or by email to [badministration@burlingtonwa.gov](mailto:badministration@burlingtonwa.gov), as the city still cannot by law, hold in-person meetings.

**COUNCIL COMMENTS:**

**Councilor Keith Chaplin** gave his thanks to everyone's hard work to help keep democracy in the country alive.

**Councilor Joe DeGloria** shared he attended the exit conference with the State Auditors and offered a huge thank you to **Finance Director Joe Stewart** and his staff for a great audit review. **J. DeGloria** also requested an in-person council discussion be held to review a write off amount that occurred in 2018. The purpose of this discussion would be to determine where the funds were distributed and in what amounts. **Councilor Bill Aslett** spoke against discussing the past audit stating the audit review for 2018 showed

January 14, 2021

that while there were some poor accounting practices that took place that year all the dollars were accounted for. **Councilor Chris Loving** spoke in agreement with **Councilor Aslett** sharing that he appreciated **J. DeGloria's** comments and concerns but feels the city needs to move forward. **Mayor Sexton** offered to bring this topic back to the council for possible discussion and clarification when in-person meetings resume.

**MAYOR'S UPDATE:**

**Mayor Sexton** updated the Council about a conference call he had with the Department of Health and other elected officials regarding the COVID-19 vaccination process in Skagit County. The roll out of the vaccine has been slow in Skagit County but the suggestion of counties sharing vaccines has been brought up. **Councilor Keith Chaplin** asked if any city employees have received the vaccination. **Fire Chief Keith Toth** shared the fire department is classified as group 1A to receive the vaccine. The department had about a 50/50 response to receiving the vaccination. About 80% of willing, eligible employees have received the vaccine. **Mayor Sexton** shared he feels all First Responders and the Sewer Department are in critical positions of receiving the vaccine first.

**SPECIAL PRESENTATION:**

No Special Presentation.

**PROCLAMATION:**

No Proclamation.

**COMMITTEE & BOARD REPORTS:**

**Councilor Keith Chaplin** updated Council on the Parks and Recreation Board meeting. Focus points of the meeting consisted of prioritizing park projects and new designs for signage throughout the parks will be discussed at the next meeting. **Councilor James Stavig** also attended the Parks and Recreation meeting and shared a great discussion was held about implementing a new dog park in Burlington. A location for this park will hopefully be selected by the end of 2021.

**OFFICERS REPORTS:**

No Officers Reports.

**UNFINISHED BUSINESS:**

No Unfinished Business.

January 14, 2021

**CONSENT AGENDA**

**A Resolution Designating a Legal Publisher for all Legal Notices in 2021**

**City Administrator Greg Young** stated all cities in Washington State are required to declare an official newspaper to publish all legal and public notices. Skagit Valley Herald has been selected as the official newspaper for the City of Burlington for the year 2021.

A motion was made by **Councilors Stavig/J. DeGloria** to add the official newspaper selection of the City of Burlington to the Consent Agenda. All in favor; motion carried.

A motion was made by **Councilors Aslett/Green** to approve the Consent Agenda item #1 and authorize the Mayor 's signature on appropriate documents and resolution. All in favor; motion carried.

**NEW BUSINESS:**

**2021 Comcast Franchise Agreement**

**City Administrator Greg Young** shared the City of Burlington, not unlike other cities, has franchise agreements with various private companies that extensively use our city right-of-way (ROW). In this case, Comcast uses our ROW to run cable into buildings supplying internet and television services. This franchise agreement has a term of ten (10) years with a five (5) year extension, which is common in Washington State. This franchise agreement is nonexclusive meaning the City could grant other franchise agreements for similar purposes. The agreement is also cancelable should Comcast or the city wish to terminate the agreement. Federal Law limits what cities can charge for franchise agreements and in this case, the City is charging Comcast the legal limit – 5 percent. One important factor in franchise agreements is the ability of the city to require the franchise to relocate their infrastructure should the city need to complete road or ROW improvements. This is a standard provision which was contained in previous franchise agreements and public works has reviewed this new franchise for these provisions. **Councilor Joe DeGloria** asked if the City has other agreements like this and if the charge is five percent for those agreements as well. **Young**, shared Comcast and Cascade Natural Gas are the only two companies with franchise agreements that he is aware of. The City cannot charge Cascade Natural Gas a franchise fee however there is a Cascade Natural Gas Utility Tax. The Cascade Natural Gas agreement will be presented to Council at the next meeting. **J. DeGloria** asked if this was a renewal or a new agreement. **Young** stated this a new franchise agreement but is a continuation of the important aspects of the previous agreement. This is the same agreement Comcast uses throughout the State of Washington. **J. DeGloria** asked if the fee was five percent in the previous agreement. **Young** explained there was no change to the fee from the past agreement. **Councilor James Stavig** stated there is not an option to increase the fee because the city is already charging the maximum allowed which is five percent. **Young** shared any increase in



January 14, 2021

Comcast franchise revenue in 2021 would be the result of them increasing their customer base and/or increasing their fees for which the franchise fee is applied.

**Mayor Sexton** opened the public hearing.

A motion to close the public hearing was made by **Councilor Chaplin/Aslett**. All in favor; motion carried.

A motion was made by **Councilors Stavig/Chaplin** to approve the 2021 Comcast Franchise Agreement. All in favor; motion carried.

**Flood Development Regulations - Update**

**Community Development Director Brad Johnson** explained in order to remain eligible for flood insurance coverage and ensure compliance with the critical area provisions of the Growth Management Act (GMA) the City is required to periodically update its floodplain development regulations for consistency with current Department of Ecology and FEMA requirements. Originally, the flood development regulations were going to be revised as part of the ongoing comprehensive plan update; however, the Department of Ecology has informed us the City must adopt revised flood development regulations by the end of January. The proposed changes are based on a model ordinance developed by FEMA's Region 10 office. DOE has approved the proposed changes and the Planning Commission recommends the revisions be adopted. **Councilor Chris Loving** asked if these changes will get the city up to date. **Johnson** shared these are the last changes needed to adhere to the Department of Ecology's regulations. **Councilor James Stavig** thanked **Johnson** for putting all the information together and asked if the city is still involved in a program to give residents a break on their flood insurance. **Johnson** explained the program is called the Community Rating System and the city is still involved which allows for offering a lower rate of deduction but, would like to bring a plan to council outlining the cost vs. the benefits of this plan.

A motion was made by **Councilor Stavig/Loving** to accept the Planning Commission's recommendation dated December 16, 2020 and authorize the Mayor to sign the attached ordinance. All in favor; motion carried.

January 14, 2021

**Development Regulation Amendments to Improve Fiber Infrastructure**

**Community Development Director Brad Johnson** explained Chapter 12.28 of the Burlington Municipal Code regulates the construction of streets, roads, sidewalks and other infrastructure necessary to support new development. The provisions of this code chapter are used to regulate public and private development and generally apply whenever a grading permit or civil plan review is requested. Currently, Chapter 12.28 BMC requires that fiber optic conduit and vaults be installed whenever certain types of development occur within a City right-of-way. In practice, City staff have experienced problems with the current regulations. Specifically, Chapter 12.28 does not cover all types of development and does not require that fiber optic infrastructure be provided between new buildings and the public right-of-way. In order to address these issues City staff revised Chapter 12.28 to broaden its applicability. **Councilor Keith Chaplin** asked if the city would be providing vaults in the right-of-way. **Johnson** shared the city requires the developer to show the vaults on the civil engineering plans, if requested the city will then provide the conduit and the vaults. The developer then takes on all installation costs and the conduit and vaults in the right-of-way become public property, materials on private property would remain the property of the property owner. **Councilor Joe DeGloria** spoke in support of lowering cost for builders and asked if this will significantly increase cost to developers. **Johnson** explained the conduit and the vaults are extremely inexpensive. **Facilities Maintenance Supervisor Travis Schwetz** shared the cost is pennies on the dollar to install this equipment during development. The cost increases when work is required on existing sites. **Councilor Keith Chaplin** shared Burlington is one of the least costly cities to build in regarding impact fees. **IT Director Geoff Hawes** spoke about the specific price points for the equipment and shared the benefits of getting fiber available to more business.

A motion was made by **Councilors Stavig/Chaplin** to adopt the proposed revisions to Chapter 12.28 of the Burlington Municipal Code and authorize the Mayor to sign the attached ordinance. All in favor; motion carried.

**Comprehensive Plan Update - Development Regulation Amendments (RD and RA 1 Zones)**

**Community Development Director Brad Johnson** shared the Planning Commission previously recommended that changes be made to the land use and housing elements of the City's comprehensive plan. The Planning Commission also previously recommended

January 14, 2021

that changes be made to the City's comprehensive plan map. In order to comply with Washington State Growth Management (GMA) requirements, ensure the City's comprehensive plan and development regulations are consistent, and to ensure the City's development regulations are sufficient to accommodate projected population and employment growth, the Planning Commission has determined that significant revisions must be made to the City's development regulations. The Planning Commission requested that City's Planning Department break the development regulation update project into manageable components. The Planning Commission has reviewed the first group of code changes prepared by the Planning Department, including changes to the zoning code for the City's "RD" (Residential Detached) and "RA-1" (Residential Attached) zones. The Planning Commission recommends these changes be adopted by the City Council. **Councilor Joe DeGloria** acknowledged the thorough layout, hard work and thoughtfulness that was put into the development of this plan.

A motion was made by **Councilors Green/Stavig** to accept the Planning Commission's recommendation dated December 16, 2020 and authorize the Mayor to sign the attached resolution. All in favor; motion carried.

**Interim Policies for Outdoor Dining Facilities and the Use of Public Right-of-Way**

**Community Development Director Brad Johnson** explained due to the restrictions imposed on indoor eating and drinking establishments as a result of COVID-19 the City has been approached by several businesses interested in establishing temporary outdoor dining facilities, either on private property or within a City right-of-way. The Community Development Department previously discussed this matter with Council. At that time, Council agreed to temporarily grant the Community Development Department authority to administratively approve street use applications. Council also directed staff to develop more formal policies or regulations to guide this process during the duration of the COVID-19 pandemic. **Councilor Keith Chaplin** asked how many businesses have come forward for this request. **Johnson** stated about 4 businesses have been in contact. **Councilor Bill Aslett** expressed concerns about structures extending into the street and asked if the public safety aspect of this policy was in order with Fire and Police. **Johnson** shared the Fire Marshal and Streets Department both visited sites and gave positive input that these structures were not a hinderance.

January 14, 2021

A motion was made by **Councilors Stavig/Chaplin** to authorize the Mayor to sign the attached resolution establishing interim policies for outdoor dining facilities. All in favor; motion carried.

**Dark Fiber Lease with SkagitNet**

**IT Director Geoff Hawes** explained SkagitNet (Port of Skagit) wants to lease a dark fiber from the City to connect NoaNet equipment in our PD computer room, to the SkagitNet hut on Airport drive. This will utilize one of the existing unused strands of fiber from the PD computer room, to the SkagitNet demarcation hut which feeds all SkagitNet. This will be the first time a fiber connection is being made between the City and SkagitNet. **Councilor Keith Chaplin** asked if this item was presented to the city awhile ago but due to scheduling issues had to wait until this Council meeting. **Hawes** shared that these requests tend to be timely in manner and would like Council approval to be able to authorize the Mayor to sign on similar agreements that have little to no cost to expedite the process. **Mayor Sexton** offered to have a workshop on this matter in the spring to give Council more information.

A motion was made by **Councilors J. DeGloria/Aslett** to approve the Dark Fiber lease agreement and authorize the Mayor to sign the document. All in favor; motion carried.

**Termination of Lease Agreement for 465 Pease Rd.**

**Mayor Sexton** explained the City of Burlington entered into a lease agreement with AutoSource Vehicle Importers on July 1, 2019. The lease period is month to month and requires a 90-day notice for termination by either party. Conversation began between the Mayor and the tenant in mid-October of 2020 regarding the possible repurposing of the property for an emergent need of a homeless shelter. In order to commit to the proposed project to alleviate that need, Council action to authorize the termination of the lease agreement is necessary. The Mayor has had discussions with all adjacent property owners to describe in detail what the proposed shelter would look like, not only physically but also the level of 24/7 onsite management at that location. **Councilor Joe DeGloria** spoke in opposition of this item and shared he would like the plan to develop a bit more before deciding, expressing concerns including safety and power issues. **J. DeGloria** also asked for zoning information for neighboring properties and for an opportunity for the public to share comments and concerns. **Mayor Sexton** spoke to these concerns and shared he has had discussions with every surrounding business adjacent to this property and expressed

January 14, 2021

the overall feeling was positive. **Councilor James Stavig** spoke in favor of this item and expressed a need to support the Mayor in this program. **Councilor Keith Chaplin** also spoke in favor of this program sharing his support to take the first step and show surrounding cities the commitment Burlington has to making this program a success.

A motion was made by **Councilors Stavig/Chaplin** to authorize the Mayor to execute the termination of the current lease agreement with AutoSource Vehicle Importers for the location of 465 Pease Rd. in Burlington. **Councilors Stavig/Chaplin/Loving** and **Aslett** in favor; **Councilors Green** and **J. DeGloria** opposed. Motion carried.

#### **2021 Council Committee Assignments**

A motion was made by **Councilors Stavig/Loving** to elect **Councilor Joe DeGloria** as Mayor Pro Tempore. All in favor; motion carried.

A motion was made by **Councilors Chaplin/Stavig** to elect **Councilor Bill Aslett** as Investment Chair. All in favor; motion carried.

**Councilor James Stavig** offered his alternate position on the Audit and Finance Committee to **Councilor Joe DeGloria**. **Councilor J. DeGloria** accepted the alternate position.

A motion was made by **Councilors Aslett/Stavig** to approve the Mayor's 2021 Council Committee assignments. All in favor; motion carried.

#### **DISCUSSION**

No Discussion.

#### **EXECUTIVE SESSION:**

**City Attorney Leif Johnson** recited the following: pursuant to RCW 4230110 as well as RCW 4230140, an executive session will be in regard to Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. **L.**

January 14, 2021

**Johnson** stated that the session is expected to last about 45 minutes and conclude at approximately 9:40 p.m., and no action is expected at the conclusion.

**ADJOURNMENT:**

**Mayor Sexton** adjourned the meeting at 8:46 p.m.

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Joe Stewart  
Finance Director

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Steve Sexton  
Mayor



ITEM #: 1

CHECK ONE:

NEW BUS. X

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

## AGENDA ITEM

Council Date: January 28, 2021 Subject: 2021 Cascade Natural Gas Franchise Agreement

Submitted By: Greg Young – City Administrator

Attachments: Franchise Agreement Public Hearing Required: YES ( X ) NO ( )

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\_\_\_\_\_

### **HISTORY AND SUMMARY**

The City of Burlington, not unlike other cities, has franchise agreements with various private companies that regularly use our city right-of-way (ROW). In this case, Cascade Natural Gas uses our ROW to supply natural gas to customers in Burlington. This franchise agreement has a term of ten (10) years with five (5) year extensions, which is common in Washington State.

This franchise agreement is nonexclusive meaning that the City has the ability to grant other franchise agreements for similar purposes. The agreement is also cancelable should Cascade or the City wish to terminate the agreement.

This franchise agreement differs from the Comcast franchise we approved at our last meeting in one important way – unlike Comcast, the City is prevented by federal law from charging an annual franchise fee. If you remember however, we are able to assess a Utility Tax on natural gas which we did last year.

One important factor in franchise agreements is the ability of the city to require the franchisee to relocate their infrastructure should the city need to complete road or ROW improvements. This is a standard provision which was contained in previous franchise agreements. We were able however to negotiate a change in the relocation section – the original draft had a five-year window on relocation at no cost to the city and we were able to move this to four years.

**ALTERNATIVES CONSIDERED**

The City would choose to not renew this franchise which would mean that Cascade would be required to remove their equipment in our ROW and discontinue providing the services they current offer.

**CURRENT AND FUTURE BUDGET RAMIFICATIONS**

With the adoption of the Natural Gas Utility Tax, this firm will be submitting revenues to the City. These anticipated revenues have been included in our 2021 budget.

**LEGAL ASPECTS – LEGAL REVIEW**

None identified

**STAFF RECOMMENDATION**

Staff recommends that the Council adopt the 2021 Cascade Natural Gas Franchise Agreement

**SUGGESTED COUNCIL MOTION LANGUAGE**

“I move to approve the 2021 Cascade Natural Gas Franchise Agreement.”



**ORDINANCE NO. \_\_\_\_**

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS.

THE CITY COUNCIL OF THE CITY OF BURLINGTON, WASHINGTON, DO ORDAIN AS FOLLOWS:

**Section 1. Definitions.**

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "CNG" means Cascade Natural Gas Corporation, a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of BURLINGTON, a Municipal Corporation within the State of Washington, and its successors and assigns.

1.1.3 "Construct" or "Construction" shall mean placing, removing, replacing, adding new, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of placing, removing, replacing, adding new, and repairing Facilities.

1.1.4 "Facilities" means, collectively, any and all (i) natural gas transmission and distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, service lines, conduits, feeders, regulators, meters, meter-reading devices, monitoring and communication systems; and (ii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Franchise" means the grant of rights, privileges, authority, terms, and conditions embodied in this Ordinance.

1.1.6 "Franchise Area" means any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways of the City as now laid out, platted, dedicated or improved; and any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended. For the purpose of this definition, right-of-way includes property owned by the City in fee and used for public roads and other public ways of the City.

1.1.7 "Maintenance" or "Maintain" means examining, testing, inspecting, repairing,

maintaining, and replacing the Facilities or any part thereof as required or as necessary for safe operation.

1.1.8 "Operate" or "Operations" means the use of CNG's Facilities for the transmission, distribution, handling, and sale of product within and through the Franchise Area.

1.1.9 "Ordinance" means the 2021 Ordinance, which sets forth the terms and conditions of this Franchise.

1.1.10 "Public right of way improvement" is a City-funded capital improvement to the public right of way.

## **Section 2. Facilities Within Franchise Area.**

2.1 The City does hereby grant to CNG a Franchise for the period set forth in Section 11 below. This Franchise grants the right, privilege, and authority to Construct, Operate, and Maintain Facilities necessary for the purpose of transmission, distribution and sale of natural gas.

## **Section 3. Noninterference of Facilities.**

3.1 CNG's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable federal and state laws, rules and regulations and all applicable local government laws, rules and regulations. CNG shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded CNG by such City codes and ordinances.

3.2 CNG shall provide the City, upon the City's reasonable request, copies of available drawings in use by CNG showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, CNG does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of CNG or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

## **Section 4. Relocation of Facilities.**

4.1 Whenever the City causes a public right of way improvement to be undertaken within the Franchise Area, and such public right of way improvement requires the relocation of CNG's then existing Facilities within the Franchise Area (for purposes other than those described in paragraph 4.2 below), the City shall:

4.1.1 provide CNG, within a reasonable time prior to the commencement of such public

right of way improvement, written notice requesting such relocation; and  
4.1.2 provide CNG with reasonable plans and specifications for such public right of way improvement.

After receipt of such notice and such plans and specifications, CNG shall relocate such Facilities within the Franchise Area at no charge to the City. The City will make its best efforts to avoid the need for such moving or changing whenever possible. If the City requires the subsequent relocation of any Facilities within four (4) years from the date of relocation of such Facilities pursuant to Section 4.1, the City shall bear the entire cost of such subsequent relocation. In the event the city receives any Federal, state or other funds for gas line relocating purposes, the Grantee will be given credit to the extent any such funds are actually received by the City.

4.2 Whenever (i) any public or private development within the Franchise Area, other than a public right of way improvement, requires the relocation of CNG's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of CNG's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, CNG shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to CNG, at a time and upon terms acceptable to CNG, for any and all costs and expenses incurred by CNG in the relocation of CNG's Facilities.

4.3 Any condition or requirement imposed by the City upon any person or entity, other than CNG, that requires the relocation of CNG's Facilities shall be a required relocation for purposes of paragraph 4.2 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

4.4 Nothing in this Section 4 "Relocation of Facilities" shall require CNG to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

## **Section 5. Indemnification.**

5.1 CNG shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of CNG, its agents, servants or employees in exercising the rights granted to CNG in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify CNG thereof, and CNG shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify CNG thereof, and CNG shall have the right, at its election and its sole cost and expense to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorney of its own election. This provision shall survive the termination of this Franchise.

This indemnity provision shall not be considered a waiver to any defenses to which the City may be entitled in such action or suit defended by CNG including any defenses of sovereign immunity.

## **Section 6. Insurance**

6.1 CNG shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property to the extent caused within the exercise of the rights, privileges and authority granted hereunder to CNG, its agents, representatives or employees that includes

- A. Automobile Liability insurance with limits no less than \$2,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$5,000,000 per occurrence and \$10,000,000 aggregate for personal injury, bodily injury and property damage.

In lieu of the requirements set forth above, CNG may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City's request, CNG shall provide the City with reasonable written evidence that CNG is maintaining such insurance.

## **Section 7. Vacation or Disposal of Franchise Area.**

7.1 In the event the City vacates or disposes of any portion of the Franchise Area during the term of this Franchise wherein CNG has located Facilities, the City shall provide, or require that those seeking vacation provide, CNG prior notice of same to allow CNG to review and comment on the proposed vacation. If requested by CNG, the City shall, in its vacation or disposal procedure, reserve an easement for utilities suitable for CNG's Facilities. If CNG's facilities must be relocated from a vacated public right of way, the petitioner of said vacation will bear the expense of moving said facilities.

## **Section 8. Moving Buildings within the Franchise Area.**

8.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with CNG for the temporary or permanent adjustment of CNG's Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to CNG, not less than thirty (60) days prior to the moving or removal of such building or other object. In such event, CNG shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

## **Section 9. Default.**

9.1 If CNG willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given CNG by the City under the provisions of this Franchise, then CNG shall, at the election of the City, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the

Council after a hearing held upon notice to CNG.

#### **Section 10. Nonexclusive Franchise.**

10.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with CNG's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

#### **Section 11. Franchise Term.**

11.1 This Franchise is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by CNG, herein referred to as the primary term. This Franchise will automatically renew for successive periods of five (5) years unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

CNG shall have no rights under this Franchise nor shall CNG be bound by the terms and conditions of this Franchise unless CNG shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

#### **Section 12. Assignment.**

12.1 This Franchise may not be assigned or transferred without the written consent of the City. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. CNG shall provide prompt written notice to the City of any such assignment or transfer, and all of the provisions, terms, conditions, and requirements this Franchise shall be binding upon successors and assigns as if they were specifically mentioned wherever CNG is named herein.

#### **Section 13. Acceptance.**

13.1 This Franchise is granted upon the express condition that CNG, within (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

#### **Section 14. Survival.**

14.1 All of the provisions, terms, conditions and requirements of Sections 4, Relocation of Facilities; 5, Indemnification; and 6, Insurance; of this Franchise shall be in addition to any and all other obligations and liabilities CNG may have to the City at common law, by statute, or by contract, and shall survive the termination or expiration of this Franchise and any renewals or extensions thereof.

#### **Section 15. Notice.**

15.1 Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF BURLINGTON  
Mayor, City of Burlington  
833 South Spruce Street  
Burlington WA 98233

CASCADE NATURAL GAS CORP.  
Attn: Northwest Regional Director  
1520 S 2<sup>nd</sup> Street  
Mount Vernon, WA 98273

### **Section 16. Severability.**

16.1 If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such courts' ruling.

### **Section 17. Miscellaneous.**

17.1 If any provision, term, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

17.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by CNG of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

17.2.1 references this Franchise; and

17.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

17.3 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions

of such tariff shall control.

**Section 18. No Third Party Beneficiary**

18.1 Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party, nor confer any right or remedy upon any person other than the City and CNG. No action may be commenced or prosecuted against either the City or CNG by any other party claiming beneficiary of this Franchise and nothing this Franchise shall release or discharge any obligation or liability of any third party to either the City or CNG.

**Section 19. Effective Date.**

19.1 This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage by the City Council.

Passed by the City Council of the City of BURLINGTON the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

APPROVED:

\_\_\_\_\_

Steve Sexton, Mayor

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

BY: \_\_\_\_\_

Leif Johnson, City Attorney

DATE: \_\_\_\_\_

HONORABLE MAYOR AND CITY COUNCIL  
CITY OF BURLINGTON, WASHINGTON

In the matter of the application of Cascade Natural Gas Corporation, a Washington corporation, for a franchise to construct, operate and maintain facilities in, upon, over, under, along, across and through the franchise area of the City of BURLINGTON, Washington

Franchise Ordinance No. \_\_\_\_\_

ACCEPTANCE

WHEREAS, the City Council of the City of BURLINGTON, Washington, has granted a franchise to Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, by enacting Ordinance No. \_\_\_\_\_, passed by the City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021 and

WHEREAS, a copy of said Ordinance granting said franchise was received by Cascade Natural Gas Corporation on the \_\_\_\_\_ day of \_\_\_\_\_, 2020, from said City of BURLINGTON, Washington.

NOW, THEREFORE, Cascade Natural Gas Corporation, a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of BURLINGTON, Washington.

IN TESTIMONY WHEREOF said Cascade Natural Gas Corporation has caused this written Acceptance to be executed in its name by its undersigned \_\_\_\_\_ thereunto duly authorized on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ATTEST:

CASCADE NATURAL GAS CORP.

\_\_\_\_\_

By \_\_\_\_\_

Copy received for City of BURLINGTON  
on \_\_\_\_\_ 2021.

By \_\_\_\_\_  
Finance Director





ITEM #: 2

CHECK ONE:

NEW BUS. X

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

## AGENDA ITEM

Council Date: January 28, 2021 Subject: 2021 Contract for prosecution services by Kailin James  
Submitted By: Leif Johnson – City Attorney

Attachments: Proposed Contract Public Hearing Required: YES ( ) NO (X)

\_\_\_\_\_  
\_\_\_\_\_

### HISTORY AND SUMMARY

The City of Burlington has contracted with Kailin James to provide criminal prosecution services on a yearly basis since approximately 2014. Ms. James and City Attorney Leif Johnson divide criminal prosecution duties based on a variety of factors that may fluctuate in any given week, with Ms. James handling the lion’s share of duties. Since 2015, the number of municipal court calendar days and potential trials per month has generally increased, including the anticipated addition of a community court calendar in 2021.

The City is no longer under federal audit regarding defense services, but Prosecution strives to maintain the elevated standards that were put in place during that period, as well as anticipate new needs that may arise. It is also likely that prosecution needs will increase later in 2021 and beyond, once many of the criminal matters that were previously put on hold while courts were essentially closed for most of the 2020 need to be resolved, while respecting defendant’s speedy trial rights.

The proposed contract, attached, is identical to the contract approved by Council in 2020, with no change in fees or rates. It is important that Ms. James is available for public defense access as much as necessary, and this contract should continue to support that goal. City Attorney Leif Johnson plans to continue to participate in criminal prosecution at much the same level that was exercised in 2020.

The contract currently in place expired at the end of December, and went to month-to-month thereafter. The proposed contract is set for calendar year 2021, then month-to-month thereafter.

### **ALTERNATIVES CONSIDERED**

The city is not required to approve this contract, but not doing so will result in a substantial impact to the Legal Department and prosecution generally. As prosecution needs have increased, especially since 2014, it is not possible for the duties performed by Ms. James to be absorbed by the City Attorney without a substantial change in the level of services provided by the Legal Department, both in prosecution and other non-prosecution matters.

### **CURRENT AND FUTURE BUDGET RAMIFICATIONS**

The overall rates and fees are the same as they have been for the last several contract renewals, so approving this contract should be relatively neutral when compared to prior years, with some unknown fluctuations depending on need, as it arises. However, it seems possible that there will be an increase in need as the effects of 2020 court closures are dealt with in the future.

### **LEGAL ASPECTS – LEGAL REVIEW**

Prosecution is a basic, required function of the Burlington Municipal Court. The City must maintain adequate prosecution resources. Failing to do so would result in numerous substantial negative complications.

### **STAFF RECOMMENDATION**

Staff recommends approval of the resolution.

### **SUGGESTED COUNCIL MOTION LANGUAGE**

“I move to approve the *Agreement For Legal Services Between City Of Burlington And Kailin James* and authorize the Mayor to sign the Agreement.”

**AGREEMENT FOR LEGAL SERVICES  
BETWEEN CITY OF BURLINGTON AND  
KAILIN JAMES**

**WHEREAS**, the City of Burlington (hereinafter "Burlington") and Kailin James, (hereinafter "James") have agreed that James shall render legal services to the prosecution of misdemeanor offenses in the Burlington Municipal Court on behalf of the City of Burlington, the following Agreement for legal services is hereby made:

1. **Compensation.** Burlington agrees to hire James to represent it as described above in the following manner:

**Tier 1:** An hourly rate of \$120 for the first sixteen (16) hours of work within the month. The City guarantees no less than the first sixteen (16) hours for a minimum of \$1920.00 per month.

**Tier 2:** An hourly rate of \$90 for any and all hours worked within the month beyond the first sixteen (16) hours.

James will invoice Burlington on a monthly basis for James's fees. Burlington agrees to make full payment on any bill within thirty (30) days thereof.

2. **Term.** This Agreement shall be effective January 29, 2021 through December 31, 2021 unless otherwise terminated by the Parties. If the Agreement is not terminated in writing by the parties, the Agreement shall continue on a month-to-month basis, pursuant to Section 9 of this Agreement. James and Burlington acknowledge that the extent of the workload to be assumed by James is unknown and will be directed by the City Attorney.
3. **Files.** Burlington agrees to maintain all files with respect to criminal matters, provide staff sufficient for initialization, maintenance and closure of files and to comply with discovery requests, subpoenas, court hearing support, trial preparation and all related administrative and paralegal activities.
4. **Duties.** James agrees to use her best efforts in representation of Burlington on all matters arising out of or relating to misdemeanor charges, law enforcement criminal issues and other such matters. Generally, James shall cover one pre-trial calendar and up to two trials per month, unless agreed otherwise by the parties and subject to court calendar changes. James shall be responsible for informing City Attorney and arranging for coverage of James's duties in the event of a conflict that prevents James from handling a case or in the event of James's absence. James will maintain an office in Whatcom County, Washington and provide Burlington with contact information in order to be available at any time. James is and will remain licensed to practice law in the State of Washington throughout the term of the Agreement. Burlington shall have the right to prior notice and approval of any attorney selected by James and approved by the City Attorney that may provide for coverage for James.

5. **Relationship of Parties.** The Parties intend that James shall be an independent contractor and shall not be considered an employee of Burlington. James shall have the authority to control and direct the performance of the details of the work contemplated by this Agreement. James shall indemnify and hold Burlington harmless for any injury occurring to James or any staff or attorneys employed by her which injury falls within the coverage of the Washington State Worker's Compensation Program. The provisions of the paragraph shall not apply to any staff member employed by Burlington for performance of the duties identified above.
  
6. **Insurance.** James shall maintain professional liability errors and omissions insurance in the minimum amount of \$1,000,000 for the duration of this Agreement. James shall provide Burlington with a Certificate of Insurance as evidence of professional liability coverage along with an Endorsement listing the City of Burlington as an additional insured.
  
7. **Construction.**  
General Provisions;
  - a. This Agreement shall be construed and governed by the laws of the State of Washington;
  - b. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provisions hereof;
  - c. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements or understandings between the Parties with respect to the subject matter hereof;
  - d. This Agreement may not be modified or amended except by written agreement signed and acknowledged by both Parties;
  - e. The Parties hereto do hereby consent to jurisdiction and venue of the Superior Court of Skagit County, State of Washington.
  
8. **Indemnification.**  
The City of Burlington hereby agrees to defend, indemnify, and hold the provider harmless from any and all claims, demands, damages, lawsuits, liabilities, and losses, arising out of the good faith prosecution of defendants, when such prosecutions are nullified by the subsequent declaration by an appellate court of competent jurisdiction that the law under which the prosecution occurred was unconstitutional, resulting in a violation of the defendant's civil rights. It is the intent of the parties that this clause shall extend to the indemnification of claims brought under 42 U.S.C. 1983.
  
9. **Termination.**  
**By the City.** The Mayor may terminate this Agreement at any time with or without cause at any time and for any reason including failure to comply with any provision of this Agreement.  
  
**By James.** Following ninety (90) days written notice or by agreement between the Parties.

10. **Notices.**

Any notice required to be given under this Agreement shall be delivered or mailed to the following Parties at the following addresses:

**THE CITY OF BURLINGTON**

Attn: Mayor Steve Sexton  
833 S Spruce Street  
Burlington, WA 98233

**KAILIN JAMES**

1200 Dupont St. Suite 1-D  
Bellingham, WA 98225

**IN WITNESS WHEREOF**, the City of Burlington and Kailin James have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF BURLINGTON**

**KAILIN JAMES, PROVIDER**

BY: \_\_\_\_\_

Steve Sexton, Mayor

\_\_\_\_\_  
Kailin James

ATTEST:

BY: \_\_\_\_\_

Joe Stewart  
Finance Director

Approved as to Form:

BY: \_\_\_\_\_

Leif Johnson  
City Attorney



ITEM #: 3

CHECK ONE:

NEW BUS. X

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

## AGENDA ITEM

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Council Date: January 28, 2021 Subject: Professional Services Agreement with Lana Reichert of Skagit County Investigations, LLC  
Submitted By: Greg Young, Interim City Administrator

Attachments: Agreement with Lana Reichert of Skagit County Investigations, LLC Public Hearing Required: YES ( ) NO (X)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### **HISTORY AND SUMMARY**

This agreement is for individual background investigations for candidates under consideration of employment with the City of Burlington Civil Service and other City needs. The City has previously contracted with Lana Reichert for background investigations, and the billable rate remains unchanged from the most recent contract, the terms of which expired on 12/31/2020.

### **ALTERNATIVES CONSIDERED**

Background investigations for civil service jobs (police and fire/EMS) are more detailed than standard background checks. Therefore, it is somewhat of a specialized field. The City has used the services of Lana Reichert for many years and has been pleased by the thoroughness and promptness of her work. Her fees are in line with the limited competitors.

### **CURRENT AND FUTURE BUDGET RAMIFICATIONS**

Since the rollover of this contract does not change the compensation, there should not be an additional budget effect.

### **LEGAL ASPECTS – LEGAL REVIEW**

While the City is not legally required to do background checks, it is good policy and may serve to limit our potential liability for these positions whom have regular interaction with the general public to conduct these background investigations.

**STAFF RECOMMENDATION**

To approve the agreement, thereby continuing to employ the background investigation services offered by Lana Reichert of Skagit County Investigations, LLC.

**SUGGESTED COUNCIL MOTION LANGUAGE**

*"I make a motion to approve the professional services agreement with Lana Reichert of Skagit County Investigations, LLC and authorize the Mayor's signature."*

# City of Burlington Professional Service Agreement

This Agreement is entered into this \_\_\_ day of January, 2021 by and between the City of Burlington, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "City", and Lana Reichert of Skagit County Investigations LLC f1004 7<sup>th</sup> Street Suite 208, Anacortes, WA. 98221, (360) 661-4979, hereinafter referred to as the "Contractor".

**RECITAL:**

**WHEREAS**, the City provides numerous services for persons in the Burlington area; and

**WHEREAS**, the City wishes to facilitate certain services and projects but does not have available staff or expertise to provide certain services to the citizens of Burlington; and

**WHEREAS**, Contractor represents and warrants that it is available, experienced and qualified with specific expertise to provide the following services:

**NOW, THEREFORE, THE CITY AND CONTRACTOR MUTUALLY AGREE AS FOLLOWS:**

1. **Services:** The Contractor shall perform services in the following general areas:

Individual background investigations for candidates under consideration for employment with the City of Burlington Fire Department. (see Scope of Work attached hereto as Exhibit A)

2. **Location:** The Contractor shall perform said services at the following location(s):

Services shall generally be performed at the location of Contractor's choosing, pursuant to the Scope of Work described more fully in Exhibit A, attached hereto. Occasional meetings at Burlington City facilities may be requested by either Party, at a reasonable time to be agreed between the parties.

3. **Time:** The Contractor shall perform said services according to the following schedule:

Within thirty (30) days, of the transmittal of candidate files, or other timeline as agreed to by both parties, the Contractor shall provide written reports on the candidates. If more than three (3) candidate files are transmitted within any thirty (30) day period, additional review time shall be allowed, if necessary. Reports shall be submitted to the City as they are completed.

4. **Compensation:** The City shall pay the Contractor for performance of said services according to the following schedule:

A rate of \$95.00 per hour shall be billed for all time worked by the Contractor for any aspect of individual background investigations including phone interviews, in-person interviews, report writing and travel time. The total amount billed shall not exceed twenty thousand dollars (\$20,000.00), without written consent of the City.



5. **Termination:** The City may terminate this Agreement at any time, with or without cause, by giving written notice to the Contractor of such termination and specifying the effective date. The termination notice shall be sent to the address set forth above. The Contractor shall notify the City of any change in address. If the Agreement is terminated by the City as provided herein, the Contractor will be paid for services actually performed prior to termination, as billed by Contractor and agreed by the City, less payment for compensation previously made. Billing may not exceed twenty thousand dollars (\$20,000.00) total without written consent of the City.

Unless terminated beforehand, this Agreement shall terminate on December 31, 2021. The parties may extend this Agreement pursuant to written agreement, executed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City, its officers, employees and agents by virtue of any breach of this Agreement by the Contractor for the purpose of set off until such time as the exact amount of damages due the City for the Contractor is determined.

6. **Independent Contractors:** The Contractor shall at all times be an Independent Contractor and not an employee of the City and shall not be entitled to compensation or benefits of any kind except as specifically provided herein. The Contractor shall be subject to the City's control and direction as to results to be accomplished, but not as to the details and means by which the results are accomplished. The Contractor shall not be covered by any City benefit programs, such as health and welfare, benefit plans, social security, workers compensation or unemployment compensation, and shall not be treated as an employee for federal tax purposes or any other purpose. The Contractor shall be responsible for paying all taxes related to payments the City makes to the Contractor, including federal income taxes, self employment (social security and Medicaid) taxes and state business and occupation taxes, and the City is not responsible for withholding for or paying any of those taxes. The Contractor shall indemnify and hold harmless the City from and against any and all costs (including attorney's fees incurred in defense or liabilities including payroll taxes, penalties or interests) arising out of any breach of the above representations and warranties or any assertion that the Contractor is not an independent contractor.
7. **Indemnification/Hold Harmless:** The Contractor shall defend, indemnify and hold the City, its officers, elected officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.
8. **Authority:** The Contractor does not have, and shall not hold itself out as having authority to create any contract or obligation that is binding on the City unless the City otherwise consents in writing.
9. **Assignability:** The Contractor shall not assign any interest in its Agreement and shall not transfer any interest in the same.
10. **Employees of the Contractor:** All services to be performed by the Contractor herein shall only be performed by said Contractor, or his/her employees unless by specific written consent of the City. The Contractor shall have constant supervision of all of Contractor's employees at all times.
11. **Insurance Coverage:** At all times during the term of this Agreement, Contractor shall provide a current copy of and maintain and keep in force the following insurance policies against claims arising out of or in connection with the performance of this Agreement to the City:

Commercial General Liability Insurance written on an occurrence basis with limits no less than one million dollars (\$1,000,000.00) combined single limit per occurrence and two million dollars (\$2,000,000.00) aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to blanket contractual; products/completed operations; broad form property damage; explosion; collapse and underground (XCU) if applicable, and employer's liability. The City of Burlington should be the additional insured on the Certificate of Insurance along with language on the Endorsement to include: "Additional Insureds include the City of Burlington, its Elected Officials, Appointed Officers, Employees and Agents".

12. **Wage in Hours Law Compliance:** The Contractor shall comply with all applicable provisions of the Fair Labor Standards Act and any other laws affecting its employees, if any, and the rules and regulations issued there under insofar as applicable to its employees and shall at all times indemnify, defend and save the City free, clear and harmless from and against any and all actions, claims, demands, expenses arising out of said Act or laws and rules and regulations that are or may be promulgated in conjunction herewith.
13. **Equal Employment Opportunity:** The Contractor will not discriminate against any employee or applicant for employment because of race, color, or religion, sex, age, handicap, marital status or national origin.
14. **Non-Discrimination in Services:** The Contractor shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age or the presence or any sensory, mental or physical disability:
  - a. Deny any individual services or benefits provided under this Agreement
  - b. Provide any services or other benefit to an individual which are different or are provided in a different manner from those provided to others under this Agreement
  - c. Subject an individual to segregation or separate treatment in any manner related to his receipt of any service(s) or benefits provided under this Agreement
  - d. Deny any individual an opportunity to participate in any program provided by this Agreement through the provision of service(s) or otherwise, or will afford him an opportunity to do so which is different than that afforded others under this Agreement.
15. **Changes to Agreement:** The City may, from time to time, require changes in the scope of the service to be performed hereunder. Such changes, including increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by the City and the Contractor, shall be incorporated in written amendment to this Agreement.
16. **Contents and Understanding:** This Agreement contains a complete integrated understanding and Agreement between the Parties and supersedes any understanding, agreement or negotiations whether oral or written not set forth herein or in any written amendments hereto duly executed by both Parties.

In witness whereof, the City and the Contractor have executed this Agreement as of the date first above written.

**CITY OF BURLINGTON:**

**CONTRACTOR:**

Mayor

Title

Steve Sexton

Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Lana Reichert/Skagit County Investigations LLC

Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**ATTEST:**

Finance Director

Title

Joe Stewart

Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

City Attorney

Title

Leif Johnson

Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Contractor certifies that he/she has the necessary training, education and/or skill to perform the scope of work in accordance with the standards and best practices of his/her profession.

### **1. Contractor's Scope of Work:**

Conduct an individual background investigation on candidates supplied by the City to include the following:

- Employment verification
  - Including follow-up for general character reference
- PHI questionnaire consistency review and follow-up.
  - Criminal history (Criminal History report to be obtained by the Contractor)
  - Driving history (Driver Record to be provided by the City)
  - Personal finances (Credit Report to be provided by the applicant)
- Credential checks
  - Certification, license, and award verification
  - Professional affiliation and/or membership verification
  - Educational history, including verification of attendance and degrees earned
- Reference verifications
  - Contact selection of relatives
  - Contact selection personal references
  - Contact other affiliates deemed necessary or appropriate as leads develop through other interviews/verifications
- Written report including verification and contact information as well as any insight into the character, judgment, or general personality tendencies of the candidate.

### **2. Contractor's Training / Qualifications:**

Lana Reichert, Skagit County Investigation LLC owner and agency principal, holds a Bachelors of Arts in Science from the University of Idaho. Ms. Reichert is licensed and bonded with the State of Washington. Ms. Reichert has over 20 years of experience in all aspects of investigations to include criminal, civil, criminal history, background checks, surveillance, trial preparation, interviewing and report writing, witness location, scene analysis and court testimony. Ms. Reichert worked 14 years as the Chief Criminal Defense Investigator for the Skagit County Public Defender's Office.



ITEM #: 4

CHECK ONE:

NEW BUS. X

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

## AGENDA ITEM

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Council Date: January 28, 2021 Subject: Purchase New John Deere 997 Z-TRAK Mower

Submitted By: Jim Rabenstein

Attachments: Official Quote from PAPE' Machinery Public Hearing Required: YES ( ) NO (X)

\_\_\_\_\_

\_\_\_\_\_

### **HISTORY AND SUMMARY**

Our old 2007 John Deere 997 Z-TRAK mower is in need of replacement. This is one of our workhorse mowers and gets heavy use during the mowing season. A few years ago this particular mower was due for replacement and was showing its age. At the time, we did a close evaluation of the mower and determined the machine itself still had some service life, however, it was in desperate need of a new collection system. We purchased the new collection system and were able to extend the life of the mower an extra 4 years. There are now numerous components which are at the end of their service life, and it is not cost effective to attempt rejuvenation of the machine by replacing parts.

### **ALTERNATIVES CONSIDERED**

Not replace the mower and risk a sudden breakdown of the machine during our busy mowing season. As is, the machine has a \$4,400 trade-in value which will not be gained if it sustains a costly mechanical failure.

### **CURRENT AND FUTURE BUDGET RAMIFICATIONS**

The mower is scheduled for replacement in our CIP, and \$26,000 is available in 2021 from the ER&R Fund. The state contract quote for the new mower, with trade-in of the old mower, is \$21,432.10. That is \$4,567.90 below the budgeted amount.

### **LEGAL ASPECTS – LEGAL REVIEW**

None identified.

### **STAFF RECOMMENDATION**

For some of our mowers we will hold on to the old machine and use it for replacement parts on our newer mowers. As this is an older model, many of the parts don't match our current fleet. Strategically, the City gains an economic advantage by capitalizing on the mower's trade-in value.

### **SUGGESTED COUNCIL MOTION LANGUAGE**

Move to approve the purchase of the new John Deere 997 Z-TRAK mower as quoted in the state contract bid.

# YOUR CONTRACT. YOUR QUOTE. YOUR HELP REQUESTED.

**Ensure your equipment arrives with no delay.  
Issue your Purchase Order or Letter of Intent.**

To expedite the ordering process, please include the following information in Purchase Order or Letter of Intent:

**For any questions, please contact:**

- Shipping address
- Billing address
- Vendor: John Deere Company  
2000 John Deere Run Cary,  
NC 27513
- Contract name and/or number
- Signature
- Tax exempt certificate, if applicable

**Brian Oordt**

Pape Machinery, Inc.  
4220 Old Highway 99 So  
Mount Vernon, WA 98273

Tel: 360-424-7995

Fax: 360-424-0403

Email: [boordt@papemachinery.com](mailto:boordt@papemachinery.com)

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

Pape Machinery, Inc.  
 4220 Old Highway 99 So  
 Mount Vernon, WA 98273  
 360-424-7995

### Quote Summary

**Prepared For:**

CITY OF BURLINGTON PARKS AND RECREATION  
 900 E FAIRHAVEN AVE  
 BURLINGTON, WA 98233

**Delivering Dealer:**
**Pape Machinery, Inc.**

Brian Oordt  
 4220 Old Highway 99 So  
 Mount Vernon, WA 98273  
 Phone: 360-424-7995  
 boordt@papemachinery.com

*This sale is subject to Papé's Terms and Conditions of Sale effective on the date hereof, which are incorporated in full by this reference. The Terms and Conditions of Sale are available at [www.pape.com/terms](http://www.pape.com/terms), and will also be sent by mail or e-mail to the purchaser upon request.*

**Quote ID:** 23470568  
**Created On:** 12 January 2021  
**Last Modified On:** 12 January 2021  
**Expiration Date:** 11 February 2021

Equipment Summary	Selling Price	Qty	=	Extended
JOHN DEERE Z997R DIESEL NA	\$ 20,299.32	1	=	\$ 20,299.32
<b>Contract:</b> WA Lawn and Grounds 05218 (PG 4S CG 22)				
<b>Price Effective Date:</b> February 28, 2020				
JOHN DEERE 14 Bushel Dump From Seat MCS (Z997R)	\$ 3,817.42	1	=	\$ 3,817.42
<b>Contract:</b> WA Lawn and Grounds 05218 (PG 4S CG 22)				
<b>Price Effective Date:</b> February 28, 2020				
<b>Equipment Total</b>				<b>\$ 24,116.74</b>

Trade In Summary	Qty	Each	Extended
2006 JOHN DEERE 997 - DM997SB020486	1	\$ 4,400.00	\$ 4,400.00
PayOff			\$ 0.00
Total Trade Allowance			\$ 4,400.00
<b>Trade In Total</b>			<b>\$ 4,400.00</b>

* Includes Fees and Non-contract items	<b>Quote Summary</b>	
	Equipment Total	\$ 24,116.74
	Trade In	\$ (4,400.00)
	SubTotal	<b>\$ 19,716.74</b>

**Salesperson : X** \_\_\_\_\_

**Accepted By : X** \_\_\_\_\_



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**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

Pape Machinery, Inc.  
4220 Old Highway 99 So  
Mount Vernon, WA 98273  
360-424-7995

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Sales Tax - (8.70%)	\$ 1,715.36
Est. Service Agreement Tax	\$ 0.00
Total	\$ 21,432.10
Down Payment	(0.00)
Rental Applied	(0.00)
<b>Balance Due</b>	<b>\$ 21,432.10</b>

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_

# Selling Equipment

**Quote Id:** 23470568      **Customer Name:** CITY OF BURLINGTON PARKS AND RECREATION

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

Pape Machinery, Inc.  
4220 Old Highway 99 So  
Mount Vernon, WA 98273  
360-424-7995

## JOHN DEERE Z997R DIESEL NA

**Hours:**

**Stock Number:**

**Contract:** WA Lawn and Grounds 05218 (PG 4S CG 22)

**Selling Price \***

**Price Effective Date:** February 28, 2020

**\$ 20,299.32**

\* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
091QTC	Z997R DIESEL NA	1	\$ 25,859.00	21.50	\$ 5,559.68	\$ 20,299.32	\$ 20,299.32
<b>Standard Options - Per Unit</b>							
001A	United States/Canada	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00
1150	26x12x12 Pneumatic Turf Tires	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00
1504	60 In. 7-Iron PRO Side Discharge Mower Deck	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>			<b>\$ 0.00</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Value Added Services Total</b>			<b>\$ 0.00</b>			<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Total Selling Price</b>			<b>\$ 25,859.00</b>		<b>\$ 5,559.68</b>	<b>\$ 20,299.32</b>	<b>\$ 20,299.32</b>

## JOHN DEERE 14 Bushel Dump From Seat MCS (Z997R)

**Equipment Notes:**

**Hours:**

**Stock Number:**

**Selling Price \***

**Contract:** WA Lawn and Grounds 05218 (PG 4S CG 22)

**\$ 3,817.42**

**Price Effective Date:** February 28, 2020

\* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
0776TC	14 Bushel Dump From Seat MCS (Z997R)	1	\$ 4,619.00	21.50	\$ 993.09	\$ 3,625.91	\$ 3,625.91
<b>Standard Options - Per Unit</b>							
001A	United States and Canada	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00

# Selling Equipment

**Quote Id:** 23470568      **Customer Name:** CITY OF BURLINGTON PARKS AND RECREATION

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580; DUNS#: 60-7690989

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

Pape Machinery, Inc.  
 4220 Old Highway 99 So  
 Mount Vernon, WA 98273  
 360-424-7995

3405	Attaching Parts for 152.4 cm (60 In.) 7-Iron PRO Decks	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00
3500	7-Iron Blower for 7-Iron PRO and 7-Iron PRO Mulch-On-Demand Decks	1	\$ 0.00	21.50	\$ 0.00	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>			<b>\$ 0.00</b>		<b>\$ 0.00</b>	<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Dealer Attachments/Non-Contract/Open Market</b>							
UC13263	Quik-Tatch Weight, 42 lb (19 kg)	4	\$ 60.99	21.50	\$ 13.11	\$ 191.51	\$ 191.51
<b>Dealer Attachments Total</b>			<b>\$ 243.96</b>		<b>\$ 52.45</b>	<b>\$ 191.51</b>	<b>\$ 191.51</b>
<b>Total Selling Price</b>			<b>\$ 4,862.96</b>		<b>\$ 1,045.54</b>	<b>\$ 3,817.42</b>	<b>\$ 3,817.42</b>

# Trade-in

**Quote Id:** 23470568

**Customer Name:** CITY OF BURLINGTON PARKS AND RECREATION

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580;  
 DUNS#: 60-7690989

<b>2006 JOHN DEERE 997</b>	
<b>SN# DM997SB020486</b>	
<b>Machine Details</b>	
<b>Description</b>	<b>Net Trade Value</b>
2006 JOHN DEERE 997	\$ 4,400.00
SN# DM997SB020486	
Your Trade In Description	
<b>Additional Options</b>	
Hour Meter Reading	1529
<b>Total</b>	<b>\$ 4,400.00</b>

# TERMS AND CONDITIONS OF SALE

**TERMS AND CONDITIONS OF SALE:** Sales Orders are based on the terms and conditions stated herein. Unless otherwise provided on the face hereof, offers are good for acceptance for a period of 30 days from the date hereof. An order by the Buyer shall constitute an acceptance of the terms and conditions herein proposed. If, and only if, no offer of sale is issued by Seller, then the invoice shall be deemed: an acceptance of the Buyer's order; a written confirmation; and a final, complete, and exclusive written expression of the agreement between Seller and Buyer. Buyer is hereby notified that additional or different terms from those contained herein are objectionable.

**1. Taxes.** Buyer shall pay all local, state, and federal taxes arising from or related to any sale or lease to which this document relates, except for taxes upon or measured by net income of Seller.

**2. Delivery.** Stated or promised delivery dates are estimates only based upon Seller's best judgment and Seller shall not be responsible for deliveries later than promised regardless of the cause. Delivery periods are projected from the date of receipt of any order by Seller, but if equipment to be furnished by Seller is to be manufactured specifically to fill a particular order, delivery periods will be projected from the date of Seller's receipt of complete manufacturing information. If the furnishing of equipment on orders accepted by Seller is hindered or prevented by public authority or by the existence of war or other contingencies, including, but not limited to, shortage of materials, fires, labor difficulties, accidents, delays in manufacture or transportation, acts of God, embargoes, inability to ship, inability to insure against war risks or substantially increased prices or freight rates, or other causes beyond Seller's control, the obligation to fill or complete such orders shall be excused by Seller's option.

**3. Transportation and Claims.** Prices quoted are net F.O.B. point designated in writing by Seller. When no F.O.B. point is designated in writing by Seller, prices for new equipment shall be deemed to be net F.O.B. point of manufacture and prices for all other equipment shall be deemed to be F.O.B. Seller's place of business at which the order for the equipment is accepted. When transportation is allowed, the price charged will be adjusted to reflect the lowest transportation rates in effect at the time of shipment even though such rates may differ from those quoted by Seller. Seller's responsibility for the equipment shall cease and all risk of loss shall become the Buyer's upon delivery of the equipment to the first carrier for shipment to the Buyer or his consignee, even though such delivery shall be made prior to the arrival of the equipment at the F.O.B. point designated, and any and all claims for shortages, deliveries, damages or non-delivery must be made by the Buyer or his consignee to the carrier. Seller shall in no event be responsible for shortages in shipments unless notice of such shortage is given in writing to Seller within 15 days after receipt of shipment.

**4. Payment and Security.** Buyer agrees to pay in full for the equipment at time of delivery. Buyer agrees to pay the late charge on any past due balance at the rate of 18% per annum. The signator warrants that he/she has authority to execute this order on behalf of any party for whom he/she signs, and that such party has the power to enter into this agreement and perform its terms. As security for all of Buyer's obligations to Seller, Buyer grants to Seller a security interest in the equipment and authorizes Seller to file all documents necessary to perfect Seller's security interest. The security interest granted hereunder is in addition to any other rights available to Seller, and Seller shall have all of the rights and remedies available to a secured party under the Uniform Commercial Code, all of which are cumulative. Throughout the duration of Seller's security interest. Buyer shall keep the equipment fully insured against theft and loss or damage by fire and other casualty as Seller may from time to time require in accordance with such terms as Seller may require.

**5. Buyer to Furnish.** Performance by Seller is subject to the Buyer furnishing a satisfactory credit rating certificate, letter of credit, evidence of financing, or any other similar papers necessary for the satisfactory completion of such order.

**6. Laws Governing.** All orders will be governed by the laws of the State of Oregon.

**7. Assignment.** The right to any monies due or to become due hereunder may be assigned by Seller, and Buyer, upon receiving notice of such assignment, shall make payment as directed.

**8. Limitations of Warranties.** If "NEW" warranty is indicated on the reverse side or if new equipment is purchased hereunder, all warranties are strictly given only by the manufacturer. Copies of manufacturer's warranty can be obtained from Seller. If "USED" warranty is indicated on the reverse side. Seller hereby warrants to Buyer that the equipment or components thereof designated on the reverse side, shall be free under normal use and service from defects in material and workmanship for the period shown, commencing on the date of delivery. Buyer's exclusive remedy for breach of the limited warranty shall be the repair or replacement of the warranted equipment without charge to Buyer when returned at Buyer's expense to the Seller's facility where the equipment was purchased, with proof of purchase. Buyer must give notice of any warranty claim not later than 7 days after the expiration of the warranty period and must return the equipment to Seller for repair or replacement no later than 30 days after expiration of the warranty period. Any action against Seller for breach of the limited warranty must be commenced within one year after the date of delivery of the equipment. Seller's warranty does not extend to any defect, claim, or damage attributable to the failure to operate and/or maintain the equipment in accordance with the manufacturer's specifications, or due to the failure to operate or maintain the equipment in accordance with any recommendations of Seller. If "AS IS" is indicated on the reverse side, no warranty of any kind is being given and the equipment is being sold with all faults. THE WARRANTIES IN THIS PARAGRAPH AND ON THE REVERSE SIDE ARE THE EXCLUSIVE WARRANTIES GIVEN BY SELLER AND SUPERSEDE ANY PRIOR, CONTRARY, OR ADDITIONAL REPRESENTATIONS, WHETHER ORAL OR WRITTEN. SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES OTHERWISE ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS, INJURY, OR DAMAGE TO PERSONS OR PROPERTY RESULTING FROM THE FAILURE OR DEFECTIVE OPERATION OF THE EQUIPMENT; NOR WILL SELLER BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND SUSTAINED FROM ANY CAUSE. This exclusion applies regardless of whether such damages are sought for breach of warranty, breach of contract, negligence, or strict liability in tort or under any other legal theory.

**9. Rental Purchase Option.** If rental purchase option (RPO) is granted in any addendum, the purchase price shall be tendered to Seller coincidentally with the exercise of the purchase option provided that Buyer is not then in default in performing all of the terms and conditions of lease with Seller.

**10. Notice.** This paragraph shall serve as notice that The Papé Group, Inc. has assigned its rights to sell its rental equipment (as may be described in this sales order) and its rights to sales proceeds (including "trade-in assets" related thereto) to North Star Deferred Exchange as part of an IRC Sec. 1031 exchange.

**11. Attorneys Fees.** In the event suit or action is instituted against Buyer on account of or in connection with or based upon the terms hereof, the Buyer agrees to pay, in addition to the costs and disbursements provided by law, such sum as the court may adjudge reasonable attorney's fees in both the trial and appellate courts, or in connection with any bankruptcy proceeding.

**12. Entire Agreement.** The foregoing and any addendum shall constitute the complete and exclusive agreement between the parties, and it is expressly understood and agreed that no promises, provisions, terms, warranties, conditions, guarantees, or obligations whatsoever, either expressed or implied, other than as herein set forth or provided for shall be binding on either party. Each party may transmit its signature by facsimile to the other party and such facsimile signatures shall have the same force and effect as an original signature.