



**CITY OF MOUNT VERNON
CITY COUNCIL MEETING
AGENDA
August 12, 2020 6:00 p.m.**
(Virtual Meeting)

*The Mount Vernon City Councilmembers will be participating
in this meeting via video/teleconference technology.*

To virtually attend the meeting, the public may:

1. **Call the conference line:** 1-888-924-9240; Access Code: 3366211
(please 'mute' your phone, if possible, to minimize distractions)
2. **Watch the meeting live on TV10:** Comcast/Xfinity Channel 10
3. **Watch the meeting live, online:**
https://www.youtube.com/channel/UCUob_hcQUmd4S93YkletdRA

I. OPENING CEREMONIES

- A. Call to Order
- B. Roll Call of Councilmembers

II. CONSENT AGENDA

- A. Approval of July 8, 2020 Regular Council Meeting Minutes
- B. Approval of July 22, 2020 Regular Council Meeting Minutes
- C. Approval of August 5, 2020 payroll checks numbered 110176- 110207, direct deposit checks numbered 78058 – 78271 and wire transfers numbered 879 – 883 in the amount of \$867,757.69
- D. Approval of August 12, 2020 Claims numbered 9911 – 10100 in the amount of \$1,124,913.50
- E. Approval of Agreement #3920 – City of Anacortes Dark Fiber
- F. Approval of Settlement Agreement #3921

III. REPORTS

- A. Review of Emails from the Public
(All public comments must be sent via email to council@mountvernonwa.gov. The comments will be read aloud into the record during the public comment portion of the agenda.)
- B. Public Works Update
- C. Police Department Update
- D. Fire Department Update
- E. Councilmember Comments
- F. Mayor's Report

IV. NEW BUSINESS

- A. Public Hearing – Solid Waste Service Rate Change
(This is a public hearing to allow testimony regarding a rate change to the Solid Waste Utility. Effective June 1, 2020 Skagit County increased the disposal fee from \$96 to \$98 per ton. The County will continue to raise rates by \$2.00 annually through May 2024. To comment on this item please contact the Mayor's Office at mvmayor@mountvernonwa.gov or call 360-336-6211 by 5:00 p.m. Wednesday, August 12, 2020.)
(required action – none)
(staff contact – Esco Bell)

- B. Update from Helping Hands Food Bank**
(Helping Hands Food Bank is Skagit County's largest direct emergency food provider. Director of Development Nichole Long will update Council on the food bank's latest efforts.)
(required action – none)
(staff contact – Peter Donovan)
- C. Approval to Waive Right-of-Way Fees for Restaurants**
(Staff is requesting that Council approve an ordinance that will waive the permit fees for restaurants that apply for a permit expanding their seating into the public right of way.)
(required action – ordinance)
(staff contact – Peter Donovan)
- D. Renewal of Agreement for CDBG Consultant**
(Staff is requesting that Council authorize the Mayor to enter into a one year contract with Paul Schissler & Associates in the amount of \$36,000 to assist the City with the CDBG funding.)
(required action – motion)
(staff contact – Peter Donovan)
- E. Bid Award – Wastewater Treatment Plant Admin Building Remodel/Addition**
(Staff is requesting that Council award the bid for the Wastewater Treatment Plant admin building remodel/addition to Axthelm Construction, Inc. in the amount of \$1,223,556.55 and authorize the Mayor to enter into an agreement for the work.)
(required action – motion)
(staff contact – Esco Bell)
- F. Agreement for 20201 Washington Conservation Corp, IAA No. WCC-2023**
(Staff is requesting that Council authorize the Mayor to enter into an agreement with Department of Ecology, Washington Conservation Corp, for vegetation maintenance of drainage facilities.)
(required action – motion)
(staff contact – Blaine Chesterfield)
- G. Approval of Ground Cell Tower Lease Agreement**
(Staff is requesting that Council authorize the Mayor to enter into an agreement with STC Five LLC, by and through its Attorney in Fact, Global Signal Acquisitions II LLC for a ground cell tower lease agreement.)
(required action – motion)
(staff contact – Blaine Chesterfield)
- H. Bid Award – North 19th Street Stream Rehabilitation**
(Staff is requesting that Council award the bid for the North 19th Street Stream Rehabilitation Project to Axthelm Construction and authorize the Mayor to enter into an agreement for the work.)
(required action – motion)
(staff contact – William Bullock)
- I. Bid Award – 2020 Street Improvements Project TS-2020-002**
(Staff is requesting that Council award the bid for the 2020 Street Improvements Project (pavement overlay) to Lakeside Industries Inc. in the amount of \$923,403.06 and authorize the Mayor to enter in an agreement for the work.)
(required action – motion)
(staff contact – William Bullock)
- J. Approval of Agreement with Puget Sound Energy (PSE)**
(Staff is requesting that Council authorize the Mayor to enter into an agreement with PSE for the installation and ongoing maintenance of the lighting fixtures on the Kulshan Trail Safety Lighting Project in the amount of \$127,757.67 and a monthly fee of \$122.90.)
(required action – motion)
(staff contact – William Bullock)

- K. For the Good of the Order:
- COVID-19 pandemic response and discussion

Public Works and Library

COMMITTEE MEETINGS

Cancelled

Next Ordinance 3806

Next Resolution 979



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: Esco Bell, Public Works Director
SUBJECT: SOLID WASTE SERVICE RATE CHANGE FOR TRANFER STATION TIPPING INCREASE

RECOMMENDED ACTION:

None

INTRODUCTION/BACKGROUND:

The City of Mount Vernon has an agreement with Skagit County for solid waste disposal services. Effective June 1, 2020, the Skagit County increased their disposal fee from \$96 per ton to \$98 per ton. The disposal fee is scheduled to increase by \$2 per ton annually till May 2024. The cost impact to the Solid Waste Division is approximately \$3,000 per month.

FINDINGS/CONCLUSIONS:

The City of Mount Vernon engaged Bell & Associates, Inc. to perform a comprehensive solid waste rate study, which began in February 2019. During the interim between the County's rate increase and the City Council's approval of the cost of solid waste service rate study, Bell & Associates and staff are recommending that the City increase the current collection rates and pass through the disposal fee increase and as they occur through May 2024. The table on the following page summarizes the increase for the various cart and container sizes provided by the City.

Cart Size	Current Rate	Disposal Increase Pass Through	October 1 2020 Rate	June 1 2021 Rate	June 1 2022 Rate	June 1 2023 Rate
20 gallon	\$9.69	\$0.10	\$9.79	\$9.89	\$9.99	\$10.09
35 gallon	\$19.28	\$0.20	\$19.48	\$19.68	\$19.88	\$20.08
65 gallon	\$34.73	\$0.30	\$35.03	\$35.33	\$35.63	\$35.93
95 gallon	\$46.75	\$0.40	\$47.15	\$47.55	\$47.95	\$48.35
Container Size	Current Rate	Disposal Increase Pass Through	October 1 2020 Rate	June 1 2020 Rate	June 1 2022 Rate	June 1 2023 Rate
1 yard	\$80.64	\$0.60	\$81.24	\$81.84	\$82.44	\$83.04
1.5 yard	\$99.66	\$0.90	\$100.56	\$101.46	\$102.36	\$103.26
2 yard	\$129.89	\$1.10	\$130.99	\$132.09	\$133.19	\$134.29
4 yard	\$226.13	\$2.20	\$228.33	\$230.53	\$232.73	\$234.93
6 yard	\$360.49	\$3.30	\$363.79	\$367.09	\$370.39	\$373.69
8 yard	\$452.26	\$4.40	\$456.66	\$461.06	\$465.46	\$469.86

Customers using a drop box or compactor would pay the actual amount of the disposal.

RECOMMENDATION:

No action at this time.

ATTACHED:

None



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: Peter Donovan, Project Development Manager
SUBJECT: HELPING HANDS FOOD BANK UPDATE

RECOMMENDED ACTION:

None

INTRODUCTION/BACKGROUND:

HELPING HANDS FOOD BANK IS SKAGIT COUNTY'S LARGEST DIRECT EMERGENCY FOOD PROVIDER. DIRECTOR OF DEVELOPMENT NICHOLE LONG WILL UPDATE COUNCIL ON THE FOOD BANK'S LATEST EFFORTS

FINDINGS/CONCLUSIONS:

None

RECOMMENDATION:

None

ATTACHED:

None



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: Peter Donovan, Project Development Manager
SUBJECT: WAIVING ROW FEES FOR SIDEWALK CAFES

RECOMMENDED ACTION:

Ordinance

INTRODUCTION/BACKGROUND:

As a result of the State of Washington's Safe Start reopening plan, many of our local restaurants are currently under restrictions which limit the number of patrons that may be served at one time, in any establishment.

FINDINGS/CONCLUSIONS:

In an effort to both expand potential service capacity, as well as to continue to observe public safety measures; some establishments would benefit from outdoor seating, on public right-of-way (sidewalks). This type of expansion onto public right-of-way requires a permit (Type B Permit, called a Sidewalk or Alley Café Permit) to ensure that public safety is maintained in the process of this expansion. Fees for this type of permit total approximately \$125. The Mayor, The MV Downtown Association, and the City of Mount Vernon Development Services Director have all noted that, in this heavily restricted business climate in which operating expenses are increasing, while capacity to serve is decreasing; the City has an opportunity to support local commerce by removing a potential financial barrier.

RECOMMENDATION:

Approval of the proposed Ordinance to waive all Type B permit fees to those businesses that wish to expand capacity, as a result of COVID-19 restrictions.

ATTACHED:

Proposed Ordinance

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOUNT VERNON,
WASHINGTON, WAIVING THE FEES FOR A RIGHT OF WAY USE PERMIT FOR
SIDEWALK AND ALLEY CAFES.**

WHEREAS on February 29, 2020, the governor of the state of Washington declared an emergency due to the spread of COVID-19, a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS to reduce the spread of COVID-19, the United States Centers for Disease Control and Prevention and the Washington State Department of Health recommended implementation of community mitigation strategies to increase containment of the virus, including cancellation of large gatherings and social distancing; and

WHEREAS on March 16, 2020, following a classification of COVID-19 as a pandemic and further outbreaks in Washington State, the governor amended his Stay Home-Stay Healthy orders and proclamations to prohibit the onsite consumption of food and/or beverages in a public venue, including but not limited to, restaurants, food courts, coffee shops, and all other similar venues in which people congregate for the consumption of food or beverage; and

WHEREAS on May 4, 2020, the governor issued an order and guidance adopting the Safe Start Washington re-opening plan where all counties started in Phase 1 and as measures to contain COVID-19 infections took effect, counties could request an exemption from aspects of the Stay Home – Stay Healthy orders, including conditions for re-opening restaurants and similar businesses; and

WHEREAS on May 22, 2020, Skagit County requested a Phase 2 variance under the Safe Start Washington guidance; and

WHEREAS on June 5, 2020, the state Board of Health approved Skagit County's move to Phase 2 of the governor's Safe Start Washington reopening plan, which phase allows restaurants that comply with conditions including hours of operation, occupancy, and table spacing and size to allow indoor service to reopen; and

WHEREAS in order to take advantage of the governor's guidance for outdoor seating that offers restaurants the opportunity to provide additional service that does not count toward the building occupancy limit, numerous businesses have contacted the City's Development Services Department to inquire about requirements for using sidewalks for outdoor seating; and

WHEREAS many local restaurants do not have adjacent, privately-owned outdoor space where they can place tables for outdoor service; and

WHEREAS chapter 12.22 MVMC allows restaurants to submit an application to the City's Development Services Department for a Type B – Long-term right of way use permit to use a portion of an adjacent city sidewalk for a sidewalk cafe; and

WHEREAS the City finds that the mandated closures and restrictions on restaurant operation since March 16, 2020, although necessary, have had an adverse economic impact on local businesses and the City; and

WHEREAS to mitigate the economic impact on restaurants affected by closures and restrictions affecting food service establishments, the City finds that it is appropriate to waive, for a temporary period, the \$100.00 application fee imposed for a right of way use permit in Ordinance 3770 and the associated \$25.00 technology fee for local food establishments that lack adjacent private or suitable property to utilize for outdoor seating and food service and to refund such fees paid by two qualifying restaurants after May 4, 2020, in anticipation of the county qualifying for Phase 2; and

WHEREAS the City finds there exists a clear nexus between removing financial barriers to local food service establishments for use of the City's open spaces to provide their services and to both protect the local economy and promote compliance with public health guidelines so long as it otherwise complies with the City regulations.

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DOES ORDAIN AS FOLLOWS:

SECTION ONE. The City Council does hereby adopt the above listed recitals as set forth fully herein.

SECTION TWO. The application fee adopted in Ordinance 3770 and codified in chapter 12.22 MVMC for a Type B Sidewalk Café or Alley Café right of way use permit submitted by a food service establishment, which meets the following criteria, is waived until the City Council decides to terminate the waiver which shall be by ordinance and termination shall not otherwise be presumed to have occurred:

- (a) the food service establishment shall hold a valid food service permit from the Skagit County Department of Health,
- (b) the food service establishment shall demonstrate that it lacks adjacent private property or suitable property for outdoor seating, and
- (c) the food service establishment shall meet all other permitting requirements for the use of City sidewalks and other rights-of-way set forth in chapter 12.22 MVMC.

SECTION THREE. Refunds of \$125.00 shall be made each business for applications and technology fees paid after May 4, 2020, for right of way use permits for street or alley cafés made in anticipation of being able to reopen for business under the governor's Safe Start guidance.

SECTION FOUR. Severability. 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

SECTION FIVE. Savings Clause. All previous ordinances which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION SIX. Effective Date. This ordinance or a summary thereof shall be published in the official newspaper of the City, and shall take effect and be in full force five days after passage and publication as provided by law.

PASSED AND ADOPTED this ____ day of _____, 2020.

SIGNED AND APPROVED this ____ day of _____, 2020.

Doug Volesky, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published _____



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: Peter Donovan, Project Development Manager
SUBJECT: CDBG CONSULTANT CONTRACT RENEWAL

RECOMMENDED ACTION:

Motion

INTRODUCTION/BACKGROUND:

THE CITY USES A PORTION OF ITS ALLOTTED CDBG ADMINISTRATIVE FUNDING TO CONTRACT WITH A CONSULTANT WHO ASSISTS THE CITY IN ITS RESPONSIBILITY TO ALLOCATE AND TRACK CDBG FUNDING.

FINDINGS/CONCLUSIONS:

IN PAST YEARS, THIS CONSULTANT HAS EFFECTIVELY ASSISTED THE CITY IN IDENTIFYING LOCAL NEEDS, DISTRIBUTING FEDERAL FUNDING WITHIN OUR CITY, AND COMPLYING WITH HUD MONITORING REGULATIONS. THIS ONE-YEAR CONTRACT IN THE AMOUNT OF \$36,000 WITH PAUL SCHISSLER & ASSOCIATES, INC (PSAI) WILL BE PAID WITH CDBG FUNDS, AND EXPIRES JUNE 30, 2021

RECOMMENDATION:

A Motion to authorize the Mayor to enter into an agreement with PSAI

ATTACHED:

Draft Agreement with PSAI

PROFESSIONAL SERVICES AGREEMENT

NO:

Paul Schissler Associates, Incorporated, hereinafter called Contractor, and **the City of Mount Vernon**, hereinafter called City, agree as set forth in this Agreement, including,

General Conditions
Exhibit A (Scope of Work and Compensation)
Exhibit B (Proof of Insurance)
Exhibit C (HUD conditions)

copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

The term of this Agreement shall commence on the first day of July, 2020, and continue until the 30th day of June, 2021. Any party may terminate this Contract by giving 30 days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 4 (Independent Contractor), 6 (Taxes), 12 (Defense and Indemnity Agreement), 18 (Patent/Copyright Infringement) and 21 (Confidentiality), are totally and fully part of this contract and have been mutually negotiated by the parties.

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

APPROVED:

CONTRACTOR

Paul Schissler Associates, Incorporated

CITY OF MOUNT VERNON

SKAGIT COUNTY, WASHINGTON

Paul Schissler
Paul Schissler, President

Jill Boudreau, Mayor

GENERAL CONDITIONS

1. Scope of Contractor's Services:

The Contractor agrees to provide to the City services and any materials set forth in the project narrative identified in Exhibit A during the agreement period. No material, labor, or facilities will be furnished by the City, unless otherwise provided for in the Agreement.

2. Accounting and Payment for Contractor Services:

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit A. Where Exhibit A requires payments by the City, payment shall be based upon billings, supported unless otherwise provided in Exhibit A, by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested. Unless specifically stated in Exhibit A or approved in writing in advance by the City, the City will not reimburse the Contractor for any costs or expenses incurred by the Contractor in performance of this Contract.

Where required, the City shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, through the City voucher system, for the Contractor's service pursuant to the fee schedule set forth in Exhibit A.

3. Assignment and Subcontracting:

No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the City.

July 2020: City approves PSAI's request to have the option to subcontract the duties of data collection, data entry and general CDBG-related tasks, for the City of Mount Vernon's CDBG general planning and administration, to Rita Ordonez.

4. Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit A and the Contractor is not entitled to any City benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to City employees.

Contractor will defend, indemnify and hold harmless the City, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

5. No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the City at the present time or in the future.

6. Taxes:

The Contractor understands and acknowledges that the City will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the City to make withholding for any taxes other than income taxes (i.e. Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the City against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The City will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the City does not hold title. The City is exempt from Federal Excise Tax.

7. Regulations and Requirement:

This Agreement shall be subject to all laws, rules and regulations of the United States of America, and State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth herein or in the attached exhibits.

8. Right to Review:

This contract is subject to review by any Federal or State auditor. The City or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the City. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by City agents or employees, inspection of all records or other materials which the City deems pertinent to the Agreement and its performance, and any and all communications with or evaluation by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Skagit County, State of Washington, upon request.

9. Modifications:

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

10. Termination for Default:

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or

makes an assignment for the benefit of creditors, the City may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the City's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the City resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the City in completing the work, and all damage sustained, or which may be sustained by the City by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

11. Termination for Public Convenience:

The City may terminate the contract in whole or in part whenever the City determines, in its sole discretion that such termination is in the best interests of the City. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the City.

12. Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the City, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the City, its appointed or elected officials or employees. It is further provided that no liability shall attach to the City by reason of entering into this contract, except as expressly provided herein.

13. Industrial Insurance Waiver:

With respect to the performance of this Agreement and as to claims against the City, its officers, agents and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend and hold harmless provided in this agreement extend to any claim brought by or on behalf of any employee of the Contractor. This waiver is mutually negotiated by the parties to this Agreement.

14. Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the law of the State of Washington.

15. Withholding Payment:

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

16. Future Non-Allocation of Funds:

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the City will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. NO penalty or expense shall accrue to the City in the event this provision applies.

17. Contractor Commitments, Warranties and Representations:

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the City. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

18. Patent/Copyright Infringement:

Contractor will defend and indemnify the City from any claimed action, cause or demand brought against the City, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the City in any action. Such defense and payments are conditioned upon the following:

- a. Contractor shall be notified promptly in writing by City of any notice of such claim.
- b. Contractor shall have the right, hereunder, at its option and expense, to obtain for the City the right to continue using the information, in the event such claim of infringement is made, provided no reduction in performance or loss results to the City.

19. Disputes:

a. General

Differences between the Contractor and the City, arising under and by virtue of the Contract Documents shall be brought to the attention of the City at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, instructions, and decisions of the Contractor shall be final and conclusive.

b. Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the City, or (2) the happening of any event or occurrence, unless the Contractor has given the City a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the City. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within 30 days of the completion of the portion of the work from which the claim arose, and before final payment by the City, the Contractor has given the City a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or extension of time claimed to be due.

20. Ownership of Items Produced

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement shall be the sole and absolute property of the City.

21. Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the City or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the City or an order entered by a court after having acquired jurisdiction over the City. Contractor shall immediately give to the City notice of any judicial proceedings seeking disclosure of such information. Contractor shall indemnify and hold harmless the City, its officials, agents or employees from all

loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

22. Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Mayor at 910 Cleveland Avenue, Mount Vernon, WA 98273. Notice to the Contractor for all purposes under this Agreement shall be given to the Contractor at 714 Wilson Avenue, Bellingham WA 98225. Notice may be given by delivery or by depositing in the U.S. Mail, first class, postage prepaid.

23. Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

24. Waiver:

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

25. Survival:

The provisions of paragraphs 4, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 24, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

26. Entire Agreement:

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

27. Equal Employment Opportunity Responsibilities:

The Contractor agrees that it will comply with all State and local non-discrimination laws and regulations in effect at the time this agreement is executed. The Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

28. Drug-Free Workplace:

The Contractor certifies that it will provide a drug-free workplace and comply with drug-free workplace requirements in accordance with the Drug-Free Workplace Act of 1988 (42 U.S.C. 701) and with HUD's rules at 24 CFR part 24, subpart F.

EXHIBIT A:

Scope of work and compensation

Mount Vernon CDBG program planning: Schedule of Tasks and Activities

-
- Task 1: Help prepare any required amendments, revisions, and corrections to the 2018-2022 Consolidated Plan and help prepare the 2021-2022 Annual Action Plan
-
- Task 2: Assist with preparation of citizen participation material, publications and handouts
-
- Task 3: Help prepare Mount Vernon's 2019-2020 Consolidated Annual Performance and Evaluation Report (CAPER)
-
- Task 4: Provide guidance on other CDBG compliance activities as required (for example, Fair Housing, environmental review, floodwall completion, etc.)
-
- Task 5: Prompt further progress on current and potential CDBG projects and programs
-
- Task 6: Help Mount Vernon coordinate with Skagit County Consortium to maintain the regional Consolidated Plan
-
- Task 7: Compile Environmental Review Record documents for 2020-2021 activities
-
- Task 8: Assist with planning and implementation issues related to CDBG-CV funding awarded in April 2020

Compensation for Tasks 1 through 8

Community development planner and technical assistance provider	Estimated 240 hours total	Estimated 70 hrs/quarter in 2020, and 50 hrs/quarter in 2021	@ \$150/hour
Total Project Cost		Billable as \$10,500/qtr in 2020, and \$7,500/qtr in 2021	\$ 36,000.00

EXHIBIT B

PROOF OF INSURANCE

The Contractor shall provide proof of insurance for Commercial General Liability or Professional Liability in the amount of \$1,000,000.00 to cover Contractor's activities during the term of this Contract. Proof of insurance shall be in a form acceptable and approved by the City. The type of insurance required by this Agreement is described below.

Commercial General Liability Insurance

Certificate Holder – City of Mount Vernon

The Certificate must name the City as additional insured:

The City, its elected officials, officers and employees are named as additional insured.

Thirty (30) days written notice to the City of cancellation of the insurance policy.

NOTE: No contract shall form until and unless a copy of the Certificate of Insurance, properly completed and in the amount required, is attached hereto.

EXHIBIT C

HUD Conditions

Exhibit C
CDBG General Conditions

I GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. "Independent Contractor"

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee.

The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48, Bonding and Insurance.

F. Grantee Recognition

The Subrecipient shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

The Grantee or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement.

The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Suspension or Termination

In accordance with 24 CFR 85.43, the Grantee may suspend or terminate this Agreement if the Subrecipient materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
2. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
3. Ineffective or improper use of funds provided under this Agreement; or
4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

II. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, “Cost Principles for Non-Profit Organizations,” or A-2 1, “Cost Principles for Educational Institutions,” as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- c. Records required to determine the eligibility of activities;
- d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- f. Financial records as required by 24 CFR 570.502, and 24 CFR 84.2 1–28; and
- g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of four (4) years. The retention period begins on the date of the submission of the Grantee’s annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the four-year period, then such records must be retained until completion of the actions and

resolution of all issues, or the expiration of the four-year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited under applicable public disclosure laws and 24 CFR 85.42(f), unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of privacy.

5. Close-outs

The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

6 Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within 30 days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit

conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Circular A-133.

C Reporting and Payment Procedures

1. Program Income

The Subrecipient shall report quarterly all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this contract. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income during the contract period for activities permitted under this contract and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the Grantee at the end of the contract period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The Grantee will pay to the Subrecipient funds available under this Agreement based upon information submitted by the Subrecipient and consistent with any approved budget and Grantee policy concerning payments. With the exception of certain advances, payments will be made for eligible expenses actually incurred by the Subrecipient, and not to exceed actual cash requirements. Payments will be adjusted by the Grantee in accordance with advance fund and program income balances available in Subrecipient accounts. In addition, the Grantee reserves the right to liquidate funds available under this contract for costs incurred by the Grantee on behalf of the Subrecipient.

4. Progress Reports

The Subrecipient shall submit regular Progress Reports to the Grantee in the form, content, and frequency as required by the Grantee.

D Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

The Subrecipient shall comply with 24 CFR Part 5 as it applies to debarment and suspension.

3. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

E Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under

this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

III. RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (c) the requirements in 24 CFR 570.606(d) governing optional relocation policies. [The Grantee may preempt the optional policies.] The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

IV. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. Compliance

The Subrecipient agrees to comply with all local and state civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance

provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

B Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall submit a plan for an Affirmative Action Program for approval prior to the award of funds.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this contract. As used in this contract, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian- Americans, and American Indians. The Subrecipient may rely on written

representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal and State officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

6. Subcontract Provisions

The Subrecipient will include the provisions of Paragraphs X.A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) and all

other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S .C. 874 *et seq.*) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph

3. “Section 3” Clause

a Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Grantee, the Subrecipient and any of the Subrecipient’s subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these “Section 3” requirements and to include the following language in all subcontracts executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban

Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker’s representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation

of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee thereto; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this contract in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4 Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a “covered person” includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

5 Lobbying

The Subrecipient hereby certifies that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative

agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

- c. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:
- d. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. Copyright

If this contract results in any copyrightable material or inventions, the Grantee and/or grantor agency reserves the right to royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for governmental purposes.

7. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

V. ENVIRONMENTAL CONDITIONS

A. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;

- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

B. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

C. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

D. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this agreement.

In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.



THE HARTFORD
BUSINESS SERVICE CENTER
3600 WISEMAN BLVD
SAN ANTONIO TX 78251

June 14, 2020

City of Mount Vernon
Attn: Peter Donovan
910 CLEVELAND AVE
MOUNT VERNON WA 98273

Account Information:

Policy Holder Details :	PAUL SCHISLER ASSOCIATES, INC
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Contact Us

Business Service Center

Business Hours: Monday - Friday
(7AM - 7PM Central Standard Time)

Phone: (866) 467-8730

Fax: (888) 443-6112

Email: agency.services@thehartford.com

Website: <https://business.thehartford.com>

Enclosed please find a for the above referenced Policyholder. Please contact us if you have any questions or concerns.

Sincerely,

Your Hartford Service Team



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/14/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER HUB INTL NORTHWEST LLC/PHS 52811137 The Hartford Business Service Center 3600 Wiseman Blvd San Antonio, TX 78251	CONTACT NAME: PHONE (866) 467-8730 (A/C, No, Ext):		FAX (888) 443-6112 (A/C, No):
	E-MAIL ADDRESS:		
		INSURER(S) AFFORDING COVERAGE	NAIC#
INSURED PAUL SCHISLER ASSOCIATES, INC 714 WILSON AVE BELLINGHAM WA 98225-7349	INSURER A : Hartford Casualty Insurance Company		29424
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		
	INSURER F :		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/Y YYY)	LIMITS	
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> General Liability	X		52 SBA GH0060	07/12/2020	07/12/2021	EACH OCCURRENCE	\$1,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence)						\$300,000	
	MED EXP (Any one person)						\$10,000	
	PERSONAL & ADV INJURY						\$1,000,000	
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:							GENERAL AGGREGATE	\$2,000,000
							PRODUCTS - COMP/OP AGG	\$2,000,000
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			52 SBA GH0060	07/12/2020	07/12/2021	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	BODILY INJURY (Per person)							
	BODILY INJURY (Per accident)							
	PROPERTY DAMAGE (Per accident)							
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	
	<input type="checkbox"/> OCCUR CLAIMS-MADE						AGGREGATE	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	52 SBA GH0060	07/12/2020	07/12/2021	PER STATUTE	OTH-ER
	E.L. EACH ACCIDENT						\$1,000,000	
	E.L. DISEASE -EA EMPLOYEE						\$1,000,000	
							E.L. DISEASE - POLICY LIMIT	\$1,000,000
A	EMPLOYMENT PRACTICES LIABILITY			52 SBA GH0060	07/12/2020	07/12/2021	Each Claim Limit	\$5,000
							Aggregate Limit	\$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the Insured's Operations. City of Mount Vernon is an Additional Insured per the Business Liability Coverage form SS0008, attached to this policy.

CERTIFICATE HOLDER

City of Mount Vernon
 Attn: Peter Donovan
 910 CLEVELAND AVE
 MOUNT VERNON WA 98273

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Susan L. Castaneda

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DATE: August 12, 2020

TO: Mayor Boudreau and City Council

FROM: Esco Bell, P.E., Public Works Director

SUBJECT: BID AWARD – WASTEWATER TREATMENT PLANT ADMIN BUILDING
REMODEL/ADDITION (REVISED 07-2020)

RECOMMENDED ACTION:

Staff recommends a motion be made by Council authorizing the Mayor to award the construction contract for WWTP Admin Building Remodel/Addition (Revised 07-2020) project to Axthelm Construction, Inc., of Mount Vernon, WA, WA in the amount of \$1,125,627, plus tax for a total of \$1,223,556.55.

INTRODUCTION/BACKGROUND:

This project has been identified for several years in the City’s capital improvement plan for needed Wastewater Treatment Plant facilities.

The project is fully funded under the current Wastewater Utility budgets and rate structure.

FINDINGS/CONCLUSIONS:

- This project has been identified for several years in the City’s capital improvement plan for needed Wastewater Treatment Plant facilities. The existing admin facility was constructed in 1974, remodeled in 1988 for the needs of a staff of seven fulltime treatment plant operators. Over the years the wastewater system has been expanded from what was needed for a City of about 17,000 population, to today’s population of 36,000 and a staff of thirteen operators plus part time staff. More space provided by this facility is important for the existing and future requirements of this staff.
- The project is fully funded under the current Wastewater Utility budgets and rate structure.

- Wastewater utility funds are collected from user fees that can only be spent for the purposes of operating and building the infrastructure of the city's wastewater system, such as the proposed administration building remodel/addition.
- Five bids were received August 4, 2020, with the low bid provided by Axthelm Construction, Inc. The bids range in price from \$1,125,627.00 to \$1,282,000.00 before tax. The low bid was responsive and prepared in accordance with the contract documents. The construction cost estimate for the project was \$875,000.
- Axthelm Construction is a reputable local contractor with proven good performance in constructing facilities such as this project.
- Staff believes the bid result reflects the real market cost to build this important facility based on the good response of five bids and a total variation from least to highest of less than \$160,000 (a variation of less than 20%). Considering the economic effects of current pandemic crises (which would favor lower market costs) and the building construction market still at the level observed, there is no advantage to delaying construction of this facility.

RECOMMENDATION:

Staff recommends Council award the construction bid to Axthelm Construction, Inc., to allow the City to proceed with construction of this project.

ATTACHED:

Bid Tabulation

**WWTP Admin Building Remodel/Addition
(Revised 07/2020)**

Project Number: SS-2019-015

OFFICIAL Bid Tabulation

Bid Opening Date: Tuesday, August 4 @ 10:00

Number of Bidders: 5

				(1) LOWEST RESPONSIVE BID	2	3	4	5
				Axhelm Construction, Inc. 3610 Cedardale Rd, Unit C Mount Vernon, WA 98274 (360) 424-6848	Kassel & Associates, Inc. 7126 180th Ave, NE #C103 Redmond, WA 98052 (425) 828-0236	Hi Mark Construction, Inc. 782 Quarter Moon Terrace Camano Island, WA 98282 (253) 377-4594	Grenlar Construction 16904 Juanita Dr, Ste 223 Kenmore, WA 98028 (425) 419-4430	Trico Companies LLC PO Box 409 Burlington, WA 98233 (360) 757-2373
	Item	Unit	Qty	Total Amount	Total Amount	Total Amount	Total Amount	Total Amount
	WWTP Admin Building Remodel/Addition	LS	1	\$1,125,627.00	\$1,177,000.00	\$1,197,000.00	\$1,275,000.00	\$1,282,000.00
	Base Bid Total			\$1,125,627.00	\$1,177,000.00	\$1,197,000.00	\$1,275,000.00	\$1,282,000.00
	WSST @ 8.7%			\$97,929.55	\$102,399.00	\$104,139.00	\$110,925.00	\$111,534.00
	Total Bid			\$1,223,556.55	\$1,279,399.00	\$1,301,139.00	\$1,385,925.00	\$1,393,534.00



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: Blaine Chesterfield, Engineering Manager
SUBJECT: AGREEMENT – 2021 WASHINGTON CONSERVATION CORP, IAA NO. WCC-2023

RECOMMENDED ACTION:

Staff recommends Council approve the detention pond maintenance Interagency Agreement (IAA) with the Washington State Department of Ecology to have the Washington Conservation Corps (WCC) perform vegetation maintenance on drainage facilities. The agreement would be for up to eight weeks of WCC crew time with costs not to exceed \$37,760.

INTRODUCTION/BACKGROUND:

- Approximately 40 percent of the City maintained drainage facilities need significant vegetation maintenance that requires hand work with the remaining facilities needing routine maintenance work.
- The City has had great success using the WCC crews for facility maintenance since 2015.
- The WCC crew comes with a supervisor, five crew members, a crew rig, and hand tools/equipment for drainage facility maintenance. The crew will have already received trainings on equipment and safety.

FINDINGS/CONCLUSIONS:

- The City currently maintains an estimated 147 drainage facilities within the city.
- Approximately forty percent of the city's drainage facilities need vegetation maintenance that require small equipment and hand work.
- The Washington Conservation Corps community service program provides the City a great opportunity to complete some of the work on these facilities while keeping costs down.
- The work time of the WCC crew will be limited to a maximum of eight weeks during 2021 due to other obligations.

RECOMMENDATION:

Staff recommends Council authorize the Mayor to sign the Interagency Agreement with the Washington State Department of Ecology for up to eight weeks of Washington Conservation Corps crew time.

ATTACHED:

Agreement



DEPARTMENT OF
ECOLOGY
State of Washington

AGREEMENT NO. WCC-2023

AGREEMENT
BETWEEN

The State of Washington, Department of ECOLOGY
AND
City of Mount Vernon

THIS AGREEMENT is made and entered into by and between the Department of Ecology, hereinafter referred to as "ECOLOGY", and City of Mount Vernon hereinafter referred to as the "SPONSOR."

IT IS THE PURPOSE OF THIS AGREEMENT to provide Washington Conservation Corps (WCC) members to complete environmental or disaster services projects, pursuant to Chapter 43.220 of the Revised Code of Washington.

THEREFORE, IT IS MUTUALLY AGREED THAT:

STATEMENT OF WORK

Both parties agree to do all things necessary for or incidental to the performance of the work set forth in Appendix "A" attached hereto and incorporated herein.

PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on 10/5/2020 and be completed on 9/30/2021, unless terminated sooner as provided herein. The WCC Crew is only available to Sponsor subject to the dates set forth on the calendar in Appendix B attached hereto and incorporated herein.

COMPENSATION

The parties have determined that the cost of accomplishing the work herein will not exceed \$37,760. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount. Compensation for service(s) shall be based on the following established rates:

Provided by ECOLOGY	Reimbursed to ECOLOGY by SPONSOR
8 weeks of WCC Crew Time (\$4720/week)	\$37,760
Total SPONSOR COST	\$37,760
	<i>Above cost Not to be Exceeded</i>

The costs reimbursed to ECOLOGY by SPONSOR are a cost-share rate. Estimated value of a WCC crew is \$6,293 weekly per WCC Crew consisting of five WCC/AmeriCorps Members and one Supervisor (excludes food and lodging). Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.

BILLING PROCEDURE

ECOLOGY shall submit invoices monthly to the SPONSOR's designated contact person listed under "Agreement Management" section. Payment to ECOLOGY for approved and completed work will be made by warrant or account transfer by SPONSOR within 30 days of receipt of the invoice. Upon expiration of the Agreement, any claim for payment not already made shall be submitted within 30 days after the expiration date or the end of the fiscal year, whichever is earlier.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ASSURANCES

Parties to this Agreement agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

CONFORMANCE

If any provision of this Agreement violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

DISPUTES

If a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement 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, agreement terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

As an alternative to this process, if SPONSOR is a state agency, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

FUNDING AVAILABILITY

The obligation of the SPONSOR to provide reimbursements is contingent upon appropriation of funds by the SPONSOR's governing body for the specific purpose of funding the project, which is the subject of this Agreement. Upon the failure of such appropriation, the SPONSOR may terminate this Agreement.

ECOLOGY's ability to provide cost-share is contingent on availability of funding. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date and prior to completion or expiration date of this Agreement, ECOLOGY, at its sole discretion, may elect to terminate the agreement, in whole or part, for convenience or to renegotiate the agreement subject to new funding limitations and conditions. ECOLOGY may also elect to suspend performance of the agreement until ECOLOGY determines the funding insufficiency is resolved. ECOLOGY may exercise any of these options with no notification restrictions.

GOVERNING LAW AND VENUE

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws. This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

INDEMNIFICATION

To the fullest extent permitted by law, each party shall defend, indemnify, and hold harmless the other party, including officials, agents, and employees from and against all claims of third parties, and all associated losses arising out of or resulting from the performance of the contract. "Claim," as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Parties waive their immunities under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the other party and their agencies, officials, agents or employees.

INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party.

ORDER OF PRECEDENCE

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes, regulations, and rules.
2. Mutually agreed written amendments to this Agreement
3. This Agreement
4. Statement of Work and Budget.
5. Any other provisions of this Agreement, including materials incorporated by reference.

RECORDS MAINTENANCE

The parties to this Agreement shall each maintain books, records, documents and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of this Agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties subject to state public disclosure laws.

RESPONSIBILITIES OF THE PARTIES

Each party of this Agreement hereby assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omissions on the part of itself, its employees, its officers, and its agents. Neither party will be considered the agent of the other party to this Agreement.

RIGHTS IN DATA

Unless otherwise provided, data, which originates from this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be jointly owned by ECOLOGY and SPONSOR. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

TERMINATION FOR CAUSE

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

TERMINATION FOR CONVENIENCE

Either party may terminate this Agreement upon 30 days' prior written notification to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

AGREEMENT MANAGEMENT

The program manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

The Contract/Program Manager for ECOLOGY is:

Travis Weller
PO Box 47600
Olympia, WA 98504
(360) 742-8760
travis.weller@ecy.wa.gov

The Contract/Program Manager for SPONSOR is:

Blaine Chesterfield
PO Box 809
Mount Vernon WA 98273
360-336-6204
blainec@mountvernonwa.gov; mvengineering@mountv...

IN WITNESS WHEREOF, the parties have executed this Agreement.

State of Washington
Department of ECOLOGY

SPONSOR
City of Mount Vernon

Signature

Date

Signature

Date

Bridget Talebi, WCC Section Supervisor

Printed Name, Title

Printed Name, Title

STATEMENT OF WORK
Appendix A

Work summary:

Under direction of SPONSOR, crew(s) will perform restoration activities. Specific tasks could include invasive control, native species installation, plant nursery care, scientific monitoring, and fence installation or repair.

Special terms and conditions:

1. WCC resources (members, supervisors, tools and trucks) will not be utilized to clear active or abandoned homeless encampments and/or to clean up hazardous materials including hypodermic needles. If a significant amount of hazardous or unidentifiable material is discovered on a project site, activity will cease until SPONSOR mitigates potential hazards or finds an alternate project site.
2. WCC vehicle is not to be used for heavy hauling; the primary use is for transportation of crew, tools, and safety equipment. In the event that WCC vehicles are requested to tow SPONSOR-provided equipment (including rentals), it will only be on a limited basis and SPONSOR is solely responsible for accidental damages, unless damages are caused by WCC negligence.
3. WCC is not responsible for normal wear and tear when project requires the use of SPONSOR-provided tools, equipment, or safety gear.
4. The assignment of members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of non-overtime work, wages, or other employment benefits. Agencies that participate in the program may not terminate, lay-off, or reduce working hours of any employee for the purpose of using a member with available funds. In circumstances where substantial efficiencies or a public purpose may result, participating agencies may use members to carry out essential agency work or contractual functions without displacing current employees.
5. All state holidays and shutdown weeks are non-working days for members. Shutdown weeks are to be used by WCC staff/supervisors for planning purposes. The WCC standard 40-hour schedule is Monday through Thursday from 7:00am to 5:30pm. An alternate schedule may be arranged with prior approval from the WCC.
6. WCC's cost-share rate is calculated using the full costs of supporting WCC crews, including time spent training, required community service events, shutdowns, etc. Indirect costs are included in SPONSOR share at a standard rate of 5% of direct costs.
7. If inclement weather makes a project site inaccessible, then the sponsor should reassign the WCC crew to alternative projects in an accessible location.

In inclement weather, WCC crews follow the weather-related guidance (e.g. shut-down, delayed start, early end, etc.) from the regional Ecology office closest to the crew lock-up. If the member's assigned location is more than one hour from an Ecology regional office, then WCC follows weather-related guidance of federal, state and local governments. Only WCC can instruct a crew to shut-down due to weather. Sponsors are not charged for WCC-initiated, weather related shut-downs or delays.

If a shut-down is requested by a sponsor for any reason, then the sponsor is responsible for crew costs.

ECOLOGY shall:

1. Provide WCC members for the number of weeks specified in this agreement.
2. Enroll members to begin service no sooner than October 5, 2020 and no later than October 19, 2020 to attain a full AmeriCorps scholarship. Member vacancies may be filled with a 900 hour, half-term AmeriCorps Education Award beginning March 24, 2021. Any further member enrollment for the remainder of the program year is at the discretion of ECOLOGY and based on availability.
3. In the event of a disaster response deployment, ECOLOGY will make every effort to fulfill SPONSOR needs, including sending additional members, whenever possible. Unless disaster response activities are requested by the sponsor, sponsors are not charged for WCC's emergency and disaster responses.

4. Provide training and development specified in Appendix B: four (4) days of formal WCC training, a two to four day Orientation Training, one day dedicated to MLK Community Service, and one day for a debrief meeting near the conclusion of the term. Beyond dates included in Appendix B, Ecology will schedule up to 6 additional days of Supervisor training during the term. WCC members and supervisors are logging hours on the dates identified for WCC-sanctioned events, but are unavailable to SPONSOR. ECOLOGY will provide a 4-day Assistant Supervisor training to the designated Assistant Supervisor.

5. For crews, ECOLOGY agrees to provide a crew of 5 members, a crew supervisor, vehicle, and basic hand tools. Rates are not based on actual attendance, however, invoices will be reduced for member or supervisor vacancies lasting 20 days or more.

SPONSOR shall:

1. Guide completion of appropriate projects for number of weeks specified in this agreement by providing logistical, technical and safety-related support necessary for project completion. Provide site orientation for WCC members, site-specific training, and materials beyond basic hand tools to complete tasks. Obtain and ensure adherence to applicable permits as set by local, state, tribal or federal laws and regulations.

2. Help promote the AmeriCorps and WCC brands, logo, slogans and phrases. WCC will provide camera-ready logo. AmeriCorps is a registered service mark of the Corporation for National and Community Service.

AmeriCorps Prohibited Activities:

While charging time to the AmeriCorps program, accumulating service or training hours, or otherwise performing activities supported by the AmeriCorps program or CNCS, staff and members may not engage in the following activities (see 45 CFR § 2520.65):

- A. Attempting to influence legislation;
- B. Organizing or engaging in protests, petitions, boycotts, or strikes;
- C. Assisting, promoting, or deterring union organizing;
- D. Impairing existing contracts for services or collective bargaining agreements;
- E. Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;
- F. Participating in, or endorsing, events or activities that are likely to include advocacy for or against political parties, political platforms, political candidates, proposed legislation, or elected officials;
- G. Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious instruction or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;
- H. Providing a direct benefit to—
 - I. A business organized for profit;
 - II. A labor union;
 - III. A partisan political organization;
 - IV. A nonprofit organization that fails to comply with the restrictions contained in section 501(c)(3) of the Internal Revenue Code of 1986 related to engaging in political activities or substantial amount of lobbying except that nothing in these provisions shall be construed to prevent participants from engaging in advocacy activities undertaken at their own initiative; and
 - V. An organization engaged in the religious activities described in paragraph 3.g. above, unless CNCS assistance is not used to support those religious activities;
- I. Conducting a voter registration drive or using CNCS funds to conduct a voter registration drive;
- J. Providing abortion services or referrals for receipt of such services; and
- K. Such other activities as CNCS may prohibit.

AmeriCorps members may not engage in the above activities directly or indirectly by recruiting, training, or managing others for the primary purpose of engaging in one of the activities listed above. Individuals may exercise their rights as private citizens and may participate in the activities listed above on their initiative, on non-AmeriCorps time, and using non-CNCS funds. Individuals should not wear the AmeriCorps logo while doing so.

Appendix B WCC CALENDAR

2020-2021 WCC Events Calendar

October						
M	T	W	T	F	S	S
		1	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	

November						
M	T	W	T	F	S	S
1	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				

December						
M	T	W	T	F	S	S
1	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			

January						
M	T	W	T	F	S	S
1	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				

February						
M	T	W	T	F	S	S
1	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

March						
M	T	W	T	F	S	S
1	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				

April						
M	T	W	T	F	S	S
1	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					

May						
M	T	W	T	F	S	S
1	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				

June						
M	T	W	T	F	S	S
1	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					

July						
M	T	W	T	F	S	S
1	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				

August						
M	T	W	T	F	S	S
1	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				

September						
M	T	W	T	F	S	S
1	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				

Members' Potential Hours (For general guidance only - hours not guaranteed)

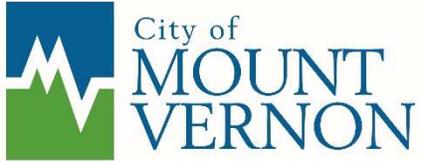
October	160	November	140	December	170	January	160
February	150	March	190	April	170	May	160
June	180	July	160	August	180	September	50
Fullterm Oct 5-Sep 9:	1870	Halfterm Oct 5-Mar 25:	940	Halfterm Mar 24-Sep 9:	950	QT Term Jun 16-Sep 9:	480
FT: 1700-hr min, \$6195 Ed Award		HT: 900-hr min, \$3097.5 Ed Award		HT: 900-hr min, \$3097.5 Ed Award		QT: 450-hr min, \$1638.89 Ed Award	

WCC standard schedule (40 hours/week) is Monday - Sunday

**Holidays and pay days included for convenience. In the event of conflicting information, order of precedence is 1) WCCSE CBA for supervisors 2) applicable WAGs 3) WCC calendar*

Legend:

- ◆ Start (FT=10/5, HT=3/24, QT=6/16)
- ◆ Holiday (observed)-Day Off
- ◆ Returning Member Orientation*
- ◆ New Member Orientation*
- ◆ AmeriCorps Swearing-in (Central Puget approx. 4 hours)
- ◆ Assistant Supervisor Training*
- ◆ Milk - Ship Holiday, Member Service Day
- ◆ Individual Placement Meeting*
- ◆ Training Conference 8/30-9/2 (tentative)
- ◆ HT** Member Orientation*
- ◆ Spike (12 days with alternate sponsor)
- ◆ Supervisor Refresher Training
- ◆ End-of-year presentations (1 day/region)
- ◆ 8/19-Dynamic & MW, 8/26 S Puget Sound; 9/23-King County; 9/9 Central/E. WA
- ◆ PPS Due (hours: QT member only)
- ◆ eTime: hours entered
- ◆ eTime: prior pay period approval due
- ◆ Payday (10th & 25th, varies on weekends)
- ◆ Production (last Thursday of the month)
- ◆ Supervisors: Crew Interviews
- ◆ Shutdown Weeks
- ◆ Supervisors: Finalize Interviews/Enrollment
- ◆ Supervisors: Cross-Training
- ◆ Supervisors: All-staff meeting & prep days
- ◆ End Date (HT=3/25, QT/FT=9/9), eTime attestation due
- ◆ Exit Paperwork Due (HT:3/18, all others: 8/19)
- ◆ MyAmeriCorps Online Survey & Form
- ◆ WCC Discuss Exit Forms



DATE: August 12, 2020

TO: Mayor Boudreau and City Council

FROM: Blaine Chesterfield – Public Works, Engineering Manager

SUBJECT: APPROVAL OF GROUND CELL TOWER LEASE AGREEMENT WITH GLOBAL SIGNAL ACQUISITION II, LLC

RECOMMENDED ACTION:

That the City Council by motion authorize the Mayor to enter into the Cell Ground Lease Agreement with STC Five LLC.

INTRODUCTION/BACKGROUND:

The City and US West Wireless entered into a ground lease agreement dated September 27, 1999 to providing a site lease to construct and operate a cell tower located at Fire Station 2. Prior to its expiration City staff and STC Five LLC (a successor in interest to US West Wireless) engaged in negotiating a new site lease attached hereto.

The new lease terms include:

- 1) Base rental payments beginning at \$20k annually. This is an increase (rounding up) of 15% of current rents from the previous lease (lease escalator under original lease increased 3% annually).
- 2) Term is ten years with 2 five year options.
- 3) Rents shall increase 3% annually through the lease term.
- 4) Payment of \$3500 administrative fee for costs in time and labor to negotiate the agreement.
- 5) New insurance and indemnification.

6) Performance Bond of \$30k to secure payment of rents due and faithful performance of the Agreement.

7) Liquidated damages of \$250 for lack of notice to the Fire Department prior to entry onto site for each occurrence subject to the conditions in the lease (e.g. no notice needed if emergency).

FINDINGS/CONCLUSIONS:

none

RECOMMENDATION:

Approval of the lease.

ATTACHED:

Proposed Lease

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT (the "Agreement") is entered into by and between the City of Mount Vernon ("City") whose address is 910 Cleveland Avenue, Mount Vernon, WA 98273 and STC Five LLC, a Delaware limited liability company, by and through its Attorney In Fact, Global Signal Acquisitions II LLC, a Delaware limited liability company, with its principal offices located at 2000 Corporate Drive, Canonsburg, Pennsylvania 15318 ("Lessee"), pursuant to Title 18 of the Mount Vernon Municipal Code ("MVMC"). References to the Lessee shall include Lessee's agents, officers, employees, successors and assigns, unless otherwise noted; references to the City shall likewise include the City's elected and appointed officials, agents, officers, employees, successors and assigns, unless otherwise noted. The City and Lessee are individually referred as a "Party" in this site lease and collectively referred to as the "Parties".

WHEREAS, City is the owner of certain real property of ground space located at 1901 N. LaVenture Road, Mount Vernon, Washington 98273, as more particularly described in Exhibit A attached hereto (the "Property") and made a part hereof by this reference; and

WHEREAS, City and Lessee desire to enter into this Agreement to lease certain portions of the Property (the "Site"), as more particularly described in Exhibit B attached hereto, to construct and maintain Communication Facilities for the provisions of telecommunication services; and

WHEREAS, City and U S WEST Wireless, L.L.C., a Delaware limited liability company ("Original Lessee") entered into an Option and Site Lease Agreement dated September 27, 1999 (the "Original Site Lease"), which was amended by that certain First Amendment to Option and Site Lease Agreement dated December 22, 2009 (hereinafter the Original Site Lease and all subsequent amendments are collectively referred to as the "Original Lease") whereby Original Lessee leased the Site from City; and

WHEREAS, STC Five LLC is currently the lessee under the Original Lease as successor in interest to the Original Lessee; and

WHEREAS, City and Lessee agree that the Original Lease expires on December 16, 2019; and

WHEREAS, the City and Lessee desire to enter into this new Lease Agreement at the expiration of the Original Lease pursuant to the terms and conditions contained herein; and

WHEREAS, City and Lessee, in their mutual interest, desire to establish the Agreement as set forth below accordingly.

WHEREFORE, City and Lessee agree as follows:

1. Nonexclusive lease. This lease is nonexclusive and does not preclude the City from granting or have granted a similar lease, right, license, franchise, etc., to other carriers or other persons for telecommunications or any other purpose on the Property. Lessee's possessory interest extends only to the Site, as described in Section 2 below and Exhibit B, which shall be for the exclusive use by Lessee with regard to third parties.

2. Permitted Use. The location on City's Property that Lessee is occupying shall be referred to as the "Site", and is more particularly described in Exhibit B attached hereto and made a part hereof by this reference.

A. Lessee shall have the right, at its expense, to install, construct, reconstruct, and maintain a communications facility and one tower structure as set forth in Exhibit B attached hereto (the "Tower"), that supports communication facilities including without limitation, cable and support mount connections to and from the tower, and necessary electric and telecommunication utilities, fiber, radio and other communication transmitting and receiving antennas, support mounts, cables, equipment, equipment storage structures and other improvements relating thereto (collectively the "Communication Facilities") for the provision of wireless communications service ("Permitted Use"). Lessee agrees that it may have only one tower structure on the Site at one time without the written consent of City; provided, however, that in the event Lessee deems it necessary to replace the existing Tower, Lessee may construct or utilize a second tower structure or cell on wheels and equipment related thereto for a limited period of time, not exceed one hundred eighty (180) days. Lessee shall not be required to remove the Tower until the replacement tower facility is completed and any occupants on the Tower have been relocated to the replacement tower. In no circumstances shall two (2) towers be left standing on the Site for a period of more than one hundred eighty (180) days without written approval from City. All construction and temporary structures shall be located within the Site footprint unless further written approval is obtained from the City. Any replacement of the existing Tower shall not exceed the current height of the existing Tower absent further approval from the City. Lessee shall have the right to sublease space to third parties so long as such subleases comply with the scope of use permitted by this Agreement. Lessee shall have the right to repair, modify, supplement, replace, upgrade, relocate or remove the Communication Facilities within the Site at any time during the term of this Agreement so long as said repair, modification, replacement, relocate, or upgrade is made for the purpose of improving or maintaining the operation of its Communication Facilities, provided that Lessee provides notice in advance of the commencement of Lessee's activities in accordance with the provisions of Section 12. Lessee's construction work shall comply with all applicable City construction codes and standards, and shall be completed in accordance with those provisions set forth in Exhibit C. Lessee covenants that the leasehold interest gained through this Agreement to the Property shall be used solely for the Permitted Use.

Lessee covenants that it will not create nor permit to exist a nuisance on the Property.

- B. Lessee shall be entitled to reasonable access over the Property for ingress and egress to and from the Site and Communications Facilities twenty-four [24] hours a day, seven [7] days per week. Lessee shall endeavor to use such access in a manner and in areas minimally disruptive to the City. Except in the case of an emergency, Lessee shall notify City in advance of any Lessee's access on the Site in order to coordinate said activities with City's operations by emailing mvfire@mountvernonwa.gov, Attn: Assistant Chief and Fire Chief unless different contact instructions are provided by the City which shall be in writing.
- C. Lessee shall pay any incremental additional utility charges to the Property incurred as a result of Lessee's Permitted Use. Lessee shall have the right, at its expense, to install or improve utilities within or on the Property that services Communication Facilities ("Utility Placement") subject to consent of the City, which shall not unreasonably be withheld, conditioned or delayed.
- D. The City specifically disclaims any and all warranties, implied or otherwise, including but not limited to that the Property or the Site are fit for the Lessee's intended use, or for any other purpose. Lessee agrees that it takes the Property and Site "as is" including all latent and patent faults, defects and conditions and waives to the fullest extent permitted by law any duty of the City to disclose any latent or patent defects pertaining to either the Property or the Site. Notwithstanding the foregoing, the City covenants that the City holds fee simple title to the Property.
- E. City reserves and shall have the right to require and permit co-location of utilities where Lessee intends to locate, install, or improve utilities on the Property that services Communication Facilities on the Site without additional compensation including but not limited to other Communication Facilities by the City or other third party, any trenching, excavation, conduit, or other structure within, under, on or above the Property and Lessor consents to the same when space is available; provided however this shall not require Lessee to collocate utilities within any conduit owned or controlled by the Lessee. City's written request to collocate shall be submitted to Lessee along with the information usually required by Lessee (the "Collocation Request"). Lessee may condition collocation of utilities by a third party by requiring said third party to enter into a Utility License Agreement to recover any incremental costs to Lessee.
- F. Access. Notwithstanding any other provisions in this Agreement, the rights granted to the Lessee do not include rights to block, obstruct, or in any other manner unreasonably hinder access, egress or ingress of City personnel or

City vehicles to the Property or any structure or facilities located thereon. Lessee has an affirmative obligation and warrants use of the Property through this Lease shall not prevent, delay, or obstruct City personnel or vehicles which shall have unencumbered egress and ingress to the fire station located on the Property and the parking lot adjacent thereto from the public right of way.

3. Term.

- A. Commencement of Lease Term. This Agreement shall be for a term of ten years and any renewal term set forth in Section 4 ("Lease Term") from the Effective Date as defined below.
- B. Effective Date: This Agreement shall become effective on December 17, 2019 ("Effective Date").

4. Renewal. The Agreement's Lease Term shall automatically be extended for two (2) additional five [5] year terms, unless Lessee provides written notice to the City at least ninety [90] days prior to the end of this Agreement's then relevant term.

5. Compensation.

- A. Except as modified below, Lessee shall pay to City at the address first set forth above, or at such place as City shall designate in writing, from time to time, and without demand therefor, annual base rent of twenty thousand dollars (\$20,000.00) in advance subject to additional rents and increase in rental charges as described herein. Rent shall be paid annually in advance in one installment due within sixty (60) days of the Effective Date. Each year thereafter, annual rent shall be due in advance on or before the anniversary of the Effective date. Any advance payment shall be non-refundable.
- B. Lessee shall pay, as additional rents, any increase in real property taxes, levied against the Site which are directly attributable to Lessee's use and improvement of the Site, and City agrees to furnish proof of such increase to Lessee in a timely manner. Lessee shall reimburse City for all Leasehold Excise taxes owed as a result of this Agreement within sixty (60) days of receipt of notice from City.
- C. Any payments received more than thirty [30] days after the due date shall be subject to a late payment penalty of 2% of the rental fee for each day or part thereof the payment is delinquent, provided that the City shall provide notice that such payment is past due prior to the institution of such late penalties. Such notice shall be provided as set forth in Section 44.

- D. On the anniversary of the Effective Date during each subsequent lease year after the initial lease year, annual rent shall increase by an amount of three percent (3%) multiplied by the annual rent due the previous lease year.
- E. In Kind Consideration. *Intentionally Omitted.*
- F. Administrative Fee. As additional consideration for this Agreement, within sixty (60) days from the full execution of this Agreement, Lessee shall reimburse the City for all of City's actual and reasonable costs and expenses to negotiate and execute this Agreement, including attorney's and consultant's fees and the time expended by the City staff and City Attorney's Office ("Administrative Fees"). The Parties stipulate that three thousand five hundred dollars and no/100 (\$3,500.00) shall be the Administrative Fees paid by Lessee to the City in full compensation for its costs and expenses incurred in negotiating this Agreement and Lessee agrees that no further documentation shall be required from Lessor to substantiate such costs and expenses.

6. Interference.

- A. Lessee hereby warrants and agrees that Lessee, or tenants and licensees of Lessee will not install or operate equipment or perform under this Agreement in any manner that materially interferes with existing or new equipment or operations by the City or other lessees occupying the Property through existing agreements that predate this Agreement and further agrees that Lessee shall not, nor shall an agent of Lessee, tamper with, adjust, change, or remove any telecommunications equipment or antennas located on the Property not belonging to Lessee, its subtenants or licensees. Lessee agrees to eliminate any material interference proved to be caused to City-owned facilities, residences and business to the surrounding area by Lessee's Communication Facilities at Lessee's own expense without installation of extra filters on City-owned equipment. The costs of engineering studies involving Lessee's Communication Facilities associated with radio or television interference complaints shall be borne by the Lessee. Lessee shall reasonably cooperate with all other lessees occupying the Property to identify the causes of and work towards the resolution of any electronic interference. Lessee further agrees to accept such interference as may be received from City operated telecommunications facilities located upon the City property subject to this Agreement and provided such interference is not in violation of FCC regulations.
- B. By executing this Agreement, Lessee warrants that it's Communication Facilities and any related equipment shall be and are presently in compliance with all applicable law, including all regulations promulgated by the Federal Communications Commission. Lessee further agrees not to

broadcast on or use any frequencies, other than those for which Lessee has permission from the Federal Communications Commission during the Lease Term. Use of any other frequencies shall be permissible only upon the express prior written consent of City. It is agreed and understood that this provision is specifically negotiated to allow City to plan for and use other frequencies than those assigned by the Federal Communications Commission to Lessee without fear of interference at this time or in the future.

C. Lessee's utilization of the Site will comply with construction and site management standards as set forth in the Washington State Department of Natural Resources Minimum Standards for Communications Sites attached hereto as Exhibit D and construction standards and specifications attached hereto as Exhibit C.

D. The City expressly disclaims any warranty express or implied that any existing or future uses of the Property or the Site by the City or agreement and usage by third parties of the Property shall not interfere with Lessee's telecommunication operations or Communication Facilities. The City makes no warranty express or implied that other telecommunications equipment, whether in place at the time of the execution of the Agreement or installed during the term of the Agreement, is in compliance with applicable law and will not interfere with Lessee's Communication Facilities, and the City shall not in any way be responsible or liable for any interference with Lessee's use of the Site which may be caused by the use and operation of any other lessee, or tenant including but not limited to future tenants or lessee's equipment including but not limited to if caused by new technology. Upon request, the City shall provide Lessee any information it possess subject to public disclosure not otherwise exempt or privileged and in accordance with state and federal law to assist Lessee in determining whether current operations and Communication Facilities would interfere with Lessee's proposed use.

E. In the event of interference with Lessee's Communication Facilities or operations, upon the identification of such interference and evidence and attribution to City or another lessee, the Parties shall use reasonable efforts to identify whether: 1) modifications of City operations or facilities, 2) modifications of operations or facilities with a third party lessee in accordance with all agreements with the third party lessee, or 3) modifications with Lessee's operations of facilities may eliminate such interference in a manner agreeable to all parties. The Parties shall reasonably cooperate to resolve such interference upon written notice and Lessee shall cooperate with all other tenants to identify the causes of and work towards resolution of any electronic interference problem. If elimination of such interference cannot be resolved, Lessee may, upon thirty (30) days' notice to the City, terminate this Agreement and restore the

Property to its original condition. Lessee's sole remedy against City for interference with Lessee's Communication Facilities or operations shall be limited to termination of the Agreement as provided. In no event shall either party be entitled to consequential or extraordinary damages.

7. Ownership and Removal of Improvements. It is the intent of the Parties that Lessee's Communication Facilities and related improvements shall not constitute a fixture and shall remain the property of Lessee. Upon expiration or earlier termination of this Agreement, Lessee shall, within ninety (90) days and at Lessee's sole expense, remove all above ground Communication Facilities and below ground Communication Facilities to a depth of three (3) feet, excluding conduits and footings, and restore the surface of the Site as nearly as reasonably possible to its original condition, ordinary wear and tear excepted. In the event that Communication Facilities or other equipment are left upon City property if not removed by the Lessee upon ninety (90) days' following expiration or termination, the City may, upon thirty (30) days' written notice to Lessee, elect to (i) remove and store such improvement at the sole cost to Lessee, or (ii) take ownership of such improvements.

8. Termination for Breach. This Agreement may be terminated by a non-defaulting Party if the other Party defaults and fails to cure such default within sixty [60] days after written notice of such default is provided to the defaulting Party by the non-defaulting Party; provided that if such default is capable of being cured, this Agreement may not be terminated by the non-defaulting Party so long as the defaulting Party commences appropriate curative action within such sixty [60] day period and thereafter promptly and diligently prosecutes such cure to completion.

9. Police Power. In accepting this Agreement, Lessee acknowledges that its rights hereunder are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and Lessee agrees to comply with all applicable and enforceable general laws enacted by the City pursuant to such power.

10. Rules and Regulations by the City. In addition to the inherent powers of the City to regulate and control any lease it issues, the authority granted to it by the Cable Act, the Telecommunications Act of 1996, other state and federal laws, and those powers expressly reserved by the City, or agreed to and provided for in this Agreement, the right and power is hereby reserved by the City to promulgate such additional regulations as it may find necessary in the exercise of its lawful powers. Except as provided by City ordinance, the foregoing does not allow for amendment by the City of material terms of this Agreement without the consent of Lessee. The City reserves the right to delegate its authority for administering this Agreement to a designated agent, provided that such delegation shall not alter the material terms of this Agreement.

11. Damage to Property. Unless subject to other specific provisions of this Agreement, neither Party nor any person acting on such Party's behalf shall take any action or permit any action to be done which may impair or damage any property of the other party..

12. Notice of Work. Unless otherwise provided in this Agreement, neither Lessee nor anyone acting on Lessee's behalf shall commence any non-emergency work in or about the public ways of the City, other ways, or upon the Property or the Site without two [2] working days advance notice to the City, provided that, notwithstanding the foregoing, Lessee shall endeavor to provide City with as much advance notice prior to engaging in non-emergency work on the property of City as may be practical so as to avoid conflicts between construction activities and the usual activities of the City. Subject to Section 13, Lessee shall obtain any necessary permits prior to commencing any such work. The Parties agree the City may incur damages as a result of breach of this notice provision including but not limited to the City making rapid changes to staffing and accommodating unforeseen reduction to on-site parking. If Lessee breaches its obligation to provide advance notice of work under this Section, the City shall provide written notice of such failure and Lessee shall pay to City two hundred fifty dollars (\$250.00) for each day (or part thereof) it fails to provide notice in advance as required, except that Lessee shall not be obligated to pay \$250 for the first failure of Lessee to provide such notice during any calendar year. The Parties agree that quantifying losses arising from Lessee's lack of advance notice to the City in this provision is inherently difficult insofar as lack of advance notice can impact City staffing (including overtime), other contracted on site work, and require the City to accommodate use of on-site parking at times when parking may be needed for City employees or the City's own contractors, and further stipulate that the agreed upon sum is not a penalty, but rather a reasonable measure of damages, based upon the parties' experience and given the nature of the losses that may result from lack of notice.

13. Repair and Emergency Work. In the event of an unexpected repair or emergency, Lessee may commence such repair and emergency response work as required under the circumstances, provided that Lessee shall notify the City as promptly as possible before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable.

14. Maintenance of Facility. Lessee shall maintain the Site and its Communication Facilities in good and safe condition and in a manner that complies with all applicable federal, state, and local requirements.

15. Relocation or Removal of Facility. Within twelve (12) months following written notice from the City ("Relocation Notice"), Lessee shall temporarily or permanently remove, relocate, change or alter the position of any improvements permitted under this Agreement including any Communication Facilities whenever the Mount Vernon City Council shall have determined that such removal, relocation, change or alteration is reasonably necessary for a public purpose. Any relocation, removal, change or alteration shall be at the expense of the Lessee. The Parties may subsequently agree to alter this provision if City is able to provide a satisfactory alternative site, and provided further that the City shall be under no obligation to identify or secure an alternative site. In the event an alternative site cannot be identified or agreed for the relocation of Lessee improvements and Communication Facilities elsewhere on the Site or Property, either

Party may terminate this Agreement within thirty (30) days following written notice to the other, which right to terminate may not be exercised until eleven (11) months following the City's Relocation Notice. In the event the City adopts a Capital Facilities Plan under Washington State's Growth Management Act which includes a project that would if constructed require that the Site is needed requiring relocation of the Communication Facilities, or any part thereof, the City shall provide written notice to the Lessee.

16. Removal of Unauthorized Facilities. Notwithstanding Lessee's removal provision in Section 7 of this Agreement, following thirty (30) days written notice from the City, Lessee shall, at its own expense, remove any unauthorized facilities or appurtenances. A facility is unauthorized and subject to removal in the following circumstances:

- A. If any part Lessee's system or Communication facilities are used outside of the scope of the Permitted Use.
- B. If any part of Lessee's system or Communication Facilities are being used in violation of state, federal, or local law.
- C. Any part of Lessee's system or Communication Facility constructed or installed without the prior grant of the Original Lease or this Agreement.
- D. Any part of Lessee's system or Communication Facility constructed or installed without the prior issuance of a required permit.
- E. Any part of Lessee's system or Communication Facility constructed or installed at a location not permitted by this Agreement.

Notwithstanding the foregoing, the City may, in its sole discretion, allow Lessee to abandon such unauthorized facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment of Lessee's facilities must first be approved by the Public Works Director, and all necessary permits must be obtained prior to any removal work. Upon permanent abandonment of facilities, the facilities shall become that of the City, and such persons shall submit to the City an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property. In no event shall the facilities be deemed abandoned if Lessee pays rent pursuant to this Agreement. The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement.

17. Emergency. The City retains the right and privilege to disconnect power to the Communication Facilities located within the City's Property, as the City may reasonably determine to be immediately necessary in response to any public health or safety emergency. The City shall not be liable to Lessee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this provision, provided that Lessee shall be provided such reasonable notice as circumstances dictate.

18. Damage to Facility. Unless directly and proximately caused by the willful misconduct or gross negligence of the City, the City shall not be liable for any damage to or loss of the Communications Facilities upon the Property or within the public ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on such City property or within the public ways by or on behalf of the City; *provided, however* that nothing in this Section releases any person or entity that has contracted with the City from liability for its own actions or failure to act.

19. Restoration of City Property.

- A. When Lessee or any person acting on Lessee's behalf does any work in or affecting City's Property, it shall, at its own expense, promptly remove any obstructions there-from and restore such ways or property to as good a condition as existed before the work was undertaken, unless otherwise approved by the City.
- B. If weather or other conditions do not permit the complete restoration required by this Section, Lessee shall temporarily restore the affected property. Such temporary restoration shall be at Lessee's sole expense and Lessee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
- C. Lessee shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
- D. Lessee shall provide for inspection and final approval of the condition of the public ways, other ways, and City's Property following any construction and restoration activities therein. City shall after inspection either provide approval of condition (which shall not be unreasonably withheld, conditioned or delayed) or make specific findings to Lessee of what conditions need to be completed. The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement.

20. Environmental Matters.

- A. Lessee will be solely responsible for and will defend, indemnify and hold City, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup or restoration of the Property associated with the presence, release or use of Hazardous Materials on the Site if caused by Lessee or persons acting under Lessee.

- B. City will be solely responsible for and will defend, indemnify, and hold Lessee, its agents, and employees harmless from and against any and all direct claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the removal, cleanup, or restoration of the Property associated with the presence, release or use of Hazardous Materials on the Property if caused by City or persons acting under the City .
- C. "Hazardous Materials" means asbestos or any hazardous substance, waste or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, CERCLA, RCRA and WADOE.
- D. The obligations of this Section shall survive the expiration or other termination of this Agreement.

21. Insurance.

- A. Lessee shall carry and maintain, without interruption, for the duration of the Agreement, insurance as set forth below against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Lessee, its agents, representatives or employees. The City shall be named as an additional insured on Lessee's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Premises Form CG 20 11 or a substitute endorsement providing equivalent coverage. Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Lessee before commencement of any work or installation of any facilities pursuant to this Agreement.
 - 1. Commercial general liability insurance, written on an occurrence basis, at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The policy shall be written with limits not less than:
 - a. \$5,000,000.00 for bodily injury or death to any one or more persons and property per occurrence.
 - b. \$10,000,000.00 in the annual aggregate.
 - 2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000.00 per occurrence;

3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
- B. The above coverages may be provided, in part, through an umbrella policy.
 - C. The Commercial General Liability insurance policy obtained by Lessee shall name the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers, as additional insureds with regard to activities performed by or on behalf of Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, agents, employees, representatives, engineers, consultants or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Lessee's insurance shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of Lessee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall provide prior written notice of cancellation be given to the City in accordance with the terms of the policy. Lessee shall submit such cancellation endorsement.
 - D. Any failure of the City, its officers, officials, employees or volunteers to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
 - E. The Lessee's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Lessee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
 - F. Lessee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the Commercial General Liability insurance of the Lessee.
 - G. Lessee shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.
 - H. Failure on the part of the Lessee to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Lessee to correct the breach, immediately terminate the Agreement, at its discretion, procure or renew

such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

22. Indemnification.

- A. Disclaimer of Liability. Unless otherwise set forth herein, the City shall not at any time, be liable for injury or damage occurring to any person or property caused by Lessee's construction, installation, maintenance, repair, use, operation, condition, or dismantling of Communication Facilities, use of the Site or the Property, and Lessee expressly assumes all such risk.

- B. Lessee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by Lessee's own employees to which Lessee might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the acts or omissions of Lessee, its agents, servants, officers, employees, tenants, or licensees in performing the activities authorized by this Agreement are the proximate cause. Lessee further releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or liability to any person including claims by Lessee's own employees, including those claims to which Lessee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way, or other public properties, that may be utilized in performing the activities authorized by this Agreement, by virtue of Lessee's exercise of the rights granted herein, or by virtue of the City's permitting Lessee's use of the City's public ways or other public property, or based upon the City's inspection or lack of inspection of work performed by Lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Agreement or pursuant to any other permit or approval issued in connection with this Agreement. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the acts or omissions of Lessee, its agents, servants, officers, employees, tenants or licensees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public way or other public place in performance of work or services permitted under this Agreement. In the event that Lessee's transmission technology or Communication Facilities emit electromagnetic impulses (EMF), Lessee expressly agrees that this indemnity provision extends to any and all claims for injury, sickness or death of any person, including employees of Lessee, arising out of or caused by said emissions. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then,

in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Lessee and the City, its officers, officials, employees, and volunteers, the Lessee's liability hereunder shall be only to the extent of the Lessee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Lessee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Agreement.

C. City hereby agrees to indemnify and hold Lessee and Lessee's officers, employees, agents, contractors, and invitees harmless from liability, damages, or claims for physical injury, loss, damage or liability, costs or expenses to the extent caused by the intentional misconduct or negligence of the City or its employees, or agents on the Property and from City's breach of any representation or warrant as set forth in this Agreement.

D. Inspection or acceptance by the City of any work performed by Lessee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation; *provided, however*, that this sentence is applicable only if Lessee has been given written notice by the City of any such claim, a reasonable opportunity to review and defend any such claim and to review and approve the terms of any such compromise of any such claim.

E. In the event that Lessee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined in proceedings conducted pursuant to and in accordance with Section 29 of this Agreement, to have been a wrongful refusal on the part of Lessee, then Lessee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

F. The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement.

23. Performance Bond. To secure the payment of all rent due and to become due hereunder and the faithful performance of this Agreement by Lessee, Lessee shall maintain a performance bond in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) during the Lease Term. Such bond shall be issued by a surety company

authorized to issue surety bonds in Washington State. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded.

24. Assignments or Transfers of Grant. This Agreement shall run with the Property and shall be binding on and inure to the benefit of the Parties, their respective successors, personal representatives and assigns. Lessee may assign its interest in the Agreement upon satisfaction of the following conditions set forth herein. The Lessee and the proposed assignee or transferee of the Agreement shall provide and certify the following information to the City not less than 45 days prior to the proposed date of transfer:

- A. All information meeting the requirements of lease applicant pursuant to Chapter 18.06 MVMC with respect to the proposed transferee or assignee; and
- B. Proof of insurance coverage and a performance bond if required, as set forth in this agreement; and
- C. Upon the effective date of the assignment the assignee's assumption of all of Lessee's pre-existing obligations and responsibilities, Lessee shall be relieved of all further obligations and liabilities under this Agreement.

Any transfer or assignment of this Agreement without prior written approval of the City under this Section shall be void and is cause for termination of this Agreement. Any transactions which singularly or collectively result in a change of working control of the Lessee, or the working control of a telecommunications system, shall be considered an assignment or transfer requiring City approval. Transactions between affiliated entities are not exempt from City approval unless said affiliated entities are named in the initial request, insurance coverages, and bonds if required.

25. Revocation, Damages and Specific Performance. The rights granted under this Agreement may be revoked or forfeited as provided in MVMC Section 18.10.230 as said Section presently exists or is hereafter amended; provided, however, that either party may elect, in lieu of the above and in lieu of Section 29 of this Agreement and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the other party to comply with the provisions of this Agreement.

26. Notice of Entry on Private Property. If directed by the City, at least twenty-four [24] hours prior to entering private property, or streets or public easements adjacent to or on such private property, to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by Lessee. A door hanger may be used to comply with the notice and posting requirements of this Section. Lessee shall make a

good faith effort to comply with the property owner/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; Provided, however, that nothing in this Agreement shall permit Lessee to unlawfully enter or construct improvements upon the property or premises of another.

27. Safety requirements. Lessee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the Site or the Property, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the general right, which right shall not be construed as an obligation, to see that Lessee's system is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City will, after discussions with Lessee, establish a reasonable time for Lessee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from Lessee.

28. Hazardous Substances. Lessee shall not introduce or use any such substance on the Site in violation of any applicable law.

29. Dispute Resolution.

- A. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of Washington State and any applicable Federal law.
- B. Arbitration. Except as otherwise provided in this Agreement, and except for provisional remedies available at law, including injunctive relief, any controversy, claim or dispute concerning the making, formation, validity, obligations under or breach of this Agreement and issues related to the existence, interpretation and enforceability of the arbitration provisions of this Agreement, shall be subject to mandatory arbitration conducted by a single arbitrator in Skagit County, Washington. There shall be no discovery other than the exchange of information which is provided to the arbitrator by the parties, except as ordered by the arbitrator to promote equality and further justice. Subject to the provisions of this Section, the arbitrator shall have the authority to award compensatory damages and shall not have authority to award punitive or other non-compensatory damages and the parties hereby waive all rights to and claims for monetary awards other than compensatory damages, but the City reserves the right to pursue any equitable remedy including civil or criminal penalties pursuant to MVMC Section 18.10.050 as now or hereafter amended. Additionally, the arbitrator

shall award costs and expenses, including reasonable attorney's fees, to the prevailing Party.

1 Arbitration under this Section shall be governed by the Washington Uniform Arbitration Act, RCW 7.04A; provided, however, that the consolidation provisions in RCW 70.04A.100, and punitive damages provisions in RCW 7.04A.210(1),(5) are not applicable to any arbitration under this Section, and that the remaining provisions in RCW 7.04A.210 are subject to Subsection 29(D) of this Agreement.

2 A competent arbitrator shall be chosen by agreement of the Parties. If the Parties are unable to agree on an arbitrator within thirty (30) calendar days of a Party demanding arbitration, either Party may request that a judge of the Superior Court of Skagit County, WA appoint an arbitrator. Each Party shall initially pay one-half the arbitrator's fee but the substantially prevailing party shall be awarded its share of such fees, in addition to its reasonable attorneys' fees, costs and expenses.

3 The Parties may jointly agree to stay mandatory arbitration proceedings pending voluntary mediation of the controversy, claim or dispute before a mediator jointly chosen by the Parties.

C. Compelling, Enforcing, Reviewing, Modifying and Confirming Arbitration. The Parties agree that pursuant to Subsection 29(B) of this Agreement and in accordance with RCW 7.04A the Skagit County Superior Court shall have the authority to compel or enforce arbitration and to review, modify or confirm an arbitration award. In the event that any such judicial proceedings are initiated, the prevailing party shall be entitled to its attorney's fees and costs incurred in compelling arbitration or confirming an arbitration award.

D. Waiver of Sovereign Immunity. Lessee hereby waives any sovereign immunity it may assert against the City in the enforcement of the terms and condition set forth in this agreement including but not limited to arbitration proceedings or proceedings in the Superior Court described in this Agreement. This waiver is applicable solely to claims by City and its successor in interest, and not by any other person, corporation, partnership or entity whatsoever.

E. In the event Lessee claims constructive eviction, Lessee's sole remedy shall be termination of this Agreement, together with payment of any advance rents and/or deposits.

30. Business Purpose. Lessee shall use the Site for the Permitted Use for which the Site is leased, and shall not use the Site for any additional or illegal purposes. Lessee

agrees that no stock of goods will be carried or anything done in or about the Site which will increase the present rate of insurance.

31. Licenses, Fees, and Taxes. Prior to constructing any improvements upon the Property, Site, or adjacent right of way, Lessee or, if work is performed by a contractor, its contractor shall obtain a business license from the City pursuant to MVMC Chapter 5.04. Further, Lessee shall pay promptly, and before they become delinquent, all applicable taxes on all merchandise, personal property and improvements owned or placed by Lessee on the Site; shall pay all applicable license fees and public utility charges related to the conduct of Lessee's business on the Site; shall pay for all applicable permits, licenses and zoning approvals relating to the conduct of business on the Site by Lessee; all applicable leasehold tax; and shall pay any applicable tax, including utility taxes and business license fees imposed by the City's Municipal Code.

32. Incorporation of MVMC Chapter 12.16. MVMC Chapter 12.16, as it now exists or may hereafter be amended, is hereby incorporated in full by this reference. In the event any provision of this Agreement conflict with the provisions of MVMC Chapter 12.16, the provisions of this Agreement shall prevail.

33. Compliance with the City's Telecommunication Ordinance. MVMC Chapter 18.10 as it presently exists or is hereafter amended is incorporated by reference and constitutes further conditions and terms under this Agreement between the City and Lessee. In the event of a conflict between MVMC Chapter 18.10 and the Agreement including all exhibits thereto, this Agreement shall control.

34. Holdover. If Lessee shall holdover after the expiration of the term of this Agreement, the holdover tenancy shall be for a period of time on a month to month basis, which tenancy may be terminated by the provision of thirty [30] days advance written notice by the Party seeking termination of the tenancy to the other Party. During such tenancy, Lessee agrees to pay the City the annual rate of rental, (and additional increases set forth in the lease if applicable), prorated on a monthly basis, and further agrees to be bound by all of the terms, covenants, agreements and conditions as herein specified, so far as applicable.

35. Fire and Other Casualty. City will provide reasonable notice to Lessee of any casualty affecting the Site. In the event the tower or Communication Facilities are destroyed or damaged by fire, earthquake or other casualty to such an extent as to render the same untenable by Lessee in whole or in a substantial part, in Lessee's sole determination, Lessee shall have the option to terminate this Agreement immediately without further liability or obligation to the City. No prepaid rent shall be refundable.

36. Condemnation. In the event City receives notification of any condemnation proceedings affecting the Property, City will provide notice of the proceeding to Lessee. In the event of the taking of the Site, Property in which Lessee has utilities located, the cell tower or Communication Facilities by condemnation or otherwise by any governmental, state or local authority, sufficient, in Lessee's sole determination, to render

the premises unsuitable for Lessee, this Agreement shall be deemed canceled as of the date the title vests in the condemning authority. Lessee shall have no claim to nor shall it be entitled to any portion of any condemnation award for damages awarded to the City. Lessee may otherwise pursue any remedy allowed by law.

37. Signs. Lessee shall place signs on the Property only as required by law. Lessee may place signs or symbols not required by law on the Site subject to the prior approval of the City. In the event Lessee shall place signs or symbols not required by law on the Site where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such signs or symbols, and the refusal of Lessee to comply with such demand within a period of forty-eight [48] hours will constitute a breach of this Agreement, thereby entitling the City to exercise any available legal remedy. Any signs placed upon the Site shall be so placed upon the understanding and agreement that Lessee will remove the same within ninety (90) days of the expiration or earlier termination of this Agreement and repair any resulting damage or injury to the Property. If such signs are not so removed within ninety (90) days of expiration or earlier termination, then the City may have the same removed at Lessee's expense.

38. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenant, agreement or option, or any other covenant, agreement or option.

39. Cancellation of Prior Leases and Agreements. City and Lessee agree that effective as of the Effective Date of this Agreement, the Original Lease is hereby no longer effective. This Agreement supersedes all other agreements, including the Original Lease, whether verbal or in writing or otherwise, between the parties concerning the Property.

40. Reimbursement of City Expenses. Lessee shall be subject to all applicable permit fees associated with activities undertaken through the authority granted in this Agreement or under the laws of the City.

In addition to the above, Lessee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency caused by Lessee's Communication Facilities.

41. Non-Severability. The provisions of sections in this Agreement are each an integral part of the consideration given by each Party and as such, such terms and conditions are not severable. If any of the sections should be held to be invalid or unconstitutional by a court of competent jurisdiction, either party may terminate this Agreement upon twenty-four (24) months' written notice unless suitable replacement terms can be agreed to by the parties.

42. Merger. This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or

understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement. This Agreement supersedes all previous offers, negotiations, and agreements with respect to the property that is the subject matter of this Agreement. There are no representations or understandings not set forth herein. Any amendment to this Agreement must be set forth in writing, and executed by the parties.

43. Dangerous Conditions, Authority for City to Abate. Whenever Lessee's construction, installation, or excavation on the Site or the Property authorized by this Agreement causes or contributes to a condition that substantially impairs the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct Lessee, at the Lessee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a prescribed time.

In the event that Lessee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the Site and/or take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Lessee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Agreement.

44. Brokers. Either Party hereto that is represented in this transaction by a broker, agent or commission salesperson (a "Representative") shall be fully and exclusively responsible for the payment of any fee, commission or other compensation owing to such Representative, and shall indemnify and hold the other Party harmless from and against any claim to a fee, commission or other compensation asserted by such Representative, including reasonable attorneys' fees and costs incurred in defending such claim.

45. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be given by established national courier service which maintains delivery records, personal delivery, or by certified or registered mail, postage prepaid, return receipt requested, to the following addresses:

If to City:
Attn: Engineering Manager
Public Works Department
1024 Cleveland Avenue
Mount Vernon, WA 98273

with a copy to:

City Attorney
City of Mount Vernon
910 Cleveland Avenue
Mount Vernon, WA 98273-0809

If to Lessee:
STC Five LLC
c/o Crown Castle USA Inc.
Attn: Legal - Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

Notice are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide reasonable means for accomplishing delivery.

46. Representations and Warranties. Each Party represents and warrants to the other Party that (i) it has full right, power, and authority to execute this Agreement and has the power to grant all rights hereunder; (ii) its execution and performance of this Agreement will not violate and laws, ordinances, covenants, tariffs, or the provisions of any mortgage, lease, or other agreement binding on said Party; and (iii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, have been duly authorized by all necessary personnel or corporate officers and do not violate any provisions of law or to the Party's certificate of incorporation or bylaws or any other arrangement, provision of law or court order or decree.

47. By executing this Agreement, the parties are not establishing a joint undertaking, joint venture, or partnership. Each Party will be deemed to be an independent entity acting solely for its own account.

48. Either Party may record the original or a true copy of a memorandum of this Agreement with the Skagit County Auditor. Each Party shall reasonably cooperate with the other Party to implement this provision.

49. Jurisdiction, Choice of Law, and Venue. This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained in accordance with Section 48 of this Agreement in Skagit County, Washington and enforced in any of the courts of competent jurisdiction in Skagit County, Washington.

[Execution Page Follows]

The Parties have entered into this Agreement as of the date on which both parties have signed this Agreement (the "Effective Date").

CITY:

City of Mount Vernon

Mayor Jill Boudreau

Date: _____

ATTEST:

Doug Volesky, Finance Director/City Clerk

Approved as to form:

Kevin Rogerson, City Attorney

LESSEE:
STC Five LLC,
a Delaware limited liability company

By: Global Signal Acquisitions II LLC,
a Delaware limited liability company
Its: Attorney in Fact

By: _____

Name: _____

Title: _____

Date: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SKAGIT)

I certify that I know or have satisfactory evidence that Jill Boudreau is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the mayor of the City of Mount Vernon, Washington to be the free and voluntary act of such Party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(SEAL or Stamp)

(Title)

My appointment expires: _____

State of Texas

County of _____

Before me, _____, a Notary Public, on this day personally appeared _____ of **GLOBAL SIGNAL ACQUISITIONS II LLC**, a Delaware limited liability company, as Attorney in Fact for **STC FIVE LLC**, a Delaware limited liability company, known to me (or proved to me on the oath of _____ or through driver's license, state id card, resident id card, military id card, or passport) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she/he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20__.

(Personalized Seal)

Notary Public's Signature



DATE: August 12, 2020
TO: Mayor Boudreau and City Council
FROM: William Bullock, P.E. - City Engineer
SUBJECT: **BID AWARD – N 19TH STREET STREAM REHABILITATION**

RECOMMENDED ACTION:

Staff recommends a motion authorizing the Mayor to award the construction contract for the N 19th Street Stream Rehabilitation project to Oceanside Construction, Inc., of Bellingham, WA in the amount of \$139,512.10.

INTRODUCTION/BACKGROUND:

During fall of 2019, the cross culvert on N 19th Street, just north of Roosevelt Street, suffered a failure that resulted in a number of sink holes, the largest of which was several feet in diameter. The culvert, approximately 150 feet south of Roosevelt Street, extends 90 feet beyond the street underneath an overflow swale as part of Kulshan Creek.

This is considered an emergency repair as the upcoming 2020 winter season high flows are expected to cause significant damage to the channel and put adjacent residential structures at risk if left unaddressed. The removal of the damaged culvert along this this length requires in the re-establishment and rehabilitation of this portion of the streambed. The existing culvert under N 19th Street will be left intact at this time but may require replacement with a larger box culvert in the future; replacement of the street cross culvert is not considered critical to the emergency repair at this time.

FINDINGS/CONCLUSIONS:

Five bids were received August 5, 2020, with the low bid provided by Oceanside Construction, Inc. The bids range in price from \$139,512.10 to \$257,072.78. The low bid was responsive and prepared in accordance with the contract documents. The construction cost estimate for the project was \$186,960. The budget for this project is part of the Storm Water fund.

RECOMMENDATION:

Staff recommends Council award the construction bid of the N 19th Street Stream Rehabilitation Project to Oceanside Construction, Inc. in the amount of \$139,512.10.

ATTACHED:

Bid Tabulation

Vicinity Map



910 Cleveland Avenue
 Mount Vernon, WA 98273
 Phone: (360) 336-6204

LOWEST RESPONSIVE BIDDER

Called By:		City of Mount Vernon		Bidder's Name		1 Oceanside Construction, Inc.		2 P&P Excavting, LLC		3 Welwest Construction, Inc.		4 Tastad Construction, Inc.		5 SRV Construction, Inc.	
For:		N 19th Street Stream Rehabilitation		Address		1511 Mt Baker Hwy Bellingham, WA 98226		2499 E Smith Road Bellingham, WA 98226		PO Box 1491 Monroe, WA 98272		1502 Bonneville Ave. Snohomish, WA 98290		PO Box 507 Anacortes, WA 98221	
		1024 Cleveland Avenue Mount Vernon, WA 98273		Phone Fax		(360) 933-1728		(360) 592-5374		(206) 793-7441		(360) 863-6640		(360) 675-7100	
By:		CERTIFIED BID TABULATION													
Date:		Bill Bullock, PE													
		August 5, 2020													
Item No.	Section	Description	Quantity	Unit	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	
001	1-09.7	Mobilization	1.00	LS	\$10,000.00	\$ 10,000.00	\$14,660.00	\$ 14,660.00	\$20,000.00	\$ 20,000.00	\$11,900.00	\$ 11,900.00	\$44,850.00	\$ 44,850.00	
002	1-04.4	Minor Change	1.00	EST	\$10,000.00	\$ 10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	\$ 10,000.00	\$10,000.00	\$ 10,000.00	
003	1-05.3	As-Built Survey and Record Drawings	1.00	LS	\$250.00	\$ 250.00	\$1,775.00	\$ 1,775.00	\$1,500.00	\$ 1,500.00	\$1.00	\$ 1.00	\$2,275.00	\$ 2,275.00	
004	1-05.4	Roadway Surveying	1.00	LS	\$2,000.00	\$ 2,000.00	\$1,300.00	\$ 1,300.00	\$4,000.00	\$ 4,000.00	\$6,800.00	\$ 6,800.00	\$4,500.00	\$ 4,500.00	
005	1-07.15	SPCC Plan	1.00	LS	\$250.00	\$ 250.00	\$700.00	\$ 700.00	\$500.00	\$ 500.00	\$625.00	\$ 625.00	\$600.00	\$ 600.00	
006	1-10	Temporary Traffic Control	1.00	LS	\$500.00	\$ 500.00	\$1,550.00	\$ 1,550.00	\$3,000.00	\$ 3,000.00	\$1,200.00	\$ 1,200.00	\$2,750.00	\$ 2,750.00	
007	2-01	Clearing, Grubbing, and Roadside Cleanup	0.26	ACRE	\$24,000.00	\$ 6,240.00	\$12,150.00	\$ 3,159.00	\$24,000.00	\$ 6,240.00	\$20,000.00	\$ 5,200.00	\$23,000.00	\$ 5,980.00	
008	2-02	Removal of Structures and Obstructions	1.00	LS	\$4,000.00	\$ 4,000.00	\$4,800.00	\$ 4,800.00	\$6,000.00	\$ 6,000.00	\$18,000.00	\$ 18,000.00	\$14,800.00	\$ 14,800.00	
009	2-03	Channel Excavation Incl. Haul	395.00	CY	\$16.00	\$ 6,320.00	\$27.50	\$ 10,862.50	\$60.00	\$ 23,700.00	\$50.00	\$ 19,750.00	\$90.00	\$ 35,550.00	
010	2-03.3(14)K	Common Borrow Incl. Haul	20.00	CY	\$32.00	\$ 640.00	\$27.50	\$ 550.00	\$60.00	\$ 1,200.00	\$102.00	\$ 2,040.00	\$80.00	\$ 1,600.00	
011	2-09	Structure Excavation Class B Incl. Haul	8.00	CY	\$30.00	\$ 240.00	\$27.50	\$ 220.00	\$60.00	\$ 480.00	\$366.00	\$ 2,928.00	\$21.00	\$ 168.00	
012	2-11	Trimming and Cleanup	1.00	LS	\$1,000.00	\$ 1,000.00	\$4,000.00	\$ 4,000.00	\$3,000.00	\$ 3,000.00	\$2,600.00	\$ 2,600.00	\$8,500.00	\$ 8,500.00	
013	7-01	Drain Pipe 12 In. Diam.	10.00	LF	\$40.00	\$ 400.00	\$67.85	\$ 678.50	\$100.00	\$ 1,000.00	\$110.00	\$ 1,100.00	\$240.00	\$ 2,400.00	
014	7-06	Temporary Stream Diversion	15.00	DAY	\$950.00	\$ 14,250.00	\$1,700.00	\$ 25,500.00	\$200.00	\$ 3,000.00	\$1,100.00	\$ 16,500.00	\$475.00	\$ 7,125.00	
015	Division 8	Replace Fence in Kind	65.00	LF	\$50.00	\$ 3,250.00	\$85.50	\$ 5,557.50	\$80.00	\$ 5,200.00	\$44.00	\$ 2,860.00	\$120.00	\$ 7,800.00	
016	8-01.3(1)B	ESC Lead	30.00	DAY	\$23.00	\$ 690.00	\$132.00	\$ 3,960.00	\$100.00	\$ 3,000.00	\$100.00	\$ 3,000.00	\$42.50	\$ 1,275.00	
017	8-01.3(9)A3	High Visibility Silt Fence	50.00	LF	\$6.00	\$ 300.00	\$4.25	\$ 212.50	\$10.00	\$ 500.00	\$10.00	\$ 500.00	\$12.00	\$ 600.00	
018	8-01.5(2)	Erosion/Water Pollution Control	1.00	EST	\$6,000.00	\$ 6,000.00	\$6,000.00	\$ 6,000.00	\$6,000.00	\$ 6,000.00	\$6,000.00	\$ 6,000.00	\$6,000.00	\$ 6,000.00	
019	8-02	Seeding, Fertilizing, and Mulching	0.08	ACRE	\$30,000.00	\$ 2,400.00	\$16,000.00	\$ 1,280.00	\$25,000.00	\$ 2,000.00	\$50,000.00	\$ 4,000.00	\$18,000.00	\$ 1,440.00	
020	8-15	Streambed Mix	143.00	TON	\$70.00	\$ 10,010.00	\$75.40	\$ 10,782.20	\$90.00	\$ 12,870.00	\$126.00	\$ 18,018.00	\$87.50	\$ 12,512.50	
022	8-15	Hand Placed Riprap	0.33	CY	\$500.00	\$ 165.00	\$698.10	\$ 230.37	\$800.00	\$ 264.00	\$2,300.00	\$ 759.00	\$2,000.00	\$ 660.00	
023	8-24	Temporary Bank Stabilization Rock	2,579.00	SF	\$17.00	\$ 43,843.00	\$7.80	\$ 20,116.20	\$17.00	\$ 43,843.00	\$15.25	\$ 39,329.75	\$21.00	\$ 54,159.00	
024	9-03.12(4)	Gravel Backfill for Drain	7.50	CY	\$32.00	\$ 240.00	\$76.20	\$ 571.50	\$150.00	\$ 1,125.00	\$100.00	\$ 750.00	\$134.00	\$ 1,005.00	
025	9-14	Topsoil B	768.00	SY	\$6.00	\$ 4,608.00	\$8.35	\$ 6,412.80	\$11.00	\$ 8,448.00	\$10.50	\$ 8,064.00	\$11.00	\$ 8,448.00	
026	9-14.6(8)	High Visibility Construction Fencing	375.00	LF	\$2.00	\$ 750.00	\$2.25	\$ 843.75	\$4.00	\$ 1,500.00	\$3.00	\$ 1,125.00	\$4.00	\$ 1,500.00	
Base Bid Schedule A						\$ 128,346.00		\$ 135,721.82		\$ 168,370.00		\$ 183,049.75		\$ 236,497.50	
Tax 8.7%						\$ 11,166.10		\$ 11,807.80		\$ 14,648.19		\$ 15,925.33		\$ 20,575.28	
Total Bid Schedule A						\$ 139,512.10		\$ 147,529.62		\$ 183,018.19		\$ 198,975.08		\$ 257,072.78	

Vicinity Map





DATE: August 8, 2020
TO: Mayor Boudreau and City Council
FROM: William Bullock, PE – City Engineer
**SUBJECT: BID AWARD: 2020 Street Improvements Project (Pavement Overlay)
TS-2020-02**

RECOMMENDED ACTION:

Staff recommends a motion by Council to award the 2020 Street Improvements Project to Lakeside Industries Inc., of Anacortes, WA for Schedule A & B in the amount of \$ 923,403.06.

INTRODUCTION/BACKGROUND:

The City opened bids for the 2020 Street Improvements Project on April 9, 2020 with Lakeside Industries submitting the low bid for all three schedules. With the budget uncertainties arising from the COVID-19, Lakeside agreed to extend the bid acceptance deadline to August 15th (normally limited to 30 days after bid opening). This gave the City time to evaluate whether revenue projections would be sufficient to award the project. The primary revenue source for this work comes from the Transportation Benefit District; currently projected to have \$970,000 available for this program (2020).

FINDINGS/CONCLUSIONS:

Awarding Schedules A & B of the 2020 Street Improvements contract will rehabilitate pavement on the following streets:

1. N 20th Street (from E Section St to Broadway)
2. N 21st Street (from N 20th St to Broadway)
3. N 16th St (from Section to Broad St)
4. Freeway Drive (from Division to Cameron Way)
5. Little Mountain Road (within Little Mountain Park City Limits)

This will complete the bulk of our 2020 paving program. Schedule C included rehabilitating N 18th Street

(from Section to College Way) will not be included in this contract award and will likely be included in the 2021 list of Street Improvements.

RECOMMENDATION:

Motion to award the 2020 Street Improvements Project to Lakeside Industries Inc., of Anacortes, WA for Schedule A & B in the amount of \$ 923,403.06.

ATTACHED:

1. 2020 Street Improvement Project Bid Tab.



910 Cleveland Avenue
 Mount Vernon, WA 98273
 Phone: (360) 336-6204

LOWEST RESPONSIVE BIDDER

Called By: For:	City of Mount Vernon 2020 Street Improvements 1024 Cleveland Avenue Mount Vernon, WA 98273	Bidder's Name Address Phone Fax	1 Lakeside Industries PO Box 729 Anacortes, WA 98221 (360) 293-2168		2 Colacurcio Brothers, Inc. 3287 H St Road Blaine, WA 98230 (360) 332-4044		3 Granite Construction 7017 Everson Goshen Rd Everson, WA 98247 (360) 676-2450		4 Faber Corporation 131 E Grover St Lynden, WA 98264 (360) 354-3500		5 SRV Construction PO Box 507 Anacortes, WA 98221 (360) 675-7100	
By: Date:	CERTIFIED BID TABULATION Darin Christen, P.E. April 14, 2020											

Item No.	Description	Quantity	Unit	Unit Price	Amount	UnitPrice	Amount	Unit Price	Amount	UnitPrice	Amount	Unit Price	Amount
Schedule A - Base Bid													
A001	Mobilization	1	LS	\$78,000.00	\$ 78,000.00	\$95,000.00	\$ 95,000.00	\$60,000.00	\$ 60,000.00	\$83,495.00	\$ 83,495.00	\$117,000.00	\$ 117,000.00
A002	SPCC Plan	1	LS	\$775.00	\$ 775.00	\$300.00	\$ 300.00	\$1,000.00	\$ 1,000.00	\$1,006.00	\$ 1,006.00	\$250.00	\$ 250.00
A003	Project Temporary Traffic Control	1	LS	\$89,000.00	\$ 89,000.00	\$47,500.00	\$ 47,500.00	\$85,000.00	\$ 85,000.00	\$85,338.00	\$ 85,338.00	\$134,650.00	\$ 134,650.00
A004	Inlet Protection	36	EA	\$78.00	\$ 2,808.00	\$60.00	\$ 2,160.00	\$80.00	\$ 2,880.00	\$136.00	\$ 4,896.00	\$70.50	\$ 2,538.00
A005	Planing Bituminous Pavement	6,418	SY	\$3.37	\$ 21,628.66	\$2.80	\$ 17,970.40	\$2.80	\$ 17,970.40	\$2.00	\$ 12,836.00	\$3.50	\$ 22,463.00
A006	Roadway Excavation Incl. Haul	3,433	CY	\$34.00	\$ 116,722.00	\$32.30	\$ 110,885.90	\$31.00	\$ 106,423.00	\$41.00	\$ 140,753.00	\$47.00	\$ 161,351.00
A008	Construction Geotextile for Separation	1,125	SY	\$3.00	\$ 3,375.00	\$2.00	\$ 2,250.00	\$1.00	\$ 1,125.00	\$3.00	\$ 3,375.00	\$2.60	\$ 2,925.00
A009	Crushed Surfacing Base Course	520	TON	\$19.70	\$ 10,244.00	\$28.00	\$ 14,560.00	\$30.00	\$ 15,600.00	\$30.00	\$ 15,600.00	\$31.80	\$ 16,536.00
A010	Crushed Surfacing Top Course	2,048	TON	\$19.50	\$ 39,936.00	\$32.00	\$ 65,536.00	\$37.00	\$ 75,776.00	\$30.00	\$ 61,440.00	\$41.00	\$ 83,968.00
A011	Adjust and Protect or Re-Establish Survey Monument	7	EA	\$465.00	\$ 3,255.00	\$1,200.00	\$ 8,400.00	\$100.00	\$ 700.00	\$1,193.00	\$ 8,351.00	\$1,825.00	\$ 12,775.00
A012	Adjust Manhole and Replace Ring and Cover	29	EA	\$1,105.00	\$ 32,045.00	\$940.00	\$ 27,260.00	\$700.00	\$ 20,300.00	\$1,315.00	\$ 38,135.00	\$1,025.00	\$ 29,725.00
A014	Adjust Water Valve Box	4	EA	\$815.00	\$ 3,260.00	\$620.00	\$ 2,480.00	\$500.00	\$ 2,000.00	\$631.00	\$ 2,524.00	\$500.00	\$ 2,000.00
A015	HMA Cl. 1/2" Pg 64-222	4,988	TON	\$81.00	\$ 404,028.00	\$88.00	\$ 438,944.00	\$100.00	\$ 498,800.00	\$97.00	\$ 483,836.00	\$92.35	\$ 460,641.80
A016	Type 3 Induction Loop Vehicle Detector	9	EA	\$990.00	\$ 8,910.00	\$930.00	\$ 8,370.00	\$1,100.00	\$ 9,900.00	\$1,153.00	\$ 10,377.00	\$970.00	\$ 8,730.00
A017	Temporary Pavement Marking - Short Duration	4,377	LF	\$0.40	\$ 1,750.80	\$1.00	\$ 4,377.00	\$0.20	\$ 875.40	\$2.00	\$ 8,754.00	\$0.50	\$ 2,188.50
Subtotal Schedule A					\$ 815,737.46		\$ 845,993.30		\$ 898,349.80		\$ 960,716.00		\$ 1,057,741.30

Called By: For:	City of Mount Vernon 2020 Street Improvements 1024 Cleveland Avenue Mount Vernon, WA 98273	Bidder's Name Address Phone Fax	1 Lakeside Industries PO Box 729 Anacortes, WA 98221 (360) 293-2168	2 Colacurcio Brothers, Inc. 3287 H St Road Blaine, WA 98230 (360) 332-4044	3 Granite Construction 7017 Everson Goshen Rd Everson, WA 98247 (360) 676-2450	4 Faber Corporation 131 E Grover St Lynden, WA 98264 (360) 354-3500	5 SRV Construction PO Box 507 Anacortes, WA 98221 (360) 675-7100
By: Date:	CERTIFIED BID TABULATION Darin Christen, P.E. April 14, 2020						

Item No.	Description	Quantity	Unit	Unit Price	Amount	UnitPrice	Amount	Unit Price	Amount	UnitPrice	Amount	Unit Price	Amount
Schedule B - Additive													
B001	Mobilization	1	LS	\$4,000.00	\$ 4,000.00	\$11,000.00	\$ 11,000.00	\$16,000.00	\$ 16,000.00	\$19,159.00	\$ 19,159.00	\$7,500.00	\$ 7,500.00
B002	SPCC Plan	1	LS	\$300.00	\$ 300.00	\$300.00	\$ 300.00	\$500.00	\$ 500.00	\$1,006.00	\$ 1,006.00	\$150.00	\$ 150.00
B003	Project Temporary Traffic Control	1	LS	\$16,300.00	\$ 16,300.00	\$9,000.00	\$ 9,000.00	\$32,000.00	\$ 32,000.00	\$12,191.00	\$ 12,191.00	\$15,300.00	\$ 15,300.00
B004	Inlet Protection	6	EA	\$78.00	\$ 468.00	\$60.00	\$ 360.00	\$80.00	\$ 480.00	\$136.00	\$ 816.00	\$77.00	\$ 462.00
B005	Planing Bituminous Pavement	3,971	SY	\$3.60	\$ 14,295.60	\$2.90	\$ 11,515.90	\$3.20	\$ 12,707.20	\$2.00	\$ 7,942.00	\$2.50	\$ 9,927.50
B011	Adjust and Protect or Re-Establish Survey Monument	3	EA	\$465.00	\$ 1,395.00	\$1,200.00	\$ 3,600.00	\$100.00	\$ 300.00	\$1,193.00	\$ 3,579.00	\$1,800.00	\$ 5,400.00
B012	Adjust Manhole and Replace Ring and Cover	8	EA	\$1,105.00	\$ 8,840.00	\$1,000.00	\$ 8,000.00	\$700.00	\$ 5,600.00	\$1,315.00	\$ 10,520.00	\$1,050.00	\$ 8,400.00
B014	Adjust Water Valve Box	9	EA	\$815.00	\$ 7,335.00	\$620.00	\$ 5,580.00	\$500.00	\$ 4,500.00	\$631.00	\$ 5,679.00	\$500.00	\$ 4,500.00
B015	HMA Cl. 1/2" Pg 64-222	556	TON	\$83.50	\$ 46,426.00	\$91.50	\$ 50,874.00	\$100.00	\$ 55,600.00	\$100.00	\$ 55,600.00	\$96.00	\$ 53,376.00
B016	Type 3 Induction Loop Vehicle Detector	7	EA	\$990.00	\$ 6,930.00	\$930.00	\$ 6,510.00	\$1,100.00	\$ 7,700.00	\$1,176.00	\$ 8,232.00	\$978.00	\$ 6,846.00
B017	Temporary Pavement Marking - Short Duration	860	LF	\$1.60	\$ 1,376.00	\$3.00	\$ 2,580.00	\$0.20	\$ 172.00	\$2.00	\$ 1,720.00	\$0.50	\$ 430.00
Total Schedule B					\$ 107,665.60		\$ 109,319.90		\$ 135,559.20		\$ 126,444.00		\$ 112,291.50

Schedule 3 - Additive													
C001	Mobilization	1	LS	\$6,000.00	\$ 6,000.00	\$28,000.00	\$ 28,000.00	\$22,000.00	\$ 22,000.00	\$25,364.00	\$ 25,364.00	\$18,250.00	\$ 18,250.00
C002	SPCC Plan	1	LS	\$200.00	\$ 200.00	\$300.00	\$ 300.00	\$500.00	\$ 500.00	\$1,006.00	\$ 1,006.00	\$125.00	\$ 125.00
C003	Project Temporary Traffic Control	1	LS	\$29,500.00	\$ 29,500.00	\$30,000.00	\$ 30,000.00	\$35,000.00	\$ 35,000.00	\$24,382.00	\$ 24,382.00	\$44,000.00	\$ 44,000.00
C004	Inlet Protection	21	EA	\$78.00	\$ 1,638.00	\$60.00	\$ 1,260.00	\$80.00	\$ 1,680.00	\$136.00	\$ 2,856.00	\$77.00	\$ 1,617.00
C005	Planing Bituminous Pavement	10,814	SY	\$3.25	\$ 35,145.50	\$2.65	\$ 28,657.10	\$2.80	\$ 30,279.20	\$2.00	\$ 21,628.00	\$3.00	\$ 32,442.00
C011	Adjust and Protect or Re-Establish Survey Monument	2	EA	\$465.00	\$ 930.00	\$1,200.00	\$ 2,400.00	\$100.00	\$ 200.00	\$1,193.00	\$ 2,386.00	\$1,800.00	\$ 3,600.00
C012	Adjust Manhole and Replace Ring and Cover	17	EA	\$1,105.00	\$ 18,785.00	\$940.00	\$ 15,980.00	\$700.00	\$ 11,900.00	\$1,315.00	\$ 22,355.00	\$1,050.00	\$ 17,850.00
C014	Adjust Water Valve Box	8	EA	\$815.00	\$ 6,520.00	\$620.00	\$ 4,960.00	\$500.00	\$ 4,000.00	\$631.00	\$ 5,048.00	\$500.00	\$ 4,000.00
C015	HMA Cl. 1/2" Pg 64-222	1,515	TON	\$80.00	\$ 121,200.00	\$87.00	\$ 131,805.00	\$100.00	\$ 151,500.00	\$95.00	\$ 143,925.00	\$92.00	\$ 139,380.00
C016	Type 3 Induction Loop Vehicle Detector	7	EA	\$990.00	\$ 6,930.00	\$930.00	\$ 6,510.00	\$1,100.00	\$ 7,700.00	\$1,176.00	\$ 8,232.00	\$978.00	\$ 6,846.00
C017	Temporary Pavement Marking - Short Duration	2,685	LF	\$0.61	\$ 1,637.85	\$1.50	\$ 4,027.50	\$0.20	\$ 537.00	\$2.00	\$ 5,370.00	\$0.50	\$ 1,342.50
Total Schedule B					\$ 228,486.35		\$ 253,899.60		\$ 265,296.20		\$ 262,552.00		\$ 269,452.50

BID TOTAL (Schedule A + B + C)	\$ 1,151,889.41	\$ 1,209,212.80	\$ 1,299,205.20	\$ 1,349,712.00	\$ 1,439,485.30
BID TOTAL (Schedule A + B)	\$ 923,403.06	\$ 955,313.20	\$ 1,033,909.00	\$ 1,087,160.00	\$ 1,170,032.80
BID TOTAL (Schedule A + C)	\$ 1,044,223.81	\$ 1,099,892.90	\$ 1,163,646.00	\$ 1,223,268.00	\$ 1,327,193.80



DATE: August 8, 2020
TO: Mayor Boudreau and City Council
FROM: William Bullock, PE – City Engineer
SUBJECT: KULSHAN TRAIL SAFETY LIGHTING PROJECT – PSE LIGHTING AGREEMENT

RECOMMENDED ACTION:

Request Council authorize the Mayor to enter into an agreement with Puget Sound Energy – Pole Services for the installation and ongoing maintenance of the lighting fixtures on the Kulshan Trail Safety Lighting Project.

INTRODUCTION/BACKGROUND:

The City began design on the Kulshan Trail Safety Lighting Project in April, 2020 with Transpo Group USA. Puget Sound Energy – Pole Services (formerly Intolight) is the contract agency for installation and maintenance of street lighting throughout the City. This project was approved for construction obligation by WSDOT in July and Public Works is preparing to advertise for construction shortly. Construction will involve a contract to install conduit and service to each pole location with a general contractor, yet to be determined, and installation and wiring of the lighting fixtures by PSE – Pole Services (the subject of this service agreement).

Federal funding for this project (TAP program) was prioritized through Skagit Council of Governments; total award amount of \$295,000 (Design - \$25,000 and Construction - \$270,000).

Current Construction Funding:

City Contract Work: \$142,532
PSE Service Agreement: \$127,757
Total Est Construction: \$270,290

FINDINGS/CONCLUSIONS:

The current expectation is to complete construction in October/November to 2020. The service agreement with PSE – Pole Services is a critical part of the construction effort for this project and is a typical component of all City construction projects requiring street light installation or modification with few exceptions.

RECOMMENDATION:

Motion to authorize the Mayor to enter into an agreement with Puget Sound Energy – Pole Services for the installation and ongoing maintenance of the lighting fixtures on the Kulshan Trail Safety Lighting Project in the amount of (installation) \$127,757.67 and a monthly charge of \$122 (ongoing maintenance and power utility cost).

ATTACHED:

1. PSE Street Lighting Agreement

EXHIBIT A**Form of Custom Street Lighting Order**

PROJECT NAME: Kulshan Trial City of Mt Vernon
LOCATION: Kulshan Trail, Mt Vernon

Order #: 105094726

CUSTOM STREET LIGHTING ORDER – SCHEDULE 51

This Custom Street Lighting Order (this “Order”), dated July 2, 2020, is made and entered into by and between PUGET SOUND ENERGY, INC. (“PSE”) and City of Mt Vernon (“Customer”) (each a “Party,” and collectively the “Parties”) under and pursuant to the terms of that certain Master Lighting Services Agreement No. 0013, dated April 2, 2018, between the Parties (the “Agreement”). This Order covers certain Lighting and Construction Services authorized by this Order and is, along with the associated Schedule, incorporated into and made a part of the Agreement. Unless specifically defined otherwise herein, terms used in this Order with initial letters capitalized have the meanings given them in the Agreement. The Parties agree as follows:

ASSOCIATED SCHEDULE:

This Order is also entered into between the Parties in accordance with PSE’s Schedule 51, Electric Tariff G, and any future modifications of or changes to such Schedule as may be approved by the WUTC.

LIGHTING SERVICES DESCRIPTION:

The installation charge of the listed lighting units was estimated to be \$127,757.67.

Description:

PSE to install 25) 55W LED Black Dayforms on 25) 15' black concrete exposed octagon poles. No dirtwork is included. No flagging is included. Buy America products/program.

CONSTRUCTION SERVICES DESCRIPTION:

PSE to install 25) 55W LED Black Dayforms on 25) 15' black concrete exposed octagon poles. No dirtwork is included. No flagging is included. All materials shall meet 23 CFR 635.410 (FHWA) Buy America Program.

BILLING:

Billing under this Order will be in accordance with the terms and conditions contained in the terms & conditions of Schedule 51, Electric Tariff G, and the Agreement, and any future modifications of or changes to such Schedule as may be approved by the WUTC.

The basis of the monthly energy charge for the Lighting Services as currently constituted under Rate Schedule 51 is as follows:

Monthly facilities cost is equal to the Value of the System (VOS) x facilities rate. VOS is the estimated installation cost less applicable taxes. Monthly energy cost is equal to the energy rate x number of Units. Energy rate is determined by wattage of unit as currently constituted under the rate schedule.

Value of System: \$ 115,398.49 Facilities Rate: .074

Units and Wattage breakdown:
25) 55W LED @ \$1.50 ea = \$37.50

The total monthly charge for this installation is as follows:

Monthly facilities charge	\$85.40
Monthly energy charge	\$37.50
Total monthly charge:	\$122.90

For Construction Services and Costs, these costs will be billed as follows:

Upon completion of the Construction Services, PSE shall provide the Customer with an invoice for the Construction Costs incurred by PSE. Customer shall remit payment to PSE for the Construction Costs within thirty (30) days of receiving the invoice.

SERVICE TERM/REMOVAL AND SALVAGE COSTS:

Service under this Order is effective for a minimum of fifteen (15) years from the date of this Order (the “Base Term”) unless earlier terminated as provided for in the Agreement. If this Order is terminated for any reason during the Base Term, the Customer shall be responsible for all costs of removal of any Facilities associated with the Services, as well as any costs associated with PSE’s efforts to salvage the removed Facilities, as set forth in the applicable Schedule. After the expiration of the Base Term, this Order shall continue on a year-to-year basis until terminated by either Party upon at least one (1) year’s notice in writing (each, an “Extended Term” and, together with the Base Term, the “Term”) unless earlier terminated as provided for elsewhere in this Agreement. The Term may be adjusted by PSE in writing for existing systems purchased by PSE, based on the estimated remaining life and purchase price. If this Order is terminated during any Extended Term, the Customer shall not be responsible for the costs of removal of any Facilities associated with the Services, or any costs associated with PSE’s efforts to salvage the removed Facilities.

ADDITIONAL TERMS:

1. To transfer the energy and maintenance monthly billing, the new billing party must contact PSE in writing.
2. Non-standard facilities are not kept in PSE inventory for the purpose of maintenance; therefore replacement of non-standard components may not be within the same time as replacement of standard components.

Are non-standard components included in this Order? Yes No

3. The monthly billing party for the energy and maintenance will be: **City of Mt Vernon**

This Order, executed by Customer’s duly authorized representative as of the date first written above, is for the Lighting Services described above delivered under PSE’s Schedule 51.

Customer: City of Mt Vernon

Signature: _____

Date: _____

Printed Name: Jill Boudreau

Title: Mayor - City of Mount Vernon

Company: **Puget Sound Energy, Inc.**

Signature: _____

Date: _____

Printed Name: _____

Title: _____