



**CITY OF WASHOUGAL
CITY COUNCIL WORKSHOP AGENDA
Monday, January 27, 2020
5:00 PM**

I. CALL TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS

IV. NEW BUSINESS

- A. Finance: Indigent Defense Contract Renewal**
- B. Community Development: Professional Services Agreement with Wallis Engineering for Development Review Engineering**
- C. Community Development: Resolution to Surplus Skyridge Easement**
- D. Public Works: Cell Tower Lease with CCATT LLC**
- E. Administration: Update to Special Event Permit Code**

V. PUBLIC COMMENTS

VI. REPORTS AND COMMUNICATIONS

- A. CITY MANAGER**
- B. MAYOR**
- C. CITY COUNCIL**

VII. ADJOURNMENT

UPCOMING MEETINGS: Monday, February 10, 2020 - Workshop at 5:00 pm and Council at 7:00 pm

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

1/27/2020

SUBJECT:

Indigent Defense Contract Renewal

DEPT. OF ORIGIN:

Finance

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

- ▢ **Indigent Defense Contract Renewal**
- ▢ **Indigent Defense Contract for Conflict Cases Renewal**

EXPENDITURE REQUIRED:

BUDGETED:

APPROPRIATION REQUIRED:

SUMMARY STATEMENT

RECOMMENDED ACTION

CONTRACT FOR PUBLIC DEFENSE SERVICES

This Agreement made and entered by and between the CITY OF WASHOUGAL, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as “City”; and JACK PETERSON, ATTORNEY AT LAW, P.C., hereinafter referred to as “Contractor”.

WHEREAS, the City has a constitutionally mandated responsibility to provide public defender services and desires to have said legal services performed for eligible persons entitled to representation in the City of Washougal as authorized by law; and

WHEREAS, the City desires to engage the Contractor to provide Legal Services and other related professional services for the City as the City’s Primary Public Defender. Contractor has agreed to offer its professional services to perform said work; and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by the City, the State, and the Supreme Court.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform, in a satisfactory and proper manner, as determined by the City, the services hereafter set forth in connection with this Agreement:

SECTION I DEFINITIONS

The following definitions control the interpretation of this Agreement:

a. The term “Eligible Client” shall mean a defendant, parent, juvenile deemed to be handled as an adult or any other person who has been determined by a finding by the Court to be entitled to a court-appointed attorney, pursuant to RCW 10.102.20.

b. The term “Represented Services” shall mean the services for which the City is to pay the Contractor. Representational services include lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and legal services including, but not limited to, interviews of clients and potential witnesses, legal research, preparation and filing of pleadings and motions, negotiations with the City Prosecutor or other agencies and the Court regarding possible dispositions, and preparation for and appearance at all court hearings, trials and other proceedings.

c. The term “Case” shall mean representation of one person per criminal transaction or incident, for which the Contractor has been appointed by the Court or Corrections, and for whom the Contractor files a Notice of Appearance with the Court. Multiple counts stemming from one criminal transaction or incident shall be deemed to constitute one case, even if cited on multiple charging documents with multiple case numbers. Each case is counted only once, irrespective of any subsequent reappointments pursuant to a failure to appear. Cases will be counted at the time of first appointment. Cases subsequently conflicted or where a private attorney is hired, will be noted on the next report and will not be counted as a case assigned to a public defender.

d. The term “Disposition” shall mean 1) the dismissal of charges, 2) the entering of an order of deferred prosecution, 3) imposition of sentence, and 4) deferral of any of the above coupled with any other hearing on that case number, including but not limited to misdemeanor probation review that occurs within thirty (30) days of sentence, deferral of sentence, or the entry of an order of deferred prosecution.

e. The term “Court” shall mean the Washougal Municipal Court a.k.a. Camas/Washougal Municipal Court.

f. The term “Other Litigation Expenses” shall mean those expenses which are not part of the Agreement with the Contractor including expert witness services or language translators.

g. The term “Misappropriation of Funds” shall mean the use of funds received pursuant to this Agreement for purposes other than those sanctioned by this Agreement and allowed by law or ethics rules.

All other terms are intended to have a plain and ordinary meaning with a definition that can be derived from any modern English dictionary.

SECTION II

MINIMUM QUALIFICATIONS FOR CONTRACTOR ATTORNEYS

The Contractor agrees to utilize attorneys who satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court. Contractor may use Rule 9 interns as part of the indigent defense representation with the expectation that duly licensed attorneys will closely monitor all Rule 9 intern work and Contractor shall not allow Rule 9 interns to represent Defendants at trial.

SECTION III

PROFESSIONAL CONDUCT

The Contractor shall provide the services of attorneys and staff members in compliance with all of the applicable laws, court rules, and administrative regulations of the State of Washington, the United States of America, the Washougal Municipal Code, and the Washington State Rules for Professional Conduct (RPC).

Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Contractor with respect to any client wherein the attorney-client relationship has been established pursuant to the terms of this Contract.

Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Contractor, or any such confidential communications made to agents or employees of the Contractor for such attorney, the advice given by an attorney to a client, or any other statements and materials privileged from disclosure in a court of law.

Attorneys and staff employed by the Contractor shall not solicit or accept any compensation, gifts, gratuities or services from any client.

SECTION IV **DUTIES OF CONTRACTOR**

a. In order to perform its duties and responsibilities under the Contract, the Contractor shall have the power and duty to:

1. Hire all Contractor personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payments of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend, remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging in or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Contractor;
5. Accept and represent and provide Represented Services for all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with the court rules and the provisions stated herein; and
6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period on which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client=s failure to appear.

b. All indigent criminal defendants charged with misdemeanors and/or gross misdemeanors under the ordinances of the City of Washougal or under state law within the City of Washougal and who qualify for court appointed counsel after being screened during the period

of this Contract shall be referred to Contractor. The Contractor shall provide legal representation and Represented Services for each of these defendants, except in the case of legal conflict, from the time of screening for eligibility through trial, sentencing, and violations of sentences, for which they have been appointed by the Court.

c. The Contractor shall receive and respond in a timely manner, at all times, to all telephone calls from indigent persons whom Contractor has been appointed to represent, and to the City's attorneys to discuss cases, and to the Court and court staff. The Contractor shall not subcontract this requirement.

The Contractor agrees to make reasonable efforts to continue with the initial attorney assigned to a client for each case assigned. The Contractor shall designate one attorney to be the main contact person concerning all clients appointed, and shall provide the contact information for this attorney to the Prosecuting Attorney. Nothing in this section shall prohibit the Contractor from making necessary staff changes or staff rotations at reasonable intervals.

The Contractor agrees that an attorney will make contact with all clients as soon as possible, and no later than five (5) working days from notification of case assignment.

d. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. The Contractor shall notify the Court and City Prosecutor immediately of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Contractor shall provide the Court and City Prosecutor with a written explanation stating the basis for the conflict in this notification.

To the extent it is practicable, Contractor shall have the capacity to communicate with clients directly in their primary language with the assistance of court appointed certified interpreters.

e. The Contractor shall convey all plea offers to clients in writing, in the client's preferred language.

f. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel. The parties agree and expect that the Contractor will employ necessary support staff services for its attorneys.

g. Contractor shall meet with the City Prosecutor for pre-trial negotiations for the purpose of negotiating cases at all regularly scheduled pre-trial hearing dates.

h. Contractor shall comply with all appearances and duties as may be required by the Court and/or the City for the term of this Agreement at no additional expense to the City.

i. All legal services rendered by Contractor shall be of the highest quality and shall be provided at all stages of each appropriate case.

j. The Contractor shall coordinate investigation services on those cases requiring investigation. The Contractor shall also coordinate expert witnesses for those cases requiring expert witness testimony. The provider shall petition the Municipal Court Judge for the expenditure of public funds prior to hiring an investigator or expert witness. Invoices for such services shall be sent directly to the City by the subcontractors; the Contractor will not be held liable for those expenses.

k. The Contractor agrees to utilize Notice of Appearance Forms provided by the Court which includes a notice of statement that Defendants are obligated to pay an Indigent Defense Recovery Fee. The Contractor shall not impede the Court from collecting such fees. The Contractor's duty of representation shall not be affected in any way by the payment or non-payment of such fees.

l. The City and Contractor recognize that the State and/or Washington State Bar Association has adopted, or may adopt new court rules requiring defense counsel to be present at all first appearances and arraignment hearings and read each citation and the Affidavit of Probable. The Contractor agrees to attend all such hearings, as required.

m. The Contractor agrees to provide representational services for clients at Clark County specialty courts including, but not limited to: Substance Abuse Court, Mental Health Court, Domestic Violence Court, and Veteran's Court. Contractor may withdraw after a client has been accepted into a specialty court, but only after a notice of substitution of counsel has been filed with the Court by a defense attorney assigned to the particular specialty court.

n. Contractor agrees to comply with the Standards for Indigent Defense as provided in the Washington State Criminal Rules for Courts of Limited Jurisdiction, and as provided by the Washington Supreme Court and by the City of Washougal, as those Standards are currently adopted or as they may be adopted, and as they may be amended in the future, including compliance with the case load limits outlined therein and the timely filing of the Certificate of Appointed Counsel of Compliance with Standards Required by CrRLJ 3.1.

SECTION V

MISCELLANEOUS CONSIDERATION

a. In recognition of the following policies and goals, the expedient administration of justice, an attorney's duty to act with diligence (RPC 1.3) and to expedite litigation (RPC 3.2), the need for indigent defendants to actively participate in the preparation of their defense, and the wasteful expense of judicial prosecution and defense resources when indigent defendants fail to maintain regular contact with their appointed counsel and/or fail to appear at critical stages in the criminal process; Contractor agrees to use all good faith efforts to secure both continuous contact with defendants whom Contractor is appointed to represent and also regular attendance by clients at critical stages in the defendant's case. Such good faith efforts shall expressly include, but not be limited to, the following measures:

1. Advising clients that regular and continuous contact is necessary to the preparation of their defense, and employing reasonable means to secure and maintain such contact;

2. Clients shall be notified in advance of the date, time and location of all critical stages in the process of the client's particular case including, but not limited to, pretrial conferences, omnibus or other pretrial motions, readiness hearings, and trial. Offers shall be extended in writing to clients within five (5) business days of receipt from the City Prosecutor. In any case, notification shall be provided early enough that the client has time to prepare for each stage;

3. Advising clients that appearance at all regularly scheduled pretrial hearings (both pretrial and mandatory pretrial) with the Contractor is required for effective assistance in the client's defense and encouraging such attendance; and

4. Timely notification of the Court when clients fail to make regular and continuance contact, as provided by the guidelines referred to in this subsection (a) above.

b. The Contractor is expected to work with the City as needed to develop and set general policies and administrative guidelines for the provision of public defense services to the City.

c. The Contractor shall make arrangements with jail and court staff to inform Contractor when a Defendant on a Washougal case is being held in custody for any reason, including but not limited to a newly filed case, a probation violation, or warrant. The Contractor shall then meet with said Defendants in custody as soon as practicable at the jail.

SECTION VI **RECORDS, REPORTS AND AUDITS**

a. All records shall be maintained by the Contractor. The Contractor shall maintain systems of internal control which conform to proper law office management and generally accepted accounting principles.

The Contractor must ensure that the City has full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the City may deem necessary, the Contractor shall provide to the City right of access to its facilities, including those of any subcontractor, to auditing records, data, invoices, materials, payrolls and other data relating to all matters covered by this Contract. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Contractor must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege.

The Contractor shall maintain such data and records in an accessible location and condition and shall provide said data and records to the City for a period of not less than ten (10)

years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Contractor agrees to cooperate with the City or its agent in the evaluation of the Contractor's performance under this Contract and to make available information reasonably required by such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with RCW Chapter 42.17.

b. The Contractor shall maintain a case-reporting and management information system which shall include the number, type, and disposition of indigent cases.

c. In addition to others statistics the City may require, Contractor shall differentiate the:

1. Number and nature of all cases;
2. Name of the Defendant, and case number(s);
3. Dates cases were assigned;
4. Defendants for which cases are currently unresolved or pending; and
5. Any other information which the City may deem appropriate.

d. The Contractor shall report the following annual activity by January 31st of each contract year:

1. An accounting of all declined cases, including the number of cases conflicted out to other attorneys;
2. An accounting of the number of cases where the initial contact attorney also represented the client in court; and
3. Proof of insurance.

SECTION VII **DISCRIMINATION PROHIBITED**

With respect to matters covered by this Agreement, there shall be no unlawful discrimination by the Contractor of the City against any person because of race, color, creed, gender, national origin, physical or mental disability, or sexual orientation. The Contractor and the City will comply with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, the City's anti-discrimination policies, and all requirements imposed by or pursuant to regulations of the Department of Justice or EEOC issued pursuant to those titles, to the end that

no person shall be excluded from participation or deprived of benefits or otherwise subject to discrimination under the defender system because of race, color, creed, gender, national origin, physical or mental disability, or sexual orientation.

SECTION VIII **CONFLICTS OF INTEREST**

The Contractor agrees to screen all cases for conflicts of interest upon assignment and throughout the discovery process. In the event the Contractor cannot represent a client because of an actual potential conflict of interest under the Washington Code of Professional Responsibility, then the Contractor shall arrange for the City's Conflict Public Defense Attorney to represent the client. The City shall be responsible for negotiating a Conflict Public Defense Attorney Agreement and the cost of such representation shall be paid for by the City. The Contractor shall notify the City and the Court of all potential conflicts of interest as soon as encountered. The Contractor will refer to the Washington State Rules of Professional Responsibility, opinions of the state judiciary, and to the American Bar Association Standards of Criminal Justice to determine the existence and appropriate resolution of conflicts.

The Contractor, each attorney, and Rule 9 legal intern employed or retained by the Contractor reserve the right to decline to advise, represent, appear for, or act for any particular person, whether or not indigent or otherwise eligible, but only for good cause shown. Good cause includes, but is not limited to, conflicts of interest which preclude the Contractor or an attorney or Rule 9 legal intern retained by the Contractor from acting pursuant to the Washington Rules of Professional Conduct. The Contractor, each attorney, or Rule 9 legal intern employed or retained by the Contractor, reserve the right to withdraw from representing any person or entity, whether or not indigent or otherwise eligible, providing the consent of the Court, if required, is first obtained. The Contractor warrants that declinations will not be made except as required by law or legal ethics, and in the event of a declination, will immediately notify the Court as well as the City.

SECTION IX **COMPLAINTS ABOUT LEGAL SERVICES**

The Contractor shall have a method to respond promptly to client complaints which will include informing clients of the complaint process. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the City of Washougal should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. This information may be provided in a brochure which also lists the clients' rights and responsibilities, to be given to the client's upon the filing of a Notice of Appearance. The Contractor agrees to submit any such publication to the City Attorney for approval prior to its implementation.

The City Administrator or his/her designee may contact some of the Contractor's clients on a random basis, after the case has been completed, for the purpose of monitoring the quality/level of satisfaction of services that were provided.

In the case a complaint is made to the City by a client with respect to the quality of legal services rendered under this Agreement, the complaint shall be first directed to the Contractor with a copy to the City Administrator or designee. If the client believes that he or she has not received an adequate response, the City Administrator or his/her designee shall evaluate the legitimacy of the complaint. The complaining client shall be informed of the disposition of his/her complaint as soon as is reasonably possible.

The Contractor shall submit a preliminary written response to any written complaints concerning services provided by the employees of the Defender or the Defender itself shall be submitted to the City Administrator within three (3) working days of the date the complaint is received by the City Administrator or designee. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Contractor.

SECTION X **NO ASSIGNMENT**

The Contractor shall not assign or subcontract any portion of this Agreement without prior written consent of the City of Washougal.

SECTION XI **CLIENT ACCESS**

The Contractor shall locate and operate its service facilities, extend the assistance of private practitioners and structure its outreach efforts in a manner that facilitates access for clients. The Contractor shall comply with federal and state laws regarding access to its facilities, and will eliminate barriers which limit access for the handicapped.

SECTION XII **NON-WAIVER OF RIGHTS AND REMEDIES**

In no event shall payment or performance by either party hereto constitute or be construed to be a waiver by either party of any breach of covenant or default which may then exist on the part of the other party, and the making of any such payment or the carrying out of any such performance while breach or default then existed shall in no way impair or prejudice any right or remedy available to the paying or performing party with respect to such breach or default.

SECTION XIII **RELATIONSHIP OF PARTIES**

The Contractor, its subconsultants, agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, its subconsultants, agents and employees, shall not, as a result of this Agreement, have access to leave, retirement, insurance, bonding or any other benefits afforded to City employees. The

Contractor and its subconsultants, agents and employees shall not have the authority to bind the City any way except as may be specifically provided herein.

SECTION XIV
CITY NOT OBLIGATED TO THIRD PARTIES

The City shall not be liable to any person or entity other than the Contractor because of this Agreement, except that the City will pay expert witness fees and additional associated services necessary in any case after a voucher has been submitted and approved by the Court in accordance with CrRLJ 3.1(f).

SECTION XV
CITY BUSINESS, OCCUPATION LICENSE & E-VERIFY PROGRAM

Prior to performing work under this Agreement, Contractor shall secure a City of Washougal Business and Occupation License under WMC 5.04.020.

SECTION XVI
LIABILITY AND HOLD HARMLESS

The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder. All work shall be done at the Contractor's risk. The Contractor shall defend, save and hold harmless the City, its officers, agents, employees and assigns from any claims, damages, losses, liability, expenses, and attorney's fees which arise from the negligent performance of this Agreement, except those which arise from the sole negligent acts or omissions of the City, its officers, agents, employees or assigns.

SECTION XVII
LIMITED PRIVATE PRACTICE OF LAW

The Contractor shall devote all time necessary to properly perform this Agreement. The Contractor is not limited from maintaining a private law practice. However, the Contractor shall not allow its private practice of law, during the term of this Agreement, to conflict with the Contractor's responsibilities and duties under this Agreement.

SECTION XVIII
INSURANCE

a. Commercial General Liability. Professional Liability and Malpractice Insurance. The Contractor shall obtain and keep in force Commercial General Liability insurance with a limit not less than \$100,000.00 for each occurrence, Professional Liability (errors and omissions), to include malpractice coverage, not less than \$500,000.00 for each occurrence, and a \$1,000,000.00 General Aggregate Limit, for the entire term of this Agreement. Malpractice insurance must include coverage for ineffective assistance of counsel.

b. Worker's Compensation. The Contractor shall take out and maintain during the life of this Agreement, worker's compensation insurance for all its employees engaged in work under this Agreement who are required to be so covered by the laws of the State of Washington.

c. Employment Security. The Contractor shall comply with all employment security laws of the state in which services are provided, and shall timely make all required payments in connection therewith.

d. Liability. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. The Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement, including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

e. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity of the paragraph.

SECTION XIX **DURATION OF CONTRACT**

The Contractor shall accept all appointments from February 1, 2020 through January 31, 2022. It will be the Contractor's duty to complete all cases which had been assigned to it during the term of this Agreement, without any additional compensation even though this agreement has ended. The City reserves the right to extend this Agreement for additional one-year or more terms, by mutual agreement of both parties.

SECTION XX **PAYMENT**

a. In consideration for the Contractor's performance of the Representative Services and duties listed herein, the City will pay the Contractor \$4,000 per month for the first year, and \$4,100 per month for the second year of this Contract.

b. In addition to the monthly payment, the Contractor shall be compensated at a rate of \$350.00 per case taken to jury trial. For the purposes of this Contract, a "jury trial" is deemed to have occurred after Voir Dire. Contractor shall submit billings each month. There will be no

additional payment for pre-trial motions or non-jury trials.

c. In the event of Contractor's failure to substantially comply with any items and conditions of this Agreement or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination.

SECTION XXI **AMENDMENTS**

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between the City and the Contractor and shall be incorporated in written amendments to the Agreement.

SECTION XXII **SCOPE OF CONTRACT**

This Contract incorporates all the agreements, covenants and understanding between the parties hereto. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.

SECTION XXIII **GOVERNING LAW AND VENUE**

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

SECTION XXIV **TERMINATION**

This Agreement may be terminated for any of the following reasons:

a. If in the sole discretion of the City, the City determines the Contractor is not providing adequate legal services. Inappropriate or unprofessional behavior under this Contract may be taken as evidence of inadequate legal services;

b. The Contractor's professional liability insurance is canceled. The Contractor shall be responsible for and maintain Professional liability insurance until the completion of all cases previously assigned to the Contractor, as set forth in Section XVIII above;

c. Either party may terminate this Agreement without cause upon 120 days written

notice to the other party, provided the Contractor complies with the requirement to continue services to those Defendants appointed herein until those cases have been fully resolved; or

d. If during the term of this Agreement, changes occur in Washington State law which mandate the City to provide indigent defense services by a method other than contracting, the City may terminate this Agreement by 15 (fifteen) days' written notice to the Contractor.

SECTION XXV
NOTICES

All notices to be given under this Contract shall be hand delivered or mailed first class to the parties at the following addresses, unless a new address is given to the other party in writing:

City: City Manager
City of Washougal
1701 C Street
Washougal, WA 98671

Contractor: Jack Peterson
Jack Peterson, Attorney at Law, P.C.
1014 Franklin Street, Suite 220
Vancouver, WA 98660

SECTION XXVI
SEVERABILITY

If any provision of this Agreement is invalid, the remainder shall not be affected if such remainder will then continue to conform to the terms and requirements of applicable law.

DATED this _____ day of February, 2020.

CITY OF WASHOUGAL,
a Municipal Corporation

JACK PETERSON, ATTORNEY AT LAW,
P.C.

MOLLY COSTON, Mayor

JOHN "JACK" PETERSON, President

Attest:

Approved as to form:

JENNIFER FORSBERG, City Clerk

KEN WOODRICH, City Attorney

CONTRACT FOR CONFLICT PUBLIC DEFENSE SERVICES

This Agreement made and entered into by and between the CITY OF WASHOUGAL, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as “City;” and HAZEN, HESS & OTT, PLLC, hereinafter referred to as “Contractor.”

WHEREAS, the City has a constitutionally mandated responsibility to provide public defender services and desires to have said legal services performed for eligible persons entitled to representation in the City of Washougal as authorized by law; and

WHEREAS, the City desires to engage the Contractor to provide Legal Services and other related professional services for the City as the City’s Conflict Public Defender, when there is a conflict with the City’s Primary Public Defender. Contractor has agreed to offer its professional services to perform said work; and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by the City, the State, and the Supreme Court.

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b. The term “Represented Services” shall mean the services for which the City is to pay the Contractor. Representational services include lawyer services and appropriate support staff services, investigation and appropriate sentencing advocacy and legal services including, but not limited to, interviews of clients and potential witnesses, legal research, preparation and filing of pleadings and motions, negotiations with the City Prosecutor or other agencies and the Court regarding possible dispositions, and preparation for and appearance at all court hearings, trials and other proceedings.

c. The term “Case” shall mean representation of one person per criminal transaction or incident, for which the Contractor has been appointed by the Court or Corrections, and for whom the Contractor files a Notice of Appearance with the Court. Multiple counts stemming from one criminal transaction or incident shall be deemed to constitute one case, even if cited on multiple charging documents with multiple case numbers. Each case is counted only once, irrespective of any subsequent reappointments pursuant to a failure to appear. Cases will be counted at the time of first appointment. Cases subsequently conflicted or where a private attorney is hired, will be noted on the next report and will not be counted as a case assigned to a public defender.

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e. The term “Court” shall mean the Washougal Municipal Court a.k.a. Camas/Washougal Municipal Court.

f. The term “Other Litigation Expenses” shall mean those expenses which are not part of the Agreement with the Contractor including expert witness services or language translators.

g. The term “Misappropriation of Funds” shall mean the use of funds received pursuant to this Agreement for purposes other than those sanctioned by this Agreement and allowed by law or ethics rules.

All other terms are intended to have a plain and ordinary meaning with a definition that can be derived from any modern English dictionary.

SECTION II

MINIMUM QUALIFICATIONS FOR CONTRACTOR ATTORNEYS

The Contractor agrees to utilize attorneys who satisfy the minimum requirements for practicing law in the State of Washington as determined by the Washington State Supreme Court. Each attorney representing eligible clients assigned pursuant to this Agreement shall have a minimum of two (2) years experience practicing criminal law in Washington State. Failure on the part of the Contractor to use attorneys with the appropriate amount of experience, and to supervise appropriately its attorneys shall be considered a material breach of this Agreement.

SECTION III

PROFESSIONAL CONDUCT

The Contractor shall provide the services of attorneys and staff members in compliance with all of the applicable laws, court rules, and administrative regulations of the State of Washington, the United States of America, the Washougal Municipal Code, and the Washington

State Rules for Professional Conduct (RPC).

Nothing in this Contract shall be construed to impair or inhibit the exercise of independent, professional judgment by an attorney employed by the Contractor with respect to any client wherein the attorney-client relationship has been established pursuant to the terms of this Contract.

Nothing in this Contract shall require or permit, without the consent of the client, access to or disclosure of any confidential communication made by a client to any attorney employed by the Contractor, or any such confidential communications made to agents or employees of the Contractor for such attorney, the advice given by an attorney to a client, or any other statements and materials privileged from disclosure in a court of law.

Attorneys and staff employed by the Contractor shall not solicit or accept any compensation, gifts, gratuities or services from any client.

SECTION IV **DUTIES OF CONTRACTOR**

a. In order to perform its duties and responsibilities under the Contract, the Contractor shall have the power and duty to:

1. Hire all Contractor personnel;
2. Provide fiscal management; establish compensation of personnel; maintain payroll records and provide payments for all personnel including withholding of income taxes, payment of social security taxes, payments of worker compensation and industrial insurance taxes (where applicable), and fringe benefits;
3. Supervise and maintain the quality of staff and services received or performed, and provide internal evaluation sessions as necessary;
4. Suspend, remove, or terminate personnel not adequately performing the duties and responsibilities assigned, mishandling funds, engaging in or condoning misconduct, or whose conduct or continued performance of duties is detrimental to the Contractor;
5. Accept and represent and provide Represented Services for all cases and clients officially referred by the Court unless withdrawal from such representation is allowed in accordance with the court rules and the provisions stated herein; and
6. In the event that this Contract is terminated or not renewed, complete the representation of all clients who have been referred by the Court during the period on which the Contract is in effect for the compensation received or receivable under the terms of the Contract, provided that completed representation is not made impossible by a client's failure to appear.

b. The Contractor shall accept indigent misdemeanor and/or gross misdemeanor case assignments for which the Primary Public Defender for the City of Washougal has a conflict of interest and/or when there are co-defendants during the period of this Contract. The Contractor shall provide legal representation and Represented Services for each of these defendants, except in the case of legal conflict, from the time of screening for eligibility through trial, sentencing, and violations of sentences, for which they have been appointed by the Court.

c. The Contractor shall receive and respond in a timely manner, at all times, to all telephone calls from indigent persons whom Contractor has been appointed to represent, and to the City's attorneys to discuss cases, and to the Court and court staff. The Contractor shall not subcontract this requirement.

The Contractor agrees to make reasonable efforts to continue with the initial attorney assigned to a client for each case assigned. The Contractor shall designate one attorney to be the main contact person concerning all clients appointed, and shall provide the contact information for this attorney to the Prosecuting Attorney. Nothing in this section shall prohibit the Contractor from making necessary staff changes or staff rotations at reasonable intervals.

The Contractor agrees that an attorney will make contact with all clients as soon as possible, and no later than five (5) working days from notification of case assignment.

d. Discovery shall be reviewed within five (5) days after receipt for purposes of determining any conflicts of interest. The Contractor shall notify the Court and City Prosecutor immediately of any conflict of interest as defined by the Washington State Rules of Professional Conduct. The Contractor shall provide the Court and City Prosecutor with a written explanation stating the basis for the conflict in this notification.

To the extent it is practicable, Contractor shall have the capacity to communicate with clients directly in their primary language with the assistance of court appointed certified interpreters.

e. The Contractor shall convey all plea offers to clients in writing, in the client's preferred language.

f. Adequate support staff is critical to an attorney's ability to render competent assistance of counsel. The parties agree and expect that the Contractor will employ necessary support staff services for its attorneys.

g. Contractor shall meet with the City Prosecutor for pre-trial negotiations for the purpose of negotiating cases at all regularly scheduled pre-trial hearing dates.

h. Contractor shall comply with all appearances and duties as may be required by the Court and/or the City for the term of this Agreement at no additional expense to the City.

i. All legal services rendered by Contractor shall be of the highest quality and shall be provided at all stages of each appropriate case.

j. The Contractor shall coordinate investigation services on those cases requiring investigation. The Contractor shall also coordinate expert witnesses for those cases requiring expert witness testimony. The provider shall petition the Municipal Court Judge for the expenditure of public funds prior to hiring an investigator or expert witness. Invoices for such services shall be sent directly to the City by the subcontractors; the Contractor will not be held liable for those expenses.

k. The Contractor agrees to utilize Notice of Appearance Forms provided by the Court which includes a notice of statement that Defendants are obligated to pay an Indigent Defense Recovery Fee. The Contractor shall not impede the Court from collecting such fees. The Contractor's duty of representation shall not be affected in any way by the payment or non-payment of such fees.

l. The City and Contractor recognize that the State and/or Washington State Bar Association has adopted, or may adopt new court rules requiring defense counsel to be present at all first appearances and arraignment hearings and read each citation and the Affidavit of Probable Cause. The Contractor agrees to attend all such hearings, as required.

m. The Contractor agrees to provide representational services for clients at Clark County specialty courts including, but not limited to: Substance Abuse Court, Mental Health Court, Domestic Violence Court, and Veteran's Court. Contractor may withdraw after a client has been accepted into a specialty court, but only after a notice of substitution of counsel has been filed with the Court by a defense attorney assigned to the particular specialty court.

n. Contractor agrees to comply with the Standards for Indigent Defense as provided in the Washington State Criminal Rules for Courts of Limited Jurisdiction, and as provided by the Washington Supreme Court and by the City of Washougal, as those Standards are currently adopted or as they may be adopted, and as they may be amended in the future, including compliance with the case load limits outlined therein and the timely filing of the Certificate of Appointed Counsel of Compliance with Standards Required by CrRLJ 3.1.

SECTION V

MISCELLANEOUS CONSIDERATION

a. In recognition of the following policies and goals, the expedient administration of justice, an attorney's duty to act with diligence (RPC 1.3) and to expedite litigation (RPC 3.2), the need for indigent defendants to actively participate in the preparation of their defense, and the wasteful expense of judicial prosecution and defense resources when indigent defendants fail to maintain regular contact with their appointed counsel and/or fail to appear at critical stages in the criminal process; Contractor agrees to use all good faith efforts to secure both continuous contact with defendants whom Contractor is appointed to represent and also regular attendance by clients at critical stages in the defendant's case. Such good faith efforts shall expressly include, but not

be limited to, the following measures:

1. Advising clients that regular and continuous contact is necessary to the preparation of their defense, and employing reasonable means to secure and maintain such contact;

2. Clients shall be notified in advance of the date, time and location of all critical stages in the process of the client's particular case including, but not limited to, pretrial conferences, omnibus or other pretrial motions, readiness hearings, and trial. Offers shall be extended in writing to clients within five (5) business days of receipt from the City Prosecutor. In any case, notification shall be provided early enough that the client has time to prepare for each stage;

3. Advising clients that appearance at all regularly scheduled pretrial hearings (both pretrial and mandatory pretrial) with the Contractor is required for effective assistance in the client's defense and encouraging such attendance; and

4. Timely notification of the Court when clients fail to make regular and continuance contact, as provided by the guidelines referred to in this subsection (a) above.

b. The Contractor is expected to work with the City as needed to develop and set general policies and administrative guidelines for the provision of public defense services to the City.

c. The Contractor shall make arrangements with jail and court staff to inform Contractor when a Defendant on a Washougal case is being held in custody for any reason, including but not limited to a newly filed case, a probation violation, or warrant. The Contractor shall then meet with said Defendants in custody as soon as practicable at the jail.

SECTION VI **RECORDS, REPORTS AND AUDITS**

a. All records shall be maintained by the Contractor. The Contractor shall maintain systems of internal control which conform to proper law office management and generally accepted accounting principles.

The Contractor must ensure that the City has full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the City may deem necessary, the Contractor shall provide to the City right of access to its facilities, including those of any subcontractor, to auditing records, data, invoices, materials, payrolls and other data relating to all matters covered by this Contract. Provided that if any such data, records or materials are subject to any privilege or rules of confidentiality the Contractor must maintain such data in a form or manner to provide same to the City that will not breach such confidentiality or privilege.

The Contractor shall maintain such data and records in an accessible location and condition and shall provide said data and records to the City for a period of not less than ten (10) years following the receipt of final payment under this Contract, unless the City agrees in writing to an earlier disposition.

The Contractor agrees to cooperate with the City or its agent in the evaluation of the Contractor's performance under this Contract and to make available information reasonably required by such evaluation process or ongoing reporting requirements established by the City. The results and records of said evaluations and reports shall be maintained and disclosed in accordance with RCW Chapter 42.17.

b. The Contractor shall maintain a case-reporting and management information system which shall include the number, type, and disposition of indigent cases.

c. In addition to others statistics the City may require, Contractor shall differentiate the:

1. Number and nature of all cases;
2. Name of the Defendant, and case number(s);
3. Dates cases were assigned;
4. Defendants for which cases are currently unresolved or pending; and
5. Any other information which the City may deem appropriate.

d. The Contractor shall report the following annual activity by January 31st of each contract year:

1. An accounting of all declined cases, including the number of cases conflicted out to other attorneys;
2. An accounting of the number of cases where the initial contact attorney also represented the client in court; and
3. Proof of insurance.

SECTION VII

DISCRIMINATION PROHIBITED

With respect to matters covered by this Agreement, there shall be no unlawful discrimination by the Contractor of the City against any person because of race, color, creed, gender, national origin, physical or mental disability, or sexual orientation. The Contractor and the City will comply with Title VI of the Civil Rights Act of 1964 and the Americans with Disabilities

Act of 1990, the City's anti-discrimination policies, and all requirements imposed by or pursuant to regulations of the Department of Justice or EEOC issued pursuant to those titles, to the end that no person shall be excluded from participation or deprived of benefits or otherwise subject to discrimination under the defender system because of race, color, creed, gender, national origin, physical or mental disability, or sexual orientation.

SECTION VIII **CONFLICTS OF INTEREST**

The Contractor agrees to screen all cases for conflicts of interest upon assignment and throughout the discovery process. In the event the Contractor cannot represent a client because of an actual potential conflict of interest under the Washington Code of Professional Responsibility, then the Contractor shall arrange for the City's Conflict Public Defense Attorney to represent the client. The City shall be responsible for negotiating a Conflict Public Defense Attorney Agreement and the cost of such representation shall be paid for by the City. The Contractor shall notify the City and the Court of all potential conflicts of interest as soon as encountered. The Contractor will refer to the Washington State Rules of Professional Responsibility, opinions of the state judiciary, and to the American Bar Association Standards of Criminal Justice to determine the existence and appropriate resolution of conflicts.

The Contractor, each attorney, and Rule 9 legal intern employed or retained by the Contractor reserve the right to decline to advise, represent, appear for, or act for any particular person, whether or not indigent or otherwise eligible, but only for good cause shown. Good cause includes, but is not limited to, conflicts of interest which preclude the Contractor or an attorney or Rule 9 legal intern retained by the Contractor from acting pursuant to the Washington Rules of Professional Conduct. The Contractor, each attorney, or Rule 9 legal intern employed or retained by the Contractor, reserve the right to withdraw from representing any person or entity, whether or not indigent or otherwise eligible, providing the consent of the Court, if required, is first obtained. The Contractor warrants that declinations will not be made except as required by law or legal ethics, and in the event of a declination, will immediately notify the Court as well as the City.

SECTION IX **COMPLAINTS ABOUT LEGAL SERVICES**

The Contractor shall have a method to respond promptly to client complaints which will include informing clients of the complaint process. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the City of Washougal should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. This information may be provided in a brochure which also lists the clients' rights and responsibilities, to be given to the client's upon the filing of a Notice of Appearance. The Contractor agrees to submit any such publication to the City Attorney for approval prior to its implementation.

The City Administrator or his/her designee may contact some of the Contractor=s clients on a random basis, after the case has been completed, for the purpose of monitoring the quality/level of satisfaction of services that were provided.

In the case a complaint is made to the City by a client with respect to the quality of legal services rendered under this Agreement, the complaint shall be first directed to the Contractor with a copy to the City Administrator or designee. If the client believes that he or she has not received an adequate response, the City Administrator or his/her designee shall evaluate the legitimacy of the complaint. The complaining client shall be informed of the disposition of his/her complaint as soon as is reasonably possible.

The Contractor shall submit a preliminary written response to any written complaints concerning services provided by the employees of the Defender or the Defender itself shall be submitted to the City Administrator within three (3) working days of the date the complaint is received by the City Administrator or designee. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the supervising attorney on any complaints sent to the Contractor.

SECTION X **NO ASSIGNMENT**

The Contractor shall not assign or subcontract any portion of this Agreement without prior written consent of the City of Washougal.

SECTION XI **CLIENT ACCESS**

The Contractor shall locate and operate its service facilities, extend the assistance of private practitioners and structure its outreach efforts in a manner that facilitates access for clients. The Contractor shall comply with federal and state laws regarding access to its facilities, and will eliminate barriers which limit access for the handicapped.

SECTION XII **NON-WAIVER OF RIGHTS AND REMEDIES**

In no event shall payment or performance by either party hereto constitute or be construed to be a waiver by either party of any breach of covenant or default which may then exist on the part of the other party, and the making of any such payment or the carrying out of any such performance while breach or default then existed shall in no way impair or prejudice any right or remedy available to the paying or performing party with respect to such breach or default.

SECTION XIII
RELATIONSHIP OF PARTIES

The Contractor, its subconsultants, agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor, its subconsultants, agents and employees, shall not, as a result of this Agreement, have access to leave, retirement, insurance, bonding or any other benefits afforded to City employees. The Contractor and its subconsultants, agents and employees shall not have the authority to bind the City any way except as may be specifically provided herein.

SECTION XIV
CITY NOT OBLIGATED TO THIRD PARTIES

The City shall not be liable to any person or entity other than the Contractor because of this Agreement, except that the City will pay expert witness fees and additional associated services necessary in any case after a voucher has been submitted and approved by the Court in accordance with CrRLJ 3.1(f).

SECTION XV
CITY BUSINESS, OCCUPATION LICENSE & E-VERIFY PROGRAM

Prior to performing work under this Agreement, Contractor shall secure a City of Washougal Business and Occupation License under WMC 5.04.020.

SECTION XVI
LIABILITY AND HOLD HARMLESS

The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder. All work shall be done at the Contractor's risk. The Contractor shall defend, save and hold harmless the City, its officers, agents, employees and assigns from any claims, damages, losses, liability, expenses, and attorney's fees which arise from the negligent performance of this Agreement, except those which arise from the sole negligent acts or omissions of the City, its officers, agents, employees or assigns.

SECTION XVII
LIMITED PRIVATE PRACTICE OF LAW

The Contractor shall devote all time necessary to properly perform this Agreement. The Contractor is not limited from maintaining a private law practice. However, the Contractor shall not allow its private practice of law, during the term of this Agreement, to conflict with the Contractor's responsibilities and duties under this Agreement.

SECTION XVIII **INSURANCE**

a. Commercial General Liability, Professional Liability and Malpractice Insurance. The Contractor shall obtain and keep in force Commercial General Liability insurance with a limit not less than \$100,000.00 for each occurrence, Professional Liability (errors and omissions), to include malpractice coverage, not less than \$500,000.00 for each occurrence, and a \$1,000,000.00 General Aggregate Limit, for the entire term of this Agreement. Malpractice insurance must include coverage for ineffective assistance of counsel.

b. Worker's Compensation. The Contractor shall take out and maintain during the life of this Agreement, worker's compensation insurance for all its employees engaged in work under this Agreement who are required to be so covered by the laws of the State of Washington.

c. Employment Security. The Contractor shall comply with all employment security laws of the state in which services are provided, and shall timely make all required payments in connection therewith.

d. Liability. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its employees, agents, or any tier of subcontractors in the performance of this Agreement. The Contractor's duty to defend, hold harmless and indemnify the City, its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting therefrom, caused by any acts, errors, mistakes, omissions, work or services in the performance of this Agreement, including any employee of the Contractor or any tier of subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be legally liable.

e. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity of the paragraph.

SECTION XIX **DURATION OF CONTRACT**

The Contractor shall accept all appointments from February 1, 2020 through January 31, 2022. It will be the Contractor's duty to complete all cases which had been assigned to it during the term of this Agreement, without any additional compensation even though this agreement has ended. The City reserves the right to extend this Agreement for additional one-year or more terms, by mutual agreement of both parties.

SECTION XX
PAYMENT

a. In consideration for the Contractor's performance of the duties listed herein, the City will pay the Contractor \$275.00 per case.

b. In addition to the monthly payment, the Contractor shall be compensated at a rate of \$350.00 per case taken to jury trial. For the purposes of this Contract, a "jury trial" is deemed to have occurred after Voir Dire. Contractor shall submit billings each month. There will be no additional payment for pre-trial motions or non-jury trials.

c. In the event of Contractor's failure to substantially comply with any items and conditions of this Agreement or to provide in any manner the work or services as agreed to herein, the City reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the City's right to termination.

SECTION XXI
AMENDMENTS

This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between the City and the Contractor and shall be incorporated in written amendments to the Agreement.

SECTION XXII
SCOPE OF CONTRACT

This Contract incorporates all the agreements, covenants and understanding between the parties hereto. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this Contract.

SECTION XXIII
GOVERNING LAW AND VENUE

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

SECTION XXIV **TERMINATION**

This Agreement may be terminated for any of the following reasons:

- a. If in the sole discretion of the City, the City determines the Contractor is not providing adequate legal services. Inappropriate or unprofessional behavior under this Contract may be taken as evidence of inadequate legal services;
- b. The Contractor's professional liability insurance is canceled. The Contractor shall be responsible for and maintain Professional liability insurance until the completion of all cases previously assigned to the Contractor, as set forth in Section XVIII above;
- c. Either party may terminate this Agreement without cause upon 120 days written notice to the other party, provided the Contractor complies with the requirement to continue services to those Defendants appointed herein until those cases have been fully resolved; or
- d. If during the term of this Agreement, changes occur in Washington State law which mandate the City to provide indigent defense services by a method other than contracting, the City may terminate this Agreement by 15 (fifteen) days' written notice to the Contractor.

SECTION XXV **NOTICES**

All notices to be given under this Contract shall be hand delivered or mailed first class to the parties at the following addresses, unless a new address is given to the other party in writing:

City: City Manager
City of Washougal
1701 C Street
Washougal, WA 98671

Contractor: Bjorn Hess
Hazen, Hess & Ott, PLLC
723 NE 4th Avenue
Camas, WA 98607

SECTION XXVI **SEVERABILITY**

If any provision of this Agreement is invalid, the remainder shall not be affected if such remainder will then continue to conform to the terms and requirements of applicable law.

DATED this _____ day of February, 2020.

CITY OF WASHOUGAL,
a Municipal Corporation

HAZEN, HESS & OTT, PLLC

MOLLY COSTON, Mayor

BJORN A. HESS, Member

Attest:

Approved as to form:

JENNIFER FORSBERG, City Clerk

KENNETH B. WOODRICH, City Attorney

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

1/27/2020

SUBJECT:

Community Development: Professional Services Agreement with Wallis Engineering for Development Review Engineering

DEPT. OF ORIGIN:

Community Development

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

📎 **2020 Wallis PSA (Development Engineering) with Exhibits.pdf**

EXPENDITURE REQUIRED:

\$50,000

BUDGETED:

Yes

APPROPRIATION REQUIRED:

\$0

SUMMARY STATEMENT

RECOMMENDED ACTION

This item will be on the January 27, 2020 consent agenda.

PROFESSIONAL SERVICES AGREEMENT

This Agreement made and entered into this 22nd day of January 2020, by and between the City of Washougal, a municipal corporation, under the laws of the State of Washington, hereinafter referred to as “City,” and Wallis Engineering, PLLC, hereinafter referred to as “Contractor,” whose address is: : 215 W. 4th Street, Suite 200, Vancouver, WA 98660.

WHEREAS, the City desires to engage the Contractor to provide Consulting Services and other related professional services for General Development Review Engineering Services, Consultation and Advice to the City on various development projects and other related professional services to support City staff, and Contractor has agreed to offer its professional services to perform said work, and

WHEREAS, the Contractor has represented by entering into this Agreement that it is fully qualified to perform the work to which it will be assigned in a competent and professional manner, to the standards required by City,

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

The City hereby agrees to engage the Contractor and the Contractor hereby agrees to perform, in a satisfactory and proper manner, as determined by City, the services hereafter set forth in connection with this Agreement.

1. Scope of Services:

Contractor agrees to:

- a. See attached Scope and Rates in Exhibit A
- b. Notwithstanding the provisions of Section 14, “Amendments,” the City may add other related professional services at its discretion.

This Agreement is a purchase of professional services at the hourly rates set forth in Exhibit A. Payment for these services are for time and materials not to exceed \$50,000 unless authorized in writing by the City. If additional time is needed, please refer to Section 4 of this agreement. A written amendment must be attached.

2. **Relation of Parties:**

The Contractor, its sub-consultants, agents and employees are independent contractors performing professional services for City and are not employees of the City. The Contractor, its sub-consultants, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to City employees. The Contractor, sub-consultants, agents and employees shall not have the authority to bind City in any way except as may be specifically provided herein.

3. **Time of Performance:**

The service of the Contractor is to commence as soon as practicable after the execution of this Agreement. It is agreed, services hereunder shall begin as of: Begin date: January 1, 2020 and be completed as of: End Date December 31, 2020.

4. **Delays and Extensions of Time:**

If the Contractor is delayed at any time in the progress of providing service covered by the Agreement, by any causes beyond Contractor's control, the time for performance may be extended by such time as shall be mutually agreed upon by Contractor and City and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to City.

5. **Compensation and Schedule of Payments:**

City shall pay the Contractor at the rates indicated in Section 1 for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without City's prior written

authorization in the form of a negotiated and executed supplemental agreement. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein. The Contractor shall submit monthly invoices to City covering both professional fees and project expenses, if any. Payments will be submitted by mail or courier to City Hall located at 1701 C Street, Washougal, WA 98671. No faxed copies or electronic requests for payment will be accepted. Payments to Contractor shall be made within thirty (30) days from submission of each invoice.

The City reserves the right to correct any invoices paid in error according to the rates set forth in this Agreement. City and Contractor agree that any amount paid in error by City does not constitute a rate change in the amount of the contract. The City's contract number given on the notice to proceed and annotated on the executed copy of the contract **must** be referenced on any invoice submitted for payment.

6. **Ownership of Records and Documents:**

All materials, writings and products produced by Contractor in the course of performing this Contract shall immediately become the joint property of the City and Contractor. In consideration of the compensation provided for by this Agreement, the Contractor hereby further assigns all copyright interests in such materials, writing and products to the City. A copy may be retained by the Contractor.

7. **Termination:**

This Agreement may be terminated by either party upon not less than fifteen (15) days written notice. Additionally, this Agreement may be suspended in accordance with Section I of City of Washougal Resolution 1051.

8. **Evaluation and Compliance with the Law:**

The Contractor shall have the authority to control and direct the performance and details of the work described herein. The Contractor agrees to comply with all relevant, federal, state and municipal laws, rules and regulations.

9. **City Business and Occupation License & E-Verify Program:**

Prior to performing work under this Agreement, Contractor shall secure a City of Washougal Business and Occupation License under W.M.C. 5.04.020.

The Contractor shall be registered with the Department of Homeland Security E-Verify Program. The Contractor shall provide a fully executed Declaration of Participation in E-Verify Program Form to the City. If the Contractor described herein uses a subcontractor in connection with the performance of the Contract, the subcontractor shall, as a condition of the Contract, certify their participation in the E-Verify program by submitting a Declaration of Participation Form. The Contractor and any subcontractors will not knowingly employ or contract with an unauthorized alien.

10. **Liability and Hold Harmless:**

Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the work hereunder. All work shall be done at Contractor's risk.

The Contractor shall defend, indemnify and hold harmless the City of Washougal, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits, including attorney fees arising out of or resulting from the act, error or omissions of the Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor'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.

11. Debarment, Suspension Or Ineligibility

The Contractor, defined as the primary participant and its principals, certifies that to the best of its knowledge and belief that they:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions with the City;
- b. Have not within a three (3) year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated above;
- d. Have not, within a three (3) year period preceding this contract had one or more public transactions (federal, state, or local) terminated for cause of default;
- e. Where the Contractor is unable to certify to any of the statements in this document, Contractor shall attach an explanation.

The Contractor agrees by submitting this contract that it shall not knowingly enter into any lower tier covered transaction with a person or business that is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this contract.

12. Insurance:

The Contractor shall obtain and keep in force during the entire term of this Agreement, liability insurance policies against any and all claims for damages to persons

or property which may arise out of the performance of this Contract, whether such work shall be by the Contractor or its subcontractors, or by any employee, agent, or representative of the Contractor or its subcontractors. Such policies of insurance shall cover liabilities arising from premises, operations, automobiles, independent contractors, personal injury, advertising injury, and professional liability. Such policies of insurance shall also be primary insurance with respect to the City. Any separate insurance maintained by the City shall be in excess of the Contractor's insurance herein.

The Contractor agrees to the following requirements relating to insurance coverage, which combination of policies shall cover all of the liabilities identified in the preceding paragraph:

a) Liability Insurance: The liability insurance required herein shall, at a minimum, be in the form of: (a) commercial general liability insurance with a One Million Dollar (\$1,000,000) or greater combined single policy limit for bodily injury and property damage for each occurrence; (b) automobile liability insurance with a One Million Dollar (\$1,000,000) or greater combined single policy limit for bodily injury and property damage for each occurrence; and (c) professional liability insurance to include coverage for professional errors and/or omissions with a One Million Dollar (\$1,000,000) or greater policy limit for each occurrence. The City shall be named as an additional insured with respect to all such policies and copies of all such policies shall be furnished to the City upon request.

b) Worker's Compensation: The Contractor shall take out and maintain during the life of the Agreement, Worker's Compensation insurance for all its employees engaged in work under or pursuant to this Agreement who are required to be so covered by the laws of the State of Washington and in any case any work is subcontracted, the Contractor shall require the subcontractor to provide worker's compensation insurance for all of its employees, unless or to the extent that such employees are covered by the

protection provided by the Contractor.

- c) Employment Security:** The Contractor shall comply with all employment security laws of the state in which services are provided, and shall timely make all required payments in connection therewith. Contractor shall provide evidence of all insurance required, at the City's request, by submitting an insurance certificate to the City on a standard "Accord" or comparable form with all applicable endorsements attached thereto.

13. Notices:

All notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed, postage paid, as follows:

City:

City of Washougal
1701 "C" Street
Washougal, WA 98671

Contractor:

Wallis Engineering, PLLC
215 W. 4th Street, Suite 200
Vancouver, WA 98660

14. Amendments:

This Agreement shall not be altered, changed, or amended, except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between City and the Contractor and shall be incorporated in written amendments to this Agreement.

15. Scope of Agreement:

This Agreement incorporates all the agreements, covenants and understanding between the parties hereto and are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents, shall be valid or enforceable unless set forth in this Agreement.

16. **Ratification:**

Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

17. **Governing Law/Venue:**

This Agreement shall be deemed to have been executed and delivered within the State of Washington and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. The Contractor shall have legal authority to enter into this Agreement and be at least 18 years of age. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

DATED this 22nd day of January, 2020.

CITY OF WASHOUGAL, a Municipal Corporation

BY: _____
David Scott, City Manager

ATTEST:

Approved as to Form:

Jennifer Forsberg, Finance Director

Kenneth B. Woodrich, City Attorney

CONTRACTOR,

BY: _____

Title: _____

**WALLIS ENGINEERING
EXHIBIT A – SCOPE OF WORK**

**CITY OF WASHOUGAL
2020 DEVELOPMENT REVIEW ENGINEERING SERVICES**

1.1 DEVELOPMENT REVIEW SERVICES

TASK 1 Pre-Application. The ENGINEER will review pre-application submittals provide recommended comments to meet local standards and attend pre-application conferences.

TASK 2 Preliminary Review. Once a complete application is submitted the ENGINEER will review application submittals for conformance with the CITY's cods, master plans, Public Works Design and Construction Standards, and engineering and construction practices. The ENGINEER may obtain input from other agencies and coordinate as needed. Consolidating comments received from staff, the ENGINEER will identify conflicting engineering issues and prepare engineering summaries of the proposal, findings against the requirements of the code and standards, and provide recommended conditions of approval for Planning staff reports. The Engineer will also attend public hearings and meetings as requested.

TASK 3 Final Review. The Engineer will perform iterative final plat, engineering drawings and asbuilt reviews from the developer's surveyor/engineer. The ENGINEER will also review engineering cost estimates for bonding requirements and provide recommendations for acceptance.

TASK 4 Miscellaneous Services. In some instances, the ENGINEER may feel that further calculation or analysis of a particular developer's proposed improvement is merited/required. Such additional analysis/review could be conducted in-house by the ENGINEER or handled by a subconsultant if such expertise did not reside within the ENGINEER's staff. In either case, CITY approval will be required.

TASK 5 Services As Requested. In some instances, the ENGINEER may provide additional services as requested in writing by the CITY in support of Development Review Engineering Services.

TASK 6 Construction Inspection. In some instances, the ENGINEER may provide construction inspection services as requested in writing by the CITY in support of Development Construction activities.

1.2 PROGRESS REPORTS – As Requested by City

As requested by the CITY a monthly progress report will be submitted to the CITY for each project that is being reviewed. Progress reports will identify the current status of each project.



RATE SCHEDULE

Rate Schedule good through December, 31, 2020

<u>Title</u>	<u>Range</u>	
Associate Engineer	\$141	\$141
Senior Engineer	\$193	\$193
Engineering Manager I - VI	\$165	\$190
Project Engineer I - IX	\$117	\$163
Staff Engineer I - IV	\$95	\$115
Engineering Intern I - III	\$59	\$65
Designer	\$112	\$136
Construction Manager	\$125	\$125
Inspector	\$88	\$103
Technician I-IV	\$78	\$114
Administrative I – VI	\$47	\$104

These hourly rates include in-house office expenses, photocopying, and other incidental items. Mileage will be reimbursed at the current standard IRS rate. Outside expenses will be billed at cost plus 10%.

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

1/27/2020

SUBJECT:

Resolution to Surplus Skyridge Easement

DEPT. OF ORIGIN:

Community Development

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

- ▢ **Resolution - Surplus of Skyridge Estates Easement (DRAFT)**
- ▢ **Deed of Easement AF #4299385**

EXPENDITURE REQUIRED:

\$0

BUDGETED:

\$0

APPROPRIATION REQUIRED:

\$0

SUMMARY STATEMENT

RECOMMENDED ACTION

Set a public hearing through the January 27, 2020 consent agenda.

Resolution No. _____

A RESOLUTION declaring for surplus an easement recorded under Auditor's file number 4299385 established for the installation, maintenance, operation, and renewal of a utility system over, under, and across that portion of Lookout Ridge Phase 3 Tract I as recorded in Book 311 of Plats, Page 236.

WHEREAS, the City of Washougal recognizes the need to declare as surplus property acquired for utilities; and

WHEREAS, the City of Washougal was deeded the easement for public utilities associated with a previously approved development known as Skyridge Estates; and

WHEREAS, that previously approved development was not constructed, and its associated preliminary approval has expired; therefore, there is no interest of the city to maintain the easement and it is therefore surplus to the city's needs; and

WHEREAS, the easement was not acquired with the use of any funds by the City; thereby the easement holds no monetary value to the City; and

WHEREAS, the easement has a fair market value of \$_____, which is the consideration the City will accept for conveyance of the easement.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF WASHOUGAL, WASHINGTON as follows:

Section I

The City of Washougal hereby declares the easement recorded under Auditor's file number 4299385 as surplus.

Section II

PASSED by the Council for the City of Washougal at a regular meeting this _____ day of _____, 2020.

City of Washougal, Washington

Molly Coston, MAYOR

ATTEST:

Jennifer Forsberg
Finance Director / City Clerk

APPROVED AS TO FORM:

Kenneth B. Woodrich
City Attorney

PAGE 236

RecFee - \$33.00 Pages: 2 - MICHAEL WYNNE
Clark County, WA 03/19/2007 03:48

ATTN: Mitch
Skyridge Estates

Real Estate Excise Tax
Ch. 11 Rev. Laws 1951
EXEMPT
Affd. # 607245 Date 3-19-07
For details of tax paid see
Affd. # _____
Doug Lasher
Clark County Treasurer *[Signature]*
By _____
Deputy

Grantor, **LOOKOUT RIDGE PHASE 3 HOMEOWNERS ASSOCIATION**, for the sum of \$20,000.00, grants, conveys, and sells to Grantee, **CITY OF WASHOUGAL** for the benefit of **JETL, LLC**, its successors and assigns, a perpetual easement for the installation, maintenance, operation, and renewal of a utility system over, under, and across that portion of "Lookout Ridge Phase 3", Tract "I", according to the plat thereof, as recorded in Book 311, page 236, Clark County Auditor's Records, also in a portion of Section 1, Township 1 North, Range 3 East, Willamette Meridian, Clark County, Washington, described as follows:

The South 129.50 feet of the East 20 feet of Tract "I" of "Lookout Ridge Phase 3", according to the plat thereof, as recorded in Book 311, page 236, Clark County Auditor's Records.

TOGETHER WITH and SUBJECT TO easements and restrictions of record.

Dated at Washougal, Washington, this 5th day of March, 2007.

GRANTOR:

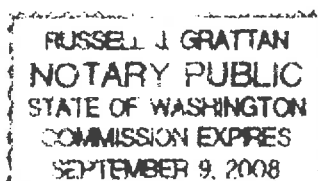
Lookout Ridge Phase 3 Homeowners Association

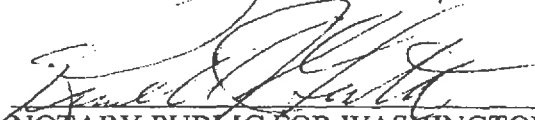
By: Robert M. Helm
Its: Treasurer

STATE OF WASHINGTON)
COUNTY OF CLARK)ss

I certify that I know or have satisfactory evidence that Kathleen M. Holm is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 15 day of MARCH 2007.




NOTARY PUBLIC FOR WASHINGTON
Printed Name: Russell J. Grattan
My appointment expires: 9/8/08

Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

1/27/2020

SUBJECT:

Cell Tower Lease with CCATT LLC

DEPT. OF ORIGIN:

Public Works

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

▢ **Crown Castle Cell Tower Lease with CCATT LLC**

EXPENDITURE REQUIRED:

N/A

BUDGETED:

N/A

APPROPRIATION REQUIRED:

N/A

SUMMARY STATEMENT

RECOMMENDED ACTION

Return to Council January 27, 2020 to authorize the City Manager to sign the cell tower lease with CCATT LLC

AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement ("Lease"), dated as of _____, 2020 (the "Effective Date"), is between THE CITY OF WASHOUGAL, a Political Subdivision of the State of Washington ("City") and NCWPCS MPL 22 – YEAR SITES TOWER HOLDINGS LLC, a Delaware limited liability company, by and through CCATT LLC, a Delaware limited liability company, its attorney-in-fact ("Lessee").

RECITALS

WHEREAS, City and Lessee are parties to that certain Option and Site Lease Agreement dated July 15, 1991, a memorandum of which was recorded on December 20, 1991 at Instrument No. 9112200035 in the official records of Clark County, Washington (the "Existing Lease"), whereby Lessee operates a communications facility and related facilities, in a fenced area on the Premises described in Section 1, below, as described on the attached legal description (Exhibit "A"), and as depicted on the map (Exhibit "B") in the City of Washougal, State of Washington; and

WHEREAS, City and Lessee desire to amend the Existing Lease by replacing the terms and conditions of the Existing Lease with the terms and conditions of this Lease. City and Lessee intend that this Lease be a continuation of the Existing Lease.

NOW THEREFORE, effective upon January 1, 2020, this Lease will amend the Existing Lease by replacing all of the terms and conditions of the Existing Lease with the terms and conditions set forth herein. For and in consideration of the mutual covenants contained herein, the parties agree as follows.

1. Premises: The "Premises", located at 1400 "A" St., Washougal, Washington, comprise at least 1500 square feet and are situated within the Property as described in Exhibit "A" attached hereto, and as depicted in Exhibit "B".
2. Use: Lessee is hereby granted a lease to construct, maintain, and operate a communications facility, including a 121-123-foot high lattice communications tower and an equipment shelter and related facilities in a fenced area in the subject Premises (collectively the "Antenna Facilities"). It is the intent of the parties that Lessee's wireless communications facility shall not constitute a fixture.
3. Termination: Except as otherwise provided herein, this Lease may be terminated, without any penalty or further liability, as follows: (a) by either party on thirty (30) days' written notice upon a default of any covenant or term hereof by the other which is not cured within sixty (60) days of receipt of written notice of default (without, however, limiting any other rights available to the parties at law, in equity or pursuant to any other provisions hereof); (b) by Lessee on thirty (30) days' written notice if it is unable to obtain or maintain any license, permit or other approval necessary to the construction and/or operation of the Lessee's Antenna Facilities; (c) by Lessee on thirty (30) days' written notice if the Premises

are or become unacceptable under Lessee's design or engineering specifications for its Antenna Facilities or the communications system to which the Antenna Facilities belong; or (d) by City on two (2) years' written notice if the Premises occupied by Lessee is at any future time required for street or utility use or any other reason required by the City. Upon termination, Lessee shall remove the monopole tower, equipment shelter and all other related appurtenances at no cost to the City, its successors and assigns. Such removal shall be completed within ninety (90) days after the effective date of termination.

4. Transfers. This Lease is issued to the Lessee and is nontransferable, except as provided below. Notwithstanding the immediately preceding sentence, Lessee may assign its interest under this Lease without City's consent but upon prior written notice to City to (a) one or more entities which shall control, be controlled by, or be under common control with, Lessee, or (b) any entity acquiring all or substantially all of the stock or assets of Lessee, including, without limitation, in connection with any merger, consolidation or reorganization of Lessee. Lessee has the right to sublease or license use of the Premises without City's consent. If the Lessee sells this facility during the term of the Lease in violation of this provision, this permit and Lease may be revoked and the Lessee will have one year to move this facility from the Premises. The City reserves the right to issue a new lease at a revised rent amount to a new or successor lessee.

5. Maintenance: Lessee shall properly maintain the Antenna Facilities and repair any damage to the tower, equipment shelter, fence and other appurtenances, including the alley pavement, at no expense to the City. This shall include prompt removal of any markings or graffiti on the Premises promptly upon receipt of written notice thereof from City.

6. Indemnification and Insurance: Lessee agrees to hold the City, its successors and assigns, harmless from any and all claims which may arise as a result of granting this Lease, except to the extent caused by the negligence or intentional misconduct of City, its employees or agents. Lessee shall obtain and maintain a general liability insurance policy naming City as additional insured on such policy. The minimum amount of coverage in this policy shall be \$2,000,000 general aggregate, \$1,000,000 personal injury, and \$1,000,000 each occurrence. The required limits recited herein may be met by primary and excess or umbrella policies.

7. Permits. Lessee shall be responsible to obtain any building permits that may be required by the City code for any work within the Premises.

8. Access and Utilities: Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Premises (including, but not limited to the installation of emergency power generators). Lessee shall have the right to permanently place utilities on (or to bring utilities across) the Property in order to service the Premises and the Antenna Facilities. City shall execute an easement evidencing this right upon Lessee's request. City shall provide Lessee ingress, egress, and access over and under the Property to the Premises adequate to service the Premises and the Antenna Facilities at all times during this Lease and any renewal thereof at no additional charge to Lessee. City shall execute an easement evidencing this right upon Lessee's request. Any work performed by Lessee within

the public right-of-way is subject to any building permits or approvals that may be reasonably required by City.

9. Approvals: Lessee shall obtain and maintain all necessary permits to operate and maintain the Antenna Facilities throughout the term of the Lease. Lessee shall also be responsible for obtaining and continuing all other governmental and other regulatory agency approvals, including but not limited to, all Federal Communication Commission and Federal Aviation Administration approvals.

10. Rental Agreement: Commencing on January 1, 2020, Lessee agrees to pay City the following monthly rent amount ("Rent"), plus leasehold excise taxes with increases as noted in the following table:

Year 1 - January 1, 2020 – December 31, 2020	<u>\$1,300 per month</u>
Year 2 - January 1, 2021 – December 31, 2021	<u>\$1,339 per month</u>
Year 3 - January 1, 2022 – December 31, 2022	<u>\$1,379.17 per month</u>
Year 4 - January 1, 2023 – December 31, 2023	<u>\$1,420.54 per month</u>
Year 5 - January 1, 2024 – December 31, 2024	<u>\$1,463.16 per month</u>

All rents plus Leasehold Excise Tax rate – Currently 12.84%.

If this Lease is terminated at a time other than on the last day of a month, Rent shall be prorated as of the date of termination, and, in the event of termination for any reason other than nonpayment of Rent, all prepaid Rents shall be refunded to Lessee.

11. Interference. Lessee shall not use the city right-of-way in any way which materially interferes with the use of the Property by City, or lessees or licensees of City, with rights to the property prior in time to the Existing Lease (subject to Lessee's rights under this Lease, including non-interference). Similarly, City shall not use, nor shall City permit its lessees, licensees, employees, invitees or agents to use, any portion of City's properties in any way which interferes with the operations of Lessee. Such interference shall be deemed a material breach by the interfering party, who shall, upon notice from the other, be responsible for terminating said interference.

12. Lease Term. Subject to the other terms and conditions contained herein, the term of this Lease is intended to be for a period of five (5) years. Therefore, the commencement date of this Lease shall be January 1, 2020 and the expiration date shall be December 31, 2025.

- i. After expiration of the initial term, Lessee may renew the lease for five (5) subsequent five (5) year terms under same terms and conditions contained herein except rent (each a "Renewal Term"). The Lease will automatically extend for each Renewal Term, unless Lessee notifies City of its intention not to renew at least thirty (30) days prior to the expiration of the then current term. Rental rate for each Renewal Term

shall begin at a rate three percent (3%) higher than the last rental amount paid and will increase two percent (2%) annually for years two (2) through five (5) of each Renewal Term.

13. Right of First Refusal. If, during the original term and any Renewal Term of this lease, City receives an offer that it intends to accept to purchase fee title, an easement, a lease, a license, or any other interest in the Property or Lease, City shall, prior to selling the Property or any portion thereof, provide written notice to Lessee of said offer, and Lessee shall have a right of first refusal to acquire such interest, or the portion to be sold, on the same terms and conditions in the offer. City's notice shall include a copy of the offer. If Lessee does not exercise its right of first refusal by written notice to City within thirty (30) days receipt of City's notice, City may convey the property as described in the City's notice, as long as such sale closes within six (6) months of the date of the third party's offer. If Lessee declines to exercise its right of first refusal, the Lease shall continue in full force and effect and Lessee's right of first refusal shall survive any such conveyance.

14. Notice. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed to the parties as follows.

If to Lessee:

NCWPCS MPL 22 – Year Sites Tower Holdings LLC
Legal Department
Attn: Network Legal
208 S. Akard Street
Dallas, TX 75202-4206

With a copy to:

CCATT LLC
Attn: Legal – Real Estate Department
2000 Corporate Drive
Canonsburg, PA 15317

And if to City:

City of Washougal
1705 “C” Street
Washougal, WA 98671

13. IRS Form W-9: City agrees to provide Lessee with a completed IRS Form W-9, or its equivalent, upon execution of this Lease and at such other times as may be reasonably requested by Lessee. In the event the Property is transferred, the succeeding City shall have a duty at the time of such transfer to provide Lessee with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in the rent to the new City. City's failure to provide the IRS Form W-9 within thirty (30) days after Lessee's request shall be considered a default and Lessee may take any reasonable action necessary to comply with

IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

14. Lessee will pay to City a one-time amount of Fifteen Thousand and 00/100 Dollars (\$15,000.00) for the full execution of this Lease, payable within sixty (60) days of the full execution of this Lease ("Conditional Signing Bonus"). In the event that this Lease (and any applicable memorandum of Lease and/or amendment) is not fully executed by both City and Lessee for any reason, Lessee shall have no obligation to pay the Conditional Signing Bonus to City.

15. Counterparts: This Lease may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

[Execution pages follow]

Dated this ____ day of _____, 2020.

CITY:

CITY OF WASHOUGAL

By: David Scott, Its City Manager

Attest:

Jennifer Forsberg, City Clerk

Approved as to form:

Kenneth B. Woodrich, City Attorney

MUNICIPALITY

STATE OF _____)
)SS.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this Amended and Restated Lease Agreement, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of CITY OF WASHOUGAL, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

Notary Seal	_____
	(Signature of Notary)

	(Legibly Print or Stamp Name of Notary)
	Notary Public in and for the State of _____
	My appointment expires: _____

NCWPCS MPL 22 – YEAR SITES
TOWER HOLDINGS LLC, a Delaware
limited liability company

By _____
Its _____

STATE OF _____)
)SS.
COUNTY OF _____)

DATED: _____.

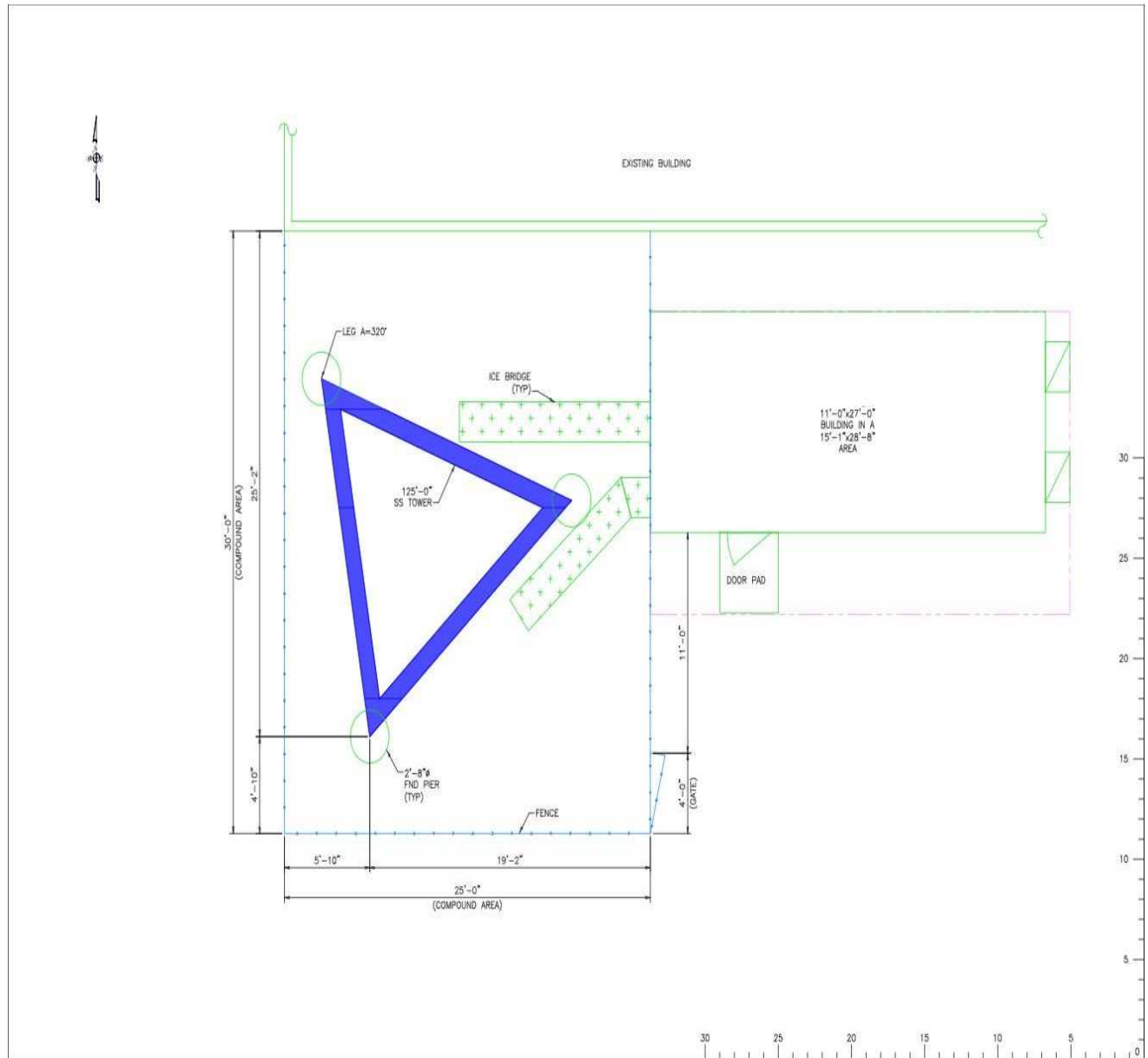
My appointment expires: _____

EXHIBIT A
(Description of Premises)

That portion of Sections 7 and 18, Township 1 North, Range 4 East, Willamette Meridian, Clark County, State of Washington, lying within the Richard Ough Donation Land Claim, and the corporate limits of the Town of Washougal, described as follows:

Beginning at a point 30 feet south and 100 feet west of the Southeast corner of Block 9, Columbia View Addition to Washougal, according to the plat thereof, recorded in Volume "B" of plats, Page 43, records of Clark County, Washington; thence West 650 feet; thence South to the meander line of the Columbia River; thence Easterly following the meander line to a point due South of the point of beginning; thence North to the point of beginning.

EXHIBIT B (Site Plan)



Workshop Coversheet
BUSINESS OF THE CITY COUNCIL
City of Washougal, Washington

FOR AGENDA OF:

1/27/2020

SUBJECT:

Update to Special Event Permit Code

DEPT. OF ORIGIN:

Administration

REVIEWED AT:

TO BE RETURNED TO COUNCIL:

Yes

ATTACHMENTS:

▮ **Ordinance 2020 Amendment to WMC 9.104.100 DRAFT**

EXPENDITURE REQUIRED:

BUDGETED:

APPROPRIATION REQUIRED:

SUMMARY STATEMENT

RECOMMENDED ACTION

ORDINANCE NO. _____

AN ORDINANCE amending Washougal Municipal Code Chapter 9.104, Special Events, specifically WMC 9.104.100, Permit Requirements, and providing for severability and an effective date.

WHEREAS, the City encourages community events for their education, entertainment and social benefits;

AND WHEREAS, WMC 9.104.100 currently requires the City to charge for in-kind assistance from the City for special events, even where the City derives benefit from the events;

AND WHEREAS, the Council wishes to authorize the City Manager to allow the City to provide in-kind services and City equipment for special events at no cost to the event sponsors where the City Manager, in his or her sound discretion, finds the event will further the goals and objectives of the City relative to the cost to provide the services or equipment;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WASHOUGAL DO HEREBY ORDAIN as follows:

Section I

That Washougal Municipal Code Section 9.104.100 Permit Requirements, part of WMC Ch. 9.104 Special Events, is hereby amended to provide authority for the City Manager to waive expenses for in-kind services or equipment for special events as set forth in Exhibit "A", attached hereto.

Section II - Severability

That if any clause, section, or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

Section III – Effective Date

This Ordinance shall be effective five (5) days after publication according to law.

PASSED by the City Council of the City of Washougal at a regular meeting this 10th day of February, 2020.

Molly Coston, Mayor of Washougal

ATTEST:

Jennifer Forsberg, Finance Director / City Clerk

APPROVED AS TO FORM:

Kenneth B. Woodrich, City Attorney

Exhibit "A"

Key: New language = underlined

Deleted language = ~~strikethrough~~

[PART OF WMC Ch. 9.104 Special Events. All chapter sections not set forth below are unchanged]

Section 1. Amending 9.104.100 Permit requirements.

- (1) Special event uses are to be temporary and approved for a particular zoning district by the planning/building director.
- (2) Temporary signage and temporary structures will be allowed subject to provisions of this code pursuant to the interpretive authority and discretion of the planning/building director.
- (3) Requests for temporary parking facilities for special events and street closures for special events shall be subject to provisions of this chapter pursuant to the interpretive authority and discretion.
- (4) Requests for fire and emergency medical services shall be subject to the discretion of the city's fire chief.
- (5) Requests for police services shall be subject to provisions of this code at the discretion of the city's police chief.
- (6) Expenses for fire, police, medical services, parks, and public works crews needed for coverage and cleanup at the special event shall be prepaid and the responsibility of the permittee. Provided, however, the City Manager may waive some or all of such expenses where the fee is exempt pursuant to section 9.104.080(2), above ~~even if the permit fee has been waived.~~

FOR REFERENCE ONLY

9.104.080 Exemptions from permit fee.

(1) No fee shall be imposed when prohibited by the First and Fourteenth Amendments to the United States Constitution, or Article I, Section 3, 4, 5 or 11 of the Washington State Constitution. Political or religious activity intended primarily for the communication or expression of ideas shall be presumed to be a constitutionally protected event.

(2) No fee shall apply to a block party and fees may be waived for special events sponsored by nonprofit agencies and which further the goals and objectives of the city.

(3) No fee shall be imposed for events that are sponsored or co-sponsored by the city of Washougal.
(Ord. 1874 § 1 (Exh. A), 2019; Ord. 1516 § 1, 2005)

DRAFT