

VENDOR SERVICES AGREEMENT
On-Call Snow Removal

The City of Burlington, through the Department of Public Works (hereinafter referred to as the City) and Sullivan Grading, LLC (hereinafter referred to as Contractor), for and in consideration of mutual benefits do hereby agree as follows:

1. Contractor will provide the following service/products at such time and in such manner as directed by the signatory Department Head. The service/product shall consist of:

On-Call Snow Removal Services, Fall/Winter 2010 – 2011

2. City will compensate Contractor a maximum of **\$15,000**, excluding sales tax, for the services performed under this Contract in accordance with **Exhibit A**. Such payment shall be the total compensation for all work performed under this Agreement, including but not limited to all labor, materials and supplies, incidental expenses, subcontractor's fees, reimbursable expenses, delivery to the project site, equipment expenses and installation.

The CONTRACTOR shall be eligible for payment after the performance of all services under this Contract. The CONTRACTOR shall submit an original written invoice with necessary and appropriate documentation, for work completed. Payment shall be made through the CITY'S ordinary payment process and shall be considered timely if made within 30 days of receipt of a properly completed invoice.

The CITY may withhold payment to the CONTRACTOR for any work not completed to the CITY'S satisfaction until such time as the CONTRACTOR modifies such work to the satisfaction of the CITY.

All payments shall be subject to adjustment for any amounts upon audit, or otherwise, determined to have been improperly invoiced.

In the event the CONTRACTOR fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the CONTRACTOR authorizes the CITY to deduct and withhold, or pay over to the appropriate governmental body, those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the CONTRACTOR'S total compensation.

3. The parties agree that Contractor is an independent contractor, and not an employee nor agent of the City. Contractor hereby agrees not to make any representations to any third party, nor to allow such third party to remain under the misimpression that Contractor is an employee of the City. All payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by

the Contractor as an independent contractor. Contractor will defend, indemnify and hold harmless the City, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph. Further the Contractor represents that all employees and sub-contractors are covered under Industrial Insurance in compliance with R.C.W. Title 51.

The CONTRACTOR, at its sole expense, shall obtain and keep in force any and all necessary licenses and permits. The CONTRACTOR shall obtain a business license pursuant to the Burlington Municipal Code.

4. Defense & Indemnity Agreement:

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

5. This Contract shall continue in accordance with the schedule or until either party terminates by giving 30 days notice in writing either personally delivered or mailed postage prepaid by certified mail, return receipt requested to the party's last known address, but in no event shall the contract continue for more than three (3) years from date of execution.

6. The Contractor shall not assign any interest in this Contract and shall not transfer any interest in same without prior written City consent.

7. The Contractor will secure, at its own expense, all personnel required in performing said services under this Contract. Contractor shall be personally liable for applicable payroll, labor and industries premiums and all applicable taxes and shall hold the City harmless therefrom.

8. The Contractor shall provide proof of insurance for general comprehensive liability in the amount of \$1,000,000 to cover Contractor's activities during the term of this Contract. Proof of insurance shall be in a form acceptable and approved by the City. A certificate of insurance naming the City, its elected officers, and employees as additional insureds and naming the City as a certificate holder shall accompany this Contract for signing. Thirty (30) days' written notice to the City of cancellation of the insurance policy is required. No contract shall form until and unless a copy of the certificate of insurance,

in the amount required, is attached hereto.

9. Prevailing Wages: Contractor and any subcontractors shall submit a "Statement of Intent to Pay Prevailing Wages", if applicable, prior to submitting first application for payment. Each statement of intent to pay prevailing wages must be approved by the Industrial Statistician of the Department of Labor and Industrial Statistician of the Department of Labor and Industries before it is submitted to the City. Unless otherwise authorized by the Department of Labor and Industries, each voucher claim submitted by a Contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the pre-filed statement or statements of Intent to Pay Prevailing Wages on file with the public agency.

10. Termination for Public Convenience:

The City may terminate the contract in whole or in part whenever the City determines, in its sole discretion, that such termination is in the best interests of the City. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the City at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the City. If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the City will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the City in the event this provision applies.

11. The Street Foreman for the CITY shall have primary responsibility for administering and approving services to be performed by the CONTRACTOR and shall coordinate all communications between the CONTRACTOR and the CITY.

12. Any and all notices affecting, or relative to, this Agreement shall be effective if in writing and delivered or mailed, postage prepaid, to the respective party being notified at the address listed with the signature of this Agreement.

13. The CONTRACTOR, at such times and in such form as the CITY may require, shall furnish the CITY with periodic reports pertaining to the work and services undertaken pursuant to this Agreement. The CONTRACTOR will make available to the CITY all work-related accounts, records, and documents for inspection, auditing, or evaluation during normal business hours in order to assess performance, compliance, and/or quality assurance under this Agreement.

14. The CONTRACTOR shall comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.

15. Washington law shall govern the interpretation of this Agreement. Skagit County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

16. If one or more of the clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal, or contrary to public policy.

17. This Agreement constitutes the complete and final agreement of the parties and replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter and may be modified only by a writing signed by both parties.

INDEX OF EXHIBITS:

Exhibit A: Compensation

IN WITNESS WHEREOF, the parties have executed this Agreement

this ____ day of _____, _____.

CONTRACTOR:

APPROVED:

Signature

Edward J. Brunz
Mayor

Date _____

Recommended:

Printed Name

Finance Director

Title

Mailing Address:

Department Head

Telephone No. _____

Fed. Tax ID # _____

Contractor Lic. #. _____

City Business Lic.# _____

Approved as to Form:

City Attorney

EXHIBIT A Compensation

Contractor shall be compensated at a rate of \$135/hour.

Mobilization shall be compensated as follows: \$90 per hour to road the machine to Burlington. If too far to road, mobilization shall be compensated at the trucking fee plus 10% markup.

Contractor shall be compensated \$1,000.00 per snow removal season to retain Contractor's services to Burlington as Contractor's first priority. Contractor may bill this retainer amount in full on or after November 1 of each snow removal season.