

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE:** April 27, 2015

<b>AGENDA ITEM:</b> Approve emergency replacement of the jail and Public Safety building video system.	
<b>PREPARED BY:</b> Worth Norton	<b>DIRECTOR APPROVAL:</b>
<b>DEPARTMENT:</b> Finance / Information Systems	
<b>ATTACHMENTS:</b> Justice Systems Corp. Proposal Standard City Small Works Roster Contract	
<b>BUDGET CODE:</b> 00105980 535000	<b>AMOUNT:</b> \$117,950.08
<b>SUMMARY:</b>	

The Public Safety video system is a CCTV (analog) system that has had several recent failures. The system has “sunset” and parts and service are no longer available. We did have some luck finding used parts for recent repairs, but used parts are getting harder to find. The most recent failure has resulted in limiting the system’s functionality.

Plans had been made previously to upgrade it to an IP based (network) camera system. The new system would have expanded storage capacity to keep us in line with retention requirements. The plans also called for moving the system from a closet to a secure and environmentally controlled server room. These plans had been shelved previously due to budget constraints and most recently due to potential changes at the jail.

This system ties into the jail door system and provides the camera and door monitoring staff important visuals of jail activity prior to allowing a jail door to be opened. The smooth operation of this system is a critical safety issue. We believe the most recent failure has created an emergency requiring a replacement of the system.

An emergency request for proposals was put out to seven vendors from the MRSC small works roster. Three responses were received and only one vendor could meet the timeline. The money for this replacement was budgeted for by the Council in the 2015 budget.

<b>RECOMMENDED ACTION:</b> Staff recommends that the Council authorize the Mayor to sign the small works roster contract with Justice Systems Corp.
--

## SMALL PUBLIC WORKS CONTRACT

**THIS SMALL PUBLIC WORKS CONTRACT** (“Contract”) is made and entered into this \_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Justice Systems Corp., incorporated under the laws of the State of Washington (“Contractor”), and the City of Marysville, a municipal corporation (“City”).

**WHEREAS**, the City desires to Public Safety CCTV Backend Replacement; and

**WHEREAS**, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform, carry out and complete said work and submitted a bid to the City to do said work; and

**WHEREAS**, the Contractor and the City desire to enter into this Contract for relocation of all backend hardware from a closet to a server room, rewiring cameras to server room, new encoders for IP conversion, networking for cameras, new NVR server and storage for 25+ months of storage, new IP based control console with touchscreen for integration with PLC jail door operations, 2 additional viewing/admin stations, licensing for 30 cameras and 5 clients in accordance with the terms and conditions of this Contract.

**NOW, THEREFORE**, in consideration of the terms, conditions and agreements contained herein, the City and Contractor agree as follows:

**1. Scope of Work—the Project.**

The Contractor shall perform, carry and complete the Public Safety CCTV Backend Replacement (“Project”) in accordance with this Contract and the incorporated Contract Documents specified in Section 2. The project shall be completed no later than June 26, 2015.

**2. Contract Documents.**

The following documents incorporated into the Contract by this reference:

- a. Bid Proposal (attached)
- b. 2010 Standard Specifications for Road, Bridge, and Municipal Construction (WSDOT/APWA) (“Standard Specifications”) (referenced but not attached).
- c. 2010 APWA Supplement General Special Provisions (referenced but not attached).

In the event of any inconsistencies or conflicts between the language of this Contract and these incorporated documents, the language of the Contract shall prevail over the language of the documents.

**3. Commencement of Work.**

Work shall not proceed under this Contract until the following conditions have been met by the Contractor:

- a. Contract has been signed and fully executed by the parties.
- b. The Contractor has provided the City with the certificates of insurance required under Section 21.
- c. The Contractor has obtained a City of Marysville Business Licenses and UBI number.
- d. The Contractor has provided the City with satisfactory documentation that Contractor is licensed and bonded as a contractor in Washington State.

These conditions shall be satisfied within ten (10) calendar days of the City's Notice of Award of the Contract to the Contractor. Upon satisfaction of these conditions, the City shall issue a Notice to Proceed and Contractor shall commence work within ten (10) calendar days of the date of said Notice.

**4. Time is of the Essence/Liquidated Damages.**

Time is of the essence in the performance of this Contract. The Contractor shall diligently pursue the Project work to physical completion by the date specified in Section 1. If said work is not completed within the time specified, the Contractor agrees to pay the City as liquidated damages the sum set forth in Section 1-08.9 of the Standard Specifications for each and every calendar day said work remains uncompleted after expiration of the specified time.

**5. Payment for Project.**

a. Total Contract Sum for Project. The City shall pay the Contractor for satisfactory completion of the Project under the Contract a total Contract Sum not to exceed **One Hundred and Eight Thousand Four Hundred and Ten dollars (\$108,410)** in accordance with the bid price in the Bid Proposal and *excluding* Washington State Sales Tax. The total Contract Sum includes all expenses and costs incurred in planning, designing and constructing the Project, including, but not limited to, applicable sales and use taxes, costs and expenses for overhead, profit, labor, materials, supplies, permits, subcontractors, consultants, and professional services necessary to construct and complete the Project.

b. Statement of Intent to Pay Prevailing Wages. The Contractor shall provide the City with a copy of Contractor's Intent to Pay Prevailing Wages prior to payment.

c. Payments shall be for Performance of Project Work. Payments for work provided hereunder shall be made following the performance of such work, unless otherwise permitted by law

and approved in writing by the City. No payment shall be made for any work rendered by the Contractor except as identified and set forth in this Contract.

d. Progress Payments. Progress payments shall be based on the timely submittal by the Contractor of the City's standard Payment Request form. Applications for Payment not signed and/or completed shall be considered incomplete and ineligible for payment consideration. The City shall initiate authorization for payment after receipt of a satisfactorily completed payment request form and shall make payment to the Contractor within approximately thirty (30) calendar days thereafter.

e. Payments for Alterations and/or Additions. Payments for any alterations in or additions to the work provided under this Contract shall be in accordance with the Request For Information (RFI) and/or Construction Change Order (CCO) process as set forth in the Standard Specifications. Following approval of the RFI and/or CCO, the Contractor shall submit a completed City standard Payment Request form.

f. Retainage. Pursuant to RCW Chapter 60.28, a sum of 5-percent of the monies earned by the Contractor will be retained from payments made by the City to the Contractor under this Contract. This retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to RCW Title 82 and (2) the claims of any person arising under the Contract.

Monies retained under the provisions of RCW Chapter 60.28 shall, at the option of the Contractor, be:

- i. Retained in a fund by the City; or
- ii. In the form of a retainage bond; or
- iii. Deposited by the City in an escrow (interest-bearing) account in a bank, mutual saving bank, or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the City and are not to be allowed to be withdrawn without the City's written authorization. The City will issue a check representing the sum of the monies reserved, payable to the bank or trust company. Such check shall be converted into bonds and securities chosen by the Contractor as the interest accrues.

At or before the time the Contract is executed, the Contractor shall designate the option desired. The Contractor in choosing option (2) agrees to assume full responsibility to pay all costs that may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities.

Release of the retainage will be made sixty (60) calendar days following the Final Acceptance of the Project provided the following conditions are met:

- iv. A release has been obtained from the Washington State Department of Revenue.
- v. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the Contracting Agency (RCW 39.12.040).

- vi. A certificate of Payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
- vii. Washington State Department of Labor and Industries (per Section 1-07.10 of the Standard Specifications) shows the Contractor is current with payments of industrial insurance and medical premiums.
- viii. All claims, as provided by law, filed against the retainage have been resolved.

g. Final Acceptance of the Project. Final Acceptance is determined when the Project is accepted by the City Council as being one hundred percent (100%) complete.

h. Payment in the Event of Termination. In the event this Contract is terminated in accordance with Section 7, the Contractor shall be compensated in accordance with the above terms for all satisfactory services and work provided under this Contract up to the effective termination date.

i. Maintenance and Inspection of Financial Records. The Contractor and its subcontractors shall maintain reasonable books, accounts, records, documents and other evidence pertaining to the costs and expenses allowable, and the consideration paid under this Contract, in accordance with reasonable and customary accepted accounting practices. All such books of account and records required to be maintained by this Contract shall be subject to inspection and audit by representatives of City and/or of the Washington State Auditor at all reasonable times, and the Contractor shall afford the proper facilities for such inspection and audit to the extent such books and records are under control of the City, and all Project Contracts shall similarly provide for such inspection and audit rights. Such books of account and records may be copied by representatives of City and/or of the Washington State Auditor where necessary to conduct or document an audit. The Contractor shall preserve and make available all such books of account and records in its control for a period of three (3) years after final payment under this Contract, and Bunker Repair Project subcontracts shall impose similar duties on the subcontractors.

**6. Term of Contract.**

The term of this Contract shall commence upon full execution of this Contract by the City and Contractor and shall terminate upon final payment by the City to the Contractor, unless sooner terminated by either party for default under Section 7 below.

**7. Termination for Default.**

Except as otherwise provided under this Contract, either party may terminate this Contract upon ten (10) working days' written notice to the other party in the event that said other party is in default and fails to cure such default within that ten-day period, or such longer period as provided by the non-defaulting party. The notice of termination shall state the reasons therefore and the effective date of the termination.

**8. Status of Contractor.**

The Contractor is a licensed, bonded and insured contractor as required and in accordance with the laws of the State of Washington. Contractor is acting as an independent contractor in the

performance of each and every part of this Contract. No officer, employee, volunteer, and/or agent of either party shall act on behalf of or represent him or herself as an agent or representative of the City. Contractor and its officers, employees, volunteers, agents, contractors and/or subcontractors shall make no claim of City employment nor shall claim against the City any related employment benefits, social security, and/or retirement benefits. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership or agency between Contractor and the City.

**9. Permits.**

The Contractor will apply for, pay for and obtain any and all City, State and Federal permits necessary to commence, construct and complete the Project.

**10. Business License Required.**

The Contractor shall obtain a City of Marysville Business License prior to commencement of work under this Contract.

**11. Work Ethic.**

The Contractor shall perform all work and services under and pursuant to this Contract in timely, professional and workmanlike manner.

**12. City Ownership of Work Products.**

All work products (reports, maps, designs, specifications, etc.) prepared by or at the request of Contractor regarding the planning, design and construction of the Project shall be the property of the City. Contractor shall provide the City with paper and electronic copies of all work products in possession or control of Contractor upon written request from the City.

**13. Trench Safety Systems.**

The Contractor shall ensure that all trenches are provided with adequate safety systems as required by RCW Chapter 49.17 and WAC 296-155-650 and -655. The Contractor is responsible for providing the competent person and registered professional engineer required by WAC 296-155-650 and -655.

**14. Prevailing Wages.**

Contractor shall pay its employees, and shall require its subcontractors to pay their employees, prevailing wages as required by and in compliance with applicable state and/or federal law and/or regulations, including but not limited to RCW Chapter 39.12 and RCW Chapter 49.28. Prior to final payment under this Contract, Contractor shall certify in writing that prevailing wages have been paid for all work on the Project as required and in accordance with applicable law and/or regulations.

**15. Taxes and Assessments.**

The Contractor shall be solely responsible for compensating its employees, agents, and/or subcontractors and for paying all related taxes, deductions, and assessments, including, but not limited to, applicable use and sales taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Contract.

**16. Nondiscrimination Provision.**

During the performance of this Contract, the Contractor shall comply with all applicable equal opportunity laws and/or regulations and shall not discriminate on the basis of race, age, color, sex, sexual orientation, religion, national origin, creed, veteran status, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of work and services under this Contract. The Contractor further agrees to maintain notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Contractor understands that violation of this provision shall be cause for immediate termination of this Contract and the Contractor may be barred from performing any services or work for the City in the future unless the Contractor demonstrate to the satisfaction of the City that discriminatory practices have been eliminated and that recurrence of such discriminatory practices is unlikely.

**17. The Americans with Disabilities Act.**

The Contractor shall comply, and shall require its subcontractors to comply, with the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. (ADA), and its implementing regulations, and Washington State's anti-discrimination law as contained in RCW Chapter 49.60 and its implementing regulations, with regard to the work and services provided pursuant to this Contract. The ADA provides comprehensive civil rights to individuals with disabilities in the area of employment, public accommodations, public transportation, state and local government services, and telecommunications.

**18. Compliance With Law.**

The Contractors shall perform all work and services under and pursuant to this Contract in full compliance with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, whether federal, state, local, or otherwise.

**19. Guarantee of Work.**

a. The Contractor guarantees and warrants all of its work, materials, and equipment provided and utilized for this Project to be free from defects for a period of one (1) year from the date of final acceptance of the Project work. The Contractor shall remedy any defects in its Project work, and the materials, and equipment utilized in the Project and pay for any damages resulting therefrom which shall appear within a period of one (1) year from the date of final acceptance of the Project work unless a longer period is specified. The City will give notice of observed defects with reasonable promptness.

b. The guarantee/warranty period shall be suspended from the time a significant defect is first documented by the City until the work or equipment is repaired or replaced by the Contractor and accepted by the City. In the event that fewer than ninety (90) calendar days remain in the guarantee period after acceptance of such repair or replacement (after deducting the period of suspension above), the guarantee period shall be extended to allow for at least ninety (90) calendar days guarantee of the work from the date of acceptance of such repair or equipment.

c. The Contractor shall also provide the City with manufacturer's warranties for all components, materials and equipment installed as part of the Project.

**20. Indemnification and Hold Harmless.**

a. The Contractor shall indemnify, defend and hold the City, its elected officials, agents, officers and/or employees harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses of any nature whatsoever (including all costs and attorneys' fees) to or by third parties arising from, resulting from or connected with the work and services performed or to be performed under this Contract by the Contractor and/or its directors, officers, agents, employees, consultants, and/or subcontractors to the fullest extent permitted by law and subject to the limitations provided below.

b. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its elected officials, agents, officers and/or employees.

c. The Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City and/or its elected officials, agents, officers and/or employees, and (b) the Contractor and/or its directors, officers, agents, employees, consultants, and/or subcontractors, shall apply only to the extent of negligence of Contractor and/or its directors, officers, agents, employees, consultants, and/or subcontractors.

d. The Contractor specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, as provided in RCW 4.24.115. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts; provided the Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against the Contractor by the City and does not include, or extend to, any claims by the Contractor's employees directly against Contractor. The obligations of Contractor under this subsection have been mutually negotiated by the parties hereto, and Contractor acknowledges that the City would not enter into this Contract without the waiver thereof of Contractor.

e. Nothing contained in this section or Contract shall be construed to create a liability or a right of indemnification by any third party.

f. The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

**21. Insurance.**

The Contractor shall procure, and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors. Failure by the Contractor to maintain the insurance as required shall constitute a material breach of contract upon which the City may, after giving five (5) working days notice to the Contractor to correct the breach, immediately terminate the Contract or at its discretion, procure or



renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, off set against funds due the Contractor from the City.

a. Minimum Scope of Insurance. The Contractor shall obtain insurance of the types described below:

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured- Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-contractors in the work. Builders Risk insurance shall be on a all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for floor and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

b. Minimum Amounts of Insurance. The Contractor shall maintain the following insurance limits:

- i. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

- ii. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.
- iii. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.
- c. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance.
  - i. The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.
  - ii. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled or reduced as to coverage by either party, except after forty-five (45) days prior written notice by certified mail, return receipt requested, has been given to the City.
- d. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- e. Verification of Coverage. The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this project.
- d. Contractor's Insurance For Other Losses. The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or subcontractors as well as to any temporary structures, scaffolding and protective fences.
- g. Waiver of Subrogation. The Contractor and the City waive all rights against each other, any of their subcontractors, lower tier subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

**22. Assignment and Subcontractors.**

- a. The Contractor shall not assign this Contract or any interest herein, nor any money due to or to become due hereunder, without first obtaining the written consent of the City.
- b. The Contractor shall not subcontract any part of the services to be performed hereunder without first obtaining the consent of the City and complying with the provisions of this section.

c. In the event the Contractor does assign this contract or employ any subcontractor, the Contractor agrees to bind in writing every assignee and subcontractor to the applicable terms and conditions of the Contract documents.

d. The Contractor shall, before commencing any work, notify the City in writing of the names of any proposed subcontractors. The Contractor shall submit to the City a Request to Sublet Work (WSDOT form 421-012). The Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items or materials or equipment), whether initially or as a substitute, against whom the City may have reasonable objection. Each subcontractor or other person or organization shall be identified in writing to the City by the Contractor prior to the date this Contract is signed by the Contractor. Acceptance of any subcontractor or assignee by the City shall not constitute a waiver of any right of the City to reject defective work or work not in conformance with the contract documents. If the City, at any time, has reasonable objection to a subcontractor or assignee, the Contractor shall submit an acceptable substitute.

e. The Contractor shall be fully responsible for all acts and omissions of its assignees, subcontractors and of persons and organization directly or indirectly employed by it and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of person directly employed by it.

f. The divisions and sections of the Specifications and the identifications of any drawings shall not control the Contractor in dividing the work among subcontractors or delineating the work to be performed by any specific trade.

g. The Contract does not and shall not create or be construed to create any relationship, contractual or otherwise, between the City and any subcontractor or assignee. Nothing in the Contract shall create any obligation on the part of the City to pay or to assure payment of any monies due any subcontractor or assignee.

h. The Contractor hereby assigns to the City any and all claims for overcharges resulting from antitrust violations as to goods and materials purchased in connection with this Contract, except as to overcharges resulting from antitrust violations commencing after the date of the bid or other event establishing the price of this Contract. In addition, the Contractor warrants and represents that each of its suppliers and subcontractors shall assign any and all such claims for overcharges to the City in accordance with the terms of this provision. The Contractor further agrees to give the City immediate notice of the existence of any such claim.

**23. Severability.**

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

**24. Integration and Supersession.**

This Contract sets forth all of the terms, conditions, and Contracts of the parties relative to the Project, and supersedes any and all such former Contracts which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or Contracts with respect thereto except as provided herein, and no amendment or modification of this Contract shall be effective unless reduced to writing and executed by the parties. In the event of any conflicts or inconsistencies between this Contract and the Declaration, the terms of this Contract shall control in all cases.

**25. Non-Waiver.**

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any Contract, covenant or condition of this Contract, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such Contract, covenant, condition or right.

**26. Survival.**

Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

**27. Contract Representatives and Notices.**

This Contract shall be administered for the City by the City's Contract Representative, Worth Norton and shall be administered for the Contractor by the Contractor's Contract Representative, Paul Allyn. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To the City:                      City of Marysville  
    Department of Public Works  
    Attn: Jeff Laycock, P.E. – Project Engineer  
    80 Columbia Avenue  
    Marysville, WA

To Contractor:                      Justice Systems Corp.  
    Paul Allyn  
    1065 12th Avenue NW, Suite E3  
    Issaquah, WA 98027

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

**28. Third Parties.**

The City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any right or benefit, whether directly or indirectly or otherwise, to third persons.

**29. Governing Law.**

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

**30. Venue.**

The venue for any action to enforce or interpret this Contract shall lie in the Superior Court of Washington for Snohomish County, Washington.

**31. Attorney Fees.**

Should either the City or the Contractor commence any legal action relating to the provisions of this Contract or the enforcement thereof, the prevailing party shall be awarded judgment for all costs of litigation including, but not limited to, costs, expert witnesses, and reasonable attorney fees.

**32. Authority.**

The person executing this Agreement on behalf of Contractor represents and warrants that he or she has been fully authorized by Contractor to execute this Agreement on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Agreement. The person executing this Contractor on behalf of the City represents and warrants that he or she has been fully authorized by the City to execute this Contractor on its behalf and to legally bind the City to all the terms, performances and provisions of this Contractor.

**33. Counterparts.**

This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Contract.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed the day and year first hereinabove written.

**CITY OF MARYSVILLE**

**CONTRACTOR**

By: \_\_\_\_\_  
Jon Nehring, Mayor

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

---

April O'Brien, Deputy City Clerk

Approved as to form:

---

Grant Weed, City Attorney

Acknowledgement of Waiver of Contractor's Industrial Insurance Immunity:

---

Jon Nehring, Mayor

---

Contractor

**ATTACHMENTS:**

- a. Bid Proposal or Other

**THIS PAGE LEFT INTENTIONALLY BLANK**