

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

**PROJECT TITLE:**

Agreement to allow the Court to utilize an on-line interpreter management service and program named 1Lingua.

- Briefing
- Proposed Action
- Consent
- Action
- First Reading
- Second Reading
- Third Reading
- Public Hearing
- Budget Advisory

COUNCIL BILL # \_\_\_\_\_  
 Originating Department \_\_\_\_\_  
 Contact Person Katie Traenkenschuh  
 Phone Number 7052  
 FOR AGENDA OF 9/28/16

Initialed by:  
 Department Head \_\_\_\_\_  
 CAA \_\_\_\_\_  
 Council President 

**Location                      Preceding Action                      Attachments                      Department(s) Approval**

Amount Budgeted	-0-	
Expenditure Required	-0-	Account Number(s):005 50100001410
Budget Remaining	-0-	
Additional Required	-0-	

**DETAILED SUMMARY STATEMENT:**

The Court participated in a pilot program with e-interpreters (1Lingua) in 2012 to help test their product and assist the court in managing interpreter services. The Court would now like to utilize their on-line interpreter management program. The program can provide interpreting services in person as well as via telephone. There is a basic fee of \$50 per month for the service.

**RECOMMENDATION (Exact action requested of Council):**

Authorize the Mayor to sign the agreement with 1Lingua to allow the Court to utilize an on-line interpreter management program.

# AGREEMENT/CONTRACT ROUTING COVERSHEET

To: Clerk's Office Date: 9/19/2016  
 From: Katie Traenkenschuh Department: Municipal Court  
 RE: Documents for Mayor's Signature Expedite: Yes  No

**TO BE COMPLETED BY DEPARTMENT:**

Project Title/Description of Service:	<u>Agreement to utilize an on-line Interpreter Management Service</u>
Project Manager:	_____
Contractor/Vendor/Agency:	<u>1Lingua</u>
Council Approval Date (if applicable):	_____
Contract End Date:	_____
Amendment/Supplemental/Change Order #:	_____
Public Works WO Number / GL Code:	_____
Tracking # (federal, state, county, etc.):	_____
Total Compensation Amount:	_____

1 Number of copies attached

**PLEASE SELECT THE DOCUMENT TYPE:**

- |                                                                                     |                                                                               |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> 1) Professional Services (PSA, Performer, etc.) | <input type="checkbox"/> 6) Technology (IT, Telecom, Software)                |
| <input type="checkbox"/> 2) Grants (Applications, Human Needs, etc. )               | <input type="checkbox"/> 7) Capital Contracts (Construction)                  |
| <input type="checkbox"/> 3) Interlocal / Interagency                                | <input type="checkbox"/> 8) Real Property (Deeds, Easements, Covenants, etc.) |
| <input type="checkbox"/> 4) Lease / Use of Property                                 | <input type="checkbox"/> 9) JOC / Small Works                                 |
| <input type="checkbox"/> 5) Purchase Agreement                                      | <input type="checkbox"/> 10) Amendments / Change Orders                       |
| <input type="checkbox"/> Other: _____                                               |                                                                               |

**Previous Action (if any):**

Any changes to the standard legal form: Yes  No

Legal Approval (If applicable, who approved in Legal?) Jim Iles

Project Description:  
On-line Interpreter Management Service

**Routing (for department use):**

Project Manager \_\_\_\_\_  
 Manager Katie Traenkenschuh \_\_\_\_\_  
 Department Head Judge Van Slyck \_\_\_\_\_

**TO BE COMPLETED BY CLERK'S OFFICE/LEGAL/ADMIN:**

DISTRIBUTION:  
 \_\_\_\_\_ City Attorney Routing date: \_\_\_\_\_  
 \_\_\_\_\_ CAO/CFO D. Bryant  
 \_\_\_\_\_ Mayor Stephanson Date signed by Mayor: \_\_\_\_\_



**e-interpreters  
Statement of Work  
Full Use of the 1Lingua System**

**Client:**

Name: City of Everett Municipal Court  
Address: 3028 Wetmore Ave.  
Everett, WA 98201  
Telephone: 425-257-8778  
Email Municipal Court@ci.everett.wa.us

Description of the subscription of the City of Everett Municipal Court (the "Client") to **e-interpreters'** interpreter management system 1Lingua Version 2.37.11 (the "Service"):

**e-interpreters** shall commence Service with the Client, as follows:

1. **e-interpreters** shall provide full access to all the functioning features of the Service to Client's administrators and all users that the Client deems appropriate;
2. **e-interpreters** shall provide 24/7/365 support to Client and registered interpreters;
3. Fees: Fees for services as described in Appendix A of this SOW, will be adjusted every month, based upon the number of encounters for the previous month;

**e-interpreters, by:**

**Client, by:**

\_\_\_\_\_  
Eduardo Zaldibar  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ray Stephanson  
City of Everett Mayor

\_\_\_\_\_  
Date

**Client, by:**

**Client, by:**

\_\_\_\_\_  
James D. Iles  
City of Everett Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Katie M. Traenkenschuh  
Court Administrator  
City of Everett Municipal Court

\_\_\_\_\_  
Date

## MASTER SERVICES AGREEMENT

This agreement ("Agreement") between **1Lingua LLC dba e-interpreters**, a Washington State Limited Liability Company located at 9024 W Mall Dr. Everett, WA, 98208-2100 ("**e-interpreters**") and City of Everett Municipal Court, a Washington State Court located at 3028 Wetmore Ave., Everett, WA 98201 ("Client"), is effective as of the date executed by the parties.

### RECITALS

Client desires to engage **e-interpreters** to provide Client access to the current version of **e-interpreters'** online interpreter management services and program named 1Lingua ("Service") pursuant to the terms set forth in this Agreement and its attached statement of work ("SOW"), and **e-interpreters** desires to be engaged by Client on such terms and conditions.

### AGREEMENT

1. **RETENTION OF E-INTERPRETERS; SERVICES TO BE PERFORMED.** Client retains **e-interpreters** to provide access to the Service as set forth in this Agreement and any attached SOW, incorporated by this reference. **e-interpreters** shall have the discretion to assign its employees and independent contractors to perform under this Agreement as necessary and appropriate.
2. **INDEPENDENT CONTRACTOR; NO AGENCY.** In performing under this Agreement, **e-interpreters** will act as an independent contractor with respect to Client. The parties do not intend to enter into a joint venture, partnership or employment arrangement by entering into this Agreement.
  - 2.1. **CONTROL AND EQUIPMENT.** In performing under this Agreement, **e-interpreters** agrees to provide its own equipment, tools and materials. **e-interpreters** shall perform under this Agreement in a timely manner, with the highest degree of professionalism and utilizing **e-interpreters'** expertise and creative talent, consistent with industry standards, and at a location, place and time which **e-interpreters** deems appropriate. **e-interpreters** may enter into any contract with other entities, except any contract which would induce **e-interpreters** to violate this Agreement.
  - 2.2. **TAXES AND LABOR LAWS.** **e-interpreters** shall have full responsibility for applicable withholding taxes for all compensation paid to **e-interpreters** by Client, and for compliance with all applicable labor and employment requirements with respect to **e-interpreters'** business organization and **e-interpreters'** agents, partners, independent contractors and employees, if any, including state worker's compensation insurance coverage requirements and any U.S. immigration visa requirements. Any and all employees of **e-interpreters**, while engaged in the performance of any work or service required of **e-interpreters** under this Agreement, shall be considered employees of **e-interpreters** only and not of Client, and any and all claims that may or might arise under the Workers' Compensation Act on behalf of said employees while so engaged, and any and all claims made by a third party as a consequence of any negligent act or omission on the part of **e-interpreters** or **e-interpreters'** employees while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of **e-interpreters**. **e-interpreters** hereby agrees to indemnify, defend, and hold Client harmless from any liability for, or assessment of, any claims or penalties with respect to such withholding taxes, labor, or employment requirements, including any liability for, or assessment of, withholding taxes imposed on Client by the relevant taxing authorities with respect to any compensation paid to **e-interpreters** or **e-interpreters'** agents, partners, or its employees or contractors.



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3. **FEES AND BILLING.** Services provided by e-interpreters to Client will be billed as set forth in Appendix A of the SOW ("Fees"). Payment on an invoice is considered past due if not received by the 30<sup>th</sup> day of the month following the invoice. Finance charges of 1% per month will be applied to all past due invoices.
4. **INTERPRETERS' FEES.** The use of the Service is free for all interpreters that provide ASL or spoken interpreter services for any and all Washington State Courts.
5. **TERM AND TERMINATION.** Subject to the provisions of this section, either party may terminate this Agreement or a specific project under a SOW with 30 business days' written notice to the other party. Either party may terminate this Agreement immediately in the case of the other party's willful or persistent material breach of this Agreement. Upon termination, any and all Fees owing to **e-interpreters** by Client for Services up through and including the termination date shall be immediately due and payable.
6. **CONFIDENTIALITY.**
  - 6.1. **CONFIDENTIAL INFORMATION.** For purposes of this Agreement, "Confidential Information" shall mean any and all information related to any aspect of either party's business which is either information not known by actual or potential competitors of the disclosing party or is proprietary information of the disclosing party, whether of a technical nature or otherwise, and shall include, without limitation, (a) any and all information in whatever form relating to the disclosing party or the manner in which the disclosing party conducts its business, including but not limited to, the disclosing party's customers, employees, operations, assets, liabilities, resources, technical analyses, recruiting and compensation practices and other intellectual capital of the disclosing party, which intellectual capital shall be deemed to include, but not be limited to, consulting tools (such as business and computer systems, software programs, databases, and other documentation and methods), client, prospect and other information regarding services, business activities and client matters, information about the disclosing party's employees, or summaries or originals (and any copies thereof) of any papers, documents, plans, specifications, customer lists, contracts, licenses or licensing agreements, or portions thereof, relating to the services, products or operations of the disclosing party or its clients; (b) any information not included above which the receiving party knows or should know is subject to a restriction on disclosure or which the receiving party knows or should know is considered by the disclosing party to be confidential, sensitive, proprietary or trade secret or is not readily available to the public. Confidential Information does not include any of the foregoing items which has become publicly known and made generally available through no wrongful act or omission of the receiving party or of others who were under confidentiality obligations as to the information involved. Each party expressly agrees that the parties' obligations to hold any Confidential Information in trust and confidence does not terminate upon termination or expiration of this Agreement and continues in perpetuity.
  - 6.2. **CONFIDENTIALITY OBLIGATIONS.** No right or license to either party's Confidential Information is granted or implied as a result of this Agreement, except to the limited extent necessary for the parties to perform under this Agreement. Each party agrees during the term of this Agreement and thereafter that it will

take all steps reasonably necessary to hold the other party's Confidential Information in trust and confidence, will not use Confidential Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Confidential Information to any third party without first obtaining the other party's express written consent on a case-by-case basis.

- 6.3. **REQUIRED DISCLOSURE.** If a party is required to disclose the Confidential Information by law or court order, it may do so without breach of this Agreement, but such party shall notify the other party sufficiently in advance of any disclosure to provide the other party with a reasonable opportunity to seek protective orders related to such disclosure.

## 7. PUBLICITY AND MARKETING.

- 7.1. **LIMITED LICENSE TO USE.** For the term of this Agreement, each party grants to the other party a limited license to use the granting party's name and logo in promotional materials and other communications with third parties. In addition, during the term of this Agreement and for a period of two years after its termination **e-interpreters** may list Client's name on its website or in materials it may provide to its prospective Clients, provided that such use does not violate the confidentiality provisions of this Agreement. If Client wishes **e-interpreters** to refrain from using its information for such purposes, Client must so notify **e-interpreters** in writing. When using the other party's trademarks and trade names under this Agreement, each party agrees to comply with all applicable laws pertaining to such use, and agrees to consult with the other party before such use.
- 7.2. **RIGHTS.** Each party agrees that it shall not question, contest or challenge the other party's ownership of such trademarks or trade names, and each party agrees it will not claim any right, title or interest in any of the other party's trademarks or trade names, nor register or attempt to register any aspect of the other party's trademarks or trade names, except the right to use the same pursuant to the terms and conditions of this Agreement.

## 8. USE OF THE SERVICE/LICENSE GRANTED.

- 8.1. **LICENSE GRANT.** **e-interpreters** hereby grants Client a non-exclusive, non-transferable, revocable license to access and use the Service in accordance with the attached SOW.
- 8.2. **RESTRICTIONS.** Client may not: (i) modify, disassemble, decompile or reverse engineer the Service or any portion thereof, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Service to any third party or use the Service to provide time sharing or similar services for any third party; (iii) make any copies of the Service; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Service, features that prevent or restrict use or copying of any content accessible through the Service, or features that enforce limitations on use of the Service; or (v) delete the copyright and other proprietary rights notices on the Service.
- 8.3. **UPGRADES.** Client acknowledges that **e-interpreters** may from time to time issue upgraded versions of the Service, and may automatically electronically upgrade the version of the Service that Client accesses. Client agrees that the terms and conditions of this Agreement will apply to all such upgrades.
- 8.4. **OPEN SOURCE.** With respect to any open source or third-party code that may be incorporated in the Service, such open source code is covered by the applicable open source or third-party license End User License Agreement, if any, authorizing use of such code.
- 8.5. **RIGHTS RESERVED.** The foregoing license grant under this Agreement is not a sale of the Service or any copy thereof and **e-interpreters** or its third party partners or suppliers retain all right, title, and interest in the Service (and any copy thereof). Any attempt by Client to transfer any of the rights,



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duties or obligations hereunder, except as expressly provided for in this Agreement, is void. **e-interpreters** reserves all rights not expressly granted under this Agreement.

- 8.6. UNAUTHORIZED USE.** Use of the Service beyond the scope of authorized access granted to Client by **e-interpreters** immediately terminates said license. In order to collect, aggregate, copy, duplicate, display or make derivative use of the Service or any content made available via the Service for other purposes (including commercial purposes) not stated herein, Client must first obtain a written license from **e-interpreters**. "Content" shall be defined for the purposes of this Agreement as any content on the Service, including but not limited to user-generated content.
- 9. NON-SOLICITATION.** During the term of this Agreement and for a period of one (1) year after its Termination, neither party shall hire or enter into a contract with any employee, agent, contractor or representative of the other party to provide services to the hiring party or, directly or indirectly, encourage any employee, agent, contractor or representative of non-hiring party to leave or otherwise terminate such person's relationship with the non-hiring party without prior written consent, arrangement and approval from the non-hiring party.
- 10. NON-INTERFERENCE.** During the term of this Agreement and thereafter, the parties agree not to either directly or indirectly interfere with the other party's contracts and relationships, or prospective contracts and relationships, including but not limited to contracts and relationships with Clients, vendors, independent contractors and employees. For the purposes of this Agreement, "interfere with" shall be defined as intentional acts designed to disrupt a relationship.
- 11. LIMITATION ON LIABILITY.**
- 11.1.** **e-interpreters** hereby represents and warrants to Client that it has the qualifications, the experience, and the ability to perform properly under this Agreement. Client understands and agrees that the decision whether and how to use the Service rests solely with Client, and that any and all consequences arising out of or in any way relating to the use of the Service shall be and remain the sole responsibility of Client.
- 11.2.** The total liability of **e-interpreters** to Client under any provision of this Agreement or for any claims, losses or damages related to its performance under this Agreement (whether based on contract, tort or any other theory), shall be limited to the amount of Fees paid by Client to **e-interpreters** for the services giving rise to the liability. In no event shall **e-interpreters** be liable for lost profits or any consequential or indirect damages. The parties acknowledge that the parties have relied upon the inclusion of these limitations in consideration of entering into this agreement.
- 11.3.** Client shall hold **e-interpreters** harmless in regards to the inappropriate and/or unlawful use of the Service by its registered interpreters, and will assume the responsibility of said use by those interpreters that Client assigns to jobs using the Service.

11.4. Notwithstanding the foregoing, **e-interpreters** shall be liable and Client will not indemnify **e-interpreters** in any event where **e-interpreters** was grossly negligent or committed deliberate misconduct in performing under this Agreement.

## 12. INDEMNIFICATION.

12.1. **BY E-INTERPRETERS.** **e-interpreters** will indemnify and hold harmless Client, its officers, directors, members, employees, sub-licensees, customers and agents from actual costs incurred by Client as a result of a breach or alleged breach of any representation or obligation of **e-interpreters** under the Agreement (a "Claim"), provided that Client gives **e-interpreters** written notice of any such Claim and **e-interpreters** has the right to participate in the defense of any such Claim at its expense. Client will not agree to the settlement of any such claim, demand or suit prior to the final judgment thereon without the consent of **e-interpreters**, whose consent will not be unreasonably withheld. In no event shall **e-interpreters** indemnify Client for any claim of lost profits or for any consequential or indirect damages. Client shall not by any act or omission admit liability or otherwise prejudice or jeopardize **e-interpreters'** actual or potential defense to any claim. Such indemnity is subject to Client's duty to mitigate all of its related costs, expenses, damages or liabilities.

12.2. **BY CLIENT.** Client will indemnify and hold harmless **e-interpreters**, its officers, directors, members, employees, sub-licensees, customers and agents from actual costs incurred by **e-interpreters** as a result of a breach or alleged breach of any representation or obligation of Client under the Agreement, related to the provision by Client to **e-interpreters** of false or misleading information pursuant to this Agreement or to Client's use of the Services, (a "Claim"), provided that **e-interpreters** gives Client written notice of any such Claim and Client has the right to participate in the defense of any such Claim at its expense. **e-interpreters** will not agree to the settlement of any such claim, demand or suit prior to the final judgment thereon without the consent of Client, whose consent will not be unreasonably withheld. In no event shall Client indemnify **e-interpreters** for lost profits or any consequential or indirect damages. **e-interpreters** shall not by any act or omission admit liability or otherwise prejudice or jeopardize Client's actual or potential defense to any claim. Such indemnity is subject to **e-interpreters** duty to mitigate its related costs, expenses, damages or liabilities. From the date of written notice from **e-interpreters** to Client of any such Claim, **e-interpreters** shall have the right to submit for reimbursement from Client the amount of any defense costs actually incurred.

## 13. GENERAL PROVISIONS.

13.1. **DISPUTES.** The parties shall attempt to resolve any and all disputes or claims arising out of this Agreement through mutually cooperative negotiation in good faith. If negotiation is unsuccessful, the matter may then be submitted to mediation. If mediation is unsuccessful, the matter shall be fully and finally settled by arbitration with a recognized Alternative Dispute Resolution ("ADR") group in King County, Washington by an arbitrator chosen in accordance with the ADR rules, and the judgment upon award may be entered in any court having jurisdiction thereof. The parties agree to electronic appearance via telephone or live video at any arbitration. The attorneys' fees and costs of dispute resolution shall be borne by the losing party unless the parties stipulate otherwise or in such proportions as the mediator or arbitrator shall decide.

13.2. **GOVERNING LAW AND VENUE.** This Agreement shall be governed by and construed under the laws of Washington State. Jurisdiction and venue for all purposes shall be in King County, Washington. The parties consent to the personal jurisdiction of the state and federal courts located in King County, Washington for any lawsuit filed there arising from or related to this Agreement.

13.3. **NOTICES.** Any notice intended for either party shall be deemed to be validly given if it is in writing and is sent by electronic mail, fax, U.S. mail or hand-delivered, or by courier service to such party's address as set forth in this Agreement, or to any other address which the party in question may have



indicated in writing to the other party. A copy of any notice sent by electronic mail shall also be sent whenever possible corresponding to one of the above-mentioned delivery modes.

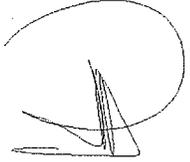
- 13.4. HEADINGS AND SEVERABILITY.** Headings are for ease of reference and shall not modify the meaning of this Agreement's provisions. If any provision of this Agreement is declared to be invalid or unenforceable, the validity and enforceability of the remaining provisions will not be affected. The invalid or unenforceable provision will be deemed modified to the extent necessary to render it valid and enforceable, and if no modification may render so, this Agreement will be construed as if not containing such provision.
- 13.5. NO WAIVER.** No delay or failure by either party in exercising, protecting or enforcing any of its rights, interests or remedies hereunder, and no course of dealing or performance with respect thereto, shall constitute a waiver thereof. The express waiver by a party of any right, interest or remedy in a particular instance shall not constitute a waiver thereof in any other instance.
- 13.6. COUNTERPARTS.** This Agreement and any amendments may be signed in counterparts; it being understood, however, that all counterparts collectively shall constitute one and the same Agreement.
- 13.7. AMENDMENTS, WAIVER, MODIFICATION OR TERMINATION.** No amendment, waiver, termination or modification of this Agreement will be binding unless it is in writing and signed by authorized representatives of each party and dated subsequent to the date of this Agreement.
- 13.8. SUCCESSORS AND ASSIGNMENT.** This Agreement shall bind the parties to the Agreement as well as their respective successors, heirs and assigns. This Agreement and the rights and obligations of the parties hereunder are not assignable by either party without prior written consent of an authorized representative of the other party; provided however, that **e-interpreters** may assign its rights hereunder to any entity resulting from any reorganization to which **e-interpreters** is a party or any entity or person to which **e-interpreters** may transfer its assets.
- 13.9. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements between the parties with respect to its subject matter.
- 13.10. FORCE MAJEURE.** Nonperformance of either party shall be excused for the time or to the extent that performance is delayed or rendered impossible by strike, fire, flood, other natural or man-made disasters, governmental acts or orders or restrictions, failure of suppliers, acts of terrorism or any other reason where failure to perform is beyond the reasonable control of the non-performing party. Both parties shall make reasonable efforts to resume performance in a timely manner.
- 13.11. ACKNOWLEDGEMENT.** The parties covenant that they have read all of the provisions of this Agreement and agree that (a) the same are necessary for the reasonable and proper protection of the parties' businesses; (b) the parties have been induced to enter into this Agreement in reliance upon the other

party's compliance with the provisions of this Agreement; (c) every provision of this Agreement is reasonable with respect to its scope and duration; (d) the parties have executed this Agreement without duress or coercion from any source; and (e) the parties have each received a copy of this Agreement.

**ACCEPTANCE OF AGREEMENT:** Signatures below indicate that both parties fully understand and accept the terms of this Agreement. The parties agree that facsimile signatures will be as effective as if originals.

**e-interpreters, by:**

**Client, by:**



\_\_\_\_\_  
Eduardo Zaldibar  
President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ray Stephanson  
City of Everett Mayor

\_\_\_\_\_  
Date

**Client, by:**

**Client, by:**

\_\_\_\_\_  
James D. Iles  
City of Everett Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Katie M. Traenkenschuh  
Court Administrator  
City of Everett Municipal Court

\_\_\_\_\_  
Date



APPENDIX A

MONTHLY REQUESTS FEES PER CLIENT	
REQUESTS BRACKETS <sup>1</sup>	FEE
0 to 50	\$50.00/month (Basic Fee)
51 to 100	Basic fee + \$1.10/request
101 and up	Basic fee + \$1.00/request

TELEPHONE CONNECTIONS COSTS <sup>2</sup>	
2-way calls	\$0.06/min
3-way calls	\$0.09/min
Reminder calls for LEP individuals <sup>3</sup>	\$0.03/min/LEP individual
<b>NO SET UP COSTS</b>	

- <sup>1</sup> A request is defined as any job where an interpreter is contracted to provide services face to face, via telephone or video conference, whether said job is completed or not. The system automatically keeps record of all requests and generates a detailed report for billing purposes.
- <sup>2</sup> These fees are **e-interpreters'** administrative connection costs only. Client sets the rates per minute/payment increments for this modality and pay interpreters for their services at their agreed upon rates.
- <sup>3</sup> Client sets up the number of attempts and the hours in advance for the reminder calls.