



McCleary City Council Agenda

11/14/18- 6:30PM

Flag Salute

Roll Call: ___ Pos. 1-Richey, ___ Pos. 2-Huff , ___ Pos. 3- Heller, ___ Pos. 4- Blankenship, ___ Pos. 5- Iversen

Presentation	<input type="checkbox"/>
Public Hearing	<input type="checkbox"/>
Mayor Comments	<input type="checkbox"/>
Public Comment	<input type="checkbox"/>
Minutes	<input type="checkbox"/>
Approval of Vouchers	<input type="checkbox"/>

**Greater Grays Harbor
Final Budget Hearing**

Tab A 10/24/2018

Staff Reports	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Tab B Chris Coker Report
Tab C Todd Report
Tab D Staff Report

Old Business

New Business	<input type="checkbox"/>
	<input type="checkbox"/>

Tab E Capital Facilities Plan
Tab F Indigent Defence Coucil Contract

Ordinances

Tab G New Fund Ordinance

Resolutions

Mayor/Council Comments	<input type="checkbox"/>
Public Comments	<input type="checkbox"/>
Adjourn/Recess Meeting	<input type="checkbox"/>

November 28th meeting?

Please turn off Cell Phones- Thank you
Americans with Disabilities Act (ADA) Accommodation is Provided Upon Request
The City of McCleary is an equal opportunity provider and employer.
La ciudad de McCleary as un proveedor de igualdad de oportunidades y el empleador

TAB - A

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, October 24, 2018

ROLL CALL AND FLAG SALUTE	Councilmembers Richey, Huff, Heller, Blankenship and Iversen were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Director of Public Works Todd Baun, Clerk-Treasurer Wendy Collins and Attorney Chris Coker.
PUBLIC HEARING	The Public Hearing on the Preliminary Budget and Revenue Sources for Levy Setting opened at 6:34 PM. No comments were made. The hearing closed at 6:35 PM.
PUBLIC COMMENTS	None.
MAYOR COMMENTS	<p>The Washington State Department of Transportation Project is wrapping up and Mayor Orffer asked everyone to be mindful that all lanes will now be open and the second exit is also opening after being closed for over a year. The stop sign at the second exit is active again and we all need to be careful to acknowledge it, and once again, stop at the stop sign. Some people thought the plastic cover on the sign had simply blown off and weren't stopping. They didn't realize the sign was back in service.</p> <p>The Family Medical Leave Act (FMLA) is a new leave law, which goes into effect, as of January 1, 2019. Every employer is required to either pay in part, or collect from the employees, for the new family medical leave plan. This will impact all employees, including the elected officials, by enforcing a monthly deduction. When the Council receives their pay in 2019, they will see the deduction taken out of their pay, as well as the employees. Any wage earned will be taxed.</p> <p>Todd Baun, Larry Skinner, Wendy Collins and Mayor Orffer joined the ladies from the Methodist Church to tour their church facility. We reviewed the area they are offering to house the museum items that are subject to damage in the current museum building. It was fun touring the church and hearing the stories that were shared. The church is looking into donating the church facility to the City for it to be used as a museum, and possibly, a welcome center.</p> <p>Mayor Orffer met with John Carnell, and some family members, to share the idea of what has transpired with the museum and the church facility opportunity. Conditions were placed on the original Deed for the Carnell House stating that if the museum ceased to remain in the building for 50-years, the house would go back to the family estate. We have asked them to be patient with us so we can work through the details. The current museum has been in this location for approximately 34-years.</p> <p>This coming Friday is the merchant trick-or-treating around town so be mindful and careful of the kids walking around town.</p>
VOUCHERS	<p>Accounts Payable checks approved were 45035 - 45096, including EFT's, in the amount of \$113,585.63.</p> <p>It was moved by Councilmember Iversen, seconded by Councilmember Heller to approve the vouchers. Motion Carried 5-0.</p>
MINUTES APPROVED	It was moved by Councilmember Huff, seconded by Councilmember Richey to approve the minutes from the meeting held on October 10, 2018. Motion Carried 5-0.
CITY ATTORNEY REPORT	<p>Chris Coker is working on helping Wendy Collins with locating an indigent defense attorney.</p> <p>Mr. Coker is working on anti-harassment training he will be presenting to the city staff in January.</p>
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided a quote for a new lawn mower. The crew attempted to repair the current mower and discovered parts are no longer available.
POLICE CHIEF REPORT	Chief Blumer was not present at the meeting.

LAWN MOWER PURCHASE	It was moved by Councilmember Blankenship, seconded by Councilmember Iversen to authorize the purchase of a new John Deere lawnmower from Washington Tractor, Inc., in the amount of \$3,484.65, including tax. Motion Carried 5-0.
RESOLUTION 720 LEMAY RATE INCREASE	It was moved by Councilmember Richey, seconded by Councilmember Blankenship to adopt Resolution 720, RELATING TO PUBLIC SERVICES; ESTABLISHING AND CONFIRMING FEES; AND PROVIDING FOR EFFECTIVE DATES, to go into affect on 01/01/2019 and to include the \$2.00 fee for city-wide clean-up. Resolution Adopted 5-0.
SURPLUS ITEMS	It was moved by Councilmember Iversen, seconded by Councilmember Huff to authorize the surplus of the listed items and vehicles for auction to the highest bidder. Motion Carried 5-0.
JD TECH SOLUTIONS SERVER UPGRADE	Todd Baun stated the previous IT service provider purchased a server for the City that was intended to be used as an email server. It cost quite a bit of money and is all set up and running as a secondary backup and is sitting there doing nothing. Jesse, our current IT provider, came up with the idea of taking the secondary server and set it up as our record storage server for scanning documents that are taking up storage space. He provided information in regard to upgrading both servers and redesigning the infrastructure. There will be an initial set up cost and will include a \$200 per month increase for monitoring the additional server. Todd asked the Council to consider accepting the proposal from JD Tech Solutions to upgrade the server and increase the monthly retainer. Councilmember Richey asked if we absolutely need this server. Mayor Orffer responded stating we need to convert all of our paper storage to electronic files due to the lack of paper document storage. This is essential for us to modernize our storage and move toward electronic file storage. Councilmember Blankenship is concerned the server size does not have a large enough capacity. Todd will talk with Jesse to see if the size is sufficient. Councilmember Heller is concerned the shelf life is not going to be long enough. Todd said we converted to a solid state hard drive because they don't fail like the standard hard drives have in the past. It was moved by Councilmember Blankenship, seconded by Councilmember Iversen to authorize and approve the cost proposal for the server upgrade, with an added inquiry of what it would cost to double the storage memory, and increase the monthly retainer with JD Tech Solutions as presented. Motion Carried 5-0.
WSDOT LAA AGREEMENT	The Washington State Department of Transportation submitted an agreement supplement to change and move the money from the right-of-way phase to the construction phase. There is no cost change to the request. It was moved by Councilmember Heller, seconded by Councilmember Blankenship to accept the WSDOT LAA Agreement Supplement, as presented. Motion Carried 5-0.
TAX LEVY REFUND	It was moved by Councilmember Iversen, seconded by Councilmember Richey to authorize the City of McCleary to accept option (a) to certify a refund levy collectable in 2019 in the amount of \$2,001.58 to recover net refunds/cancellations. Motion Carried 5-0.
ORDINANCE 845 AD VALOREM TAX LEVY 1% INCREASE	Ordinance 845 was introduced at the last meeting, requesting a 1% increase. It was moved by Councilmember Iversen, seconded by Councilmember Huff to adopt Ordinance 845 RELATING TO THE ESTABLISHMENT OF THE REGULAR TAX LEVY FOR THE YEAR 2018 FOR COLLECTION IN THE YEAR 2019; MAKING FINDINGS; AND RESERVING RIGHTS. Roll call taken in the affirmative. Ordinance Adopted 5-0.
EXECUTIVE SESSION	None.

PUBLIC COMMENT

Mayor Orffer reminded the Council of the budget meeting scheduled for Saturday, October 27th, at 9:00 am. She explained the process for the budget and reviewed the process for the workshop. The copy of the proposed budget, which was provided to the Council, will be the working copy for the workshop. She explained from the staff's standpoint, Todd as the Director of Public Works, Wendy as the Clerk-Treasurer and Chief Blumer as the Police Chief all oversee the departments within the budget. All budgeting requests in the city go to them and they create the budget and prepare the proposal. Wendy, as Clerk-Treasurer, is the owner of the budget and Todd and Chief Blumer have a lot of stake in the game of the development of the budget. Mayor Orffer oversees the process and has been reviewing it along the way. She is asking all the crucial questions regarding the city properties and asks if staff is in need of training and what items are needed for the coming year to keep the city running. On Saturday, she will provide information on any significant changes to the budget lines, which have a 15% or more difference from last years budget. Mayor Orffer will provide snacks and coffee for the workshon

MEETING ADJOURNED

It was moved by Councilmember Huff, seconded by Councilmember Blankenship to adjourn the meeting at 7:13 pm. The next meeting will be Wednesday, November 14, 2018 at 6:30 pm. Motion Carried 5-0.

Approved by Mayor Brenda Orffer and Clerk-Treasurer Wendy Collins.

TAB - B

TAB - C

STAFF REPORT

To: Mayor Orffer
From: Todd Baun, Director of Public Works
Date: November 7th, 2018
Re: Current Non-Agenda Activity

Update of Resolution #700 and #622

Chris Coker and I have been working through some financial policies updates. The updates are necessary for compliance with state regulations and to clear up some language in the current city policies.

3rd Street Project

Our 3rd Street project is currently out to bid. Bids will be opened on Nov. 28th.

TAB - D

STAFF REPORT

To: Mayor Orffer
From: Paul Nott, Light & Power
Date: November 5, 2018
Re: June-October Report



	Monthly Statistics;	YTD Totals;
New Services;	16	29
System Outages;	6	10
Pole Replacements;	5	23
Maintenance Work Orders;	17	38
Billable Work Orders;	16	30

The last few months have consisted of numerous different items. New service construction has been up. The outages were; 2 underground faults and the other 4 were weather related.

The bridge construction has been completed out Sand Creek, we are now in the process of returning things back to normal.

All poles have been re located for the Third Street project and out of the construction area.

Things that are coming up are prepare the City Christmas decorations, brush maintenance behind the mill, start alley cut over between Simpson and Maple and return circuits to normal out Sand Creek.

With winter approaching it is a good time to mention that we are entering storm season and for everyone to stay away from down power lines and be sure to notify us of any power outages. Too many times people may assume that we know about their outage and they don't call.

Have a happy Thanksgiving...

If you have any questions feel free to contact us...

TAB - E

**PROPOSAL AND CONTRACT
FOR
PROFESSIONAL ENGINEERING SERVICES**

**CITY OF MCCLEARY
WASHINGTON**

OCTOBER 2018

G&O Job. No. 20182.86

**GRAY & OSBORNE, INC.
CONSULTING ENGINEERS**

**CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES**

THIS Contract, entered into this ____ day of _____ 2018, between the CITY OF MCCLEARY, Washington, hereinafter called the "Agency"; and GRAY & OSBORNE, INC., Consulting Engineers, Seattle, Washington, hereinafter called the "Engineer".

WITNESSETH:

WITNESSETH THAT, the Agency now finds that it is in need for the engagement of professional engineering services. The purpose of this Contract is to define the scope of work to be performed, the conditions under which it shall be performed, and method of payment for professional engineering services authorized by the Agency.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

ARTICLE 1

EMPLOYMENT OF THE ENGINEER

The Agency, acting pursuant to its vested authority, does hereby engage the Engineer and the Engineer agrees to furnish the engineering services as requested by the Agency in connection with Preparing a Capital Facilities Plan, hereinafter also called the "Project." These services are outlined in this Contract and shall be undertaken upon request by the Agency to the Engineer.

ARTICLE 2

CHARACTER & EXTENT OF ENGINEERING SERVICES

Upon execution of this Contract, and authorization of the Agency to proceed, the Engineer shall provide engineering services more fully described in Exhibit "A."

SPECIAL SERVICES

The Engineer may employ competent professionals to assist in the completion of the work as described as scope of work and budget herein.

The information so secured shall be made available to the Agency and the Engineer for the use and development of the Agency's projects.

ARTICLE 3

SCOPE OF OWNER SERVICES

The AGENCY shall provide or perform the following:

Provide full information as to the Agency's requirements for the Project. Assist the Engineer by placing at his disposal all available information pertinent to the site of the Project, including previous reports, drawings, plats, surveys, utility records, and any other data relative to the Project. Absent specific written direction to the contrary, the Engineer shall be entitled to rely upon the completeness and accuracy of such documentation.

Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the Engineer.

ARTICLE 4

COMPENSATION

It is mutually agreed that the Agency will compensate the Engineer for services furnished based on the cost reimbursement method.

The total cost of these services shall not exceed the amount shown in Exhibit "B" without further written authorization by the Agency.

Total compensation is based on the following:

- (a) Cost Ceiling: The total amount of compensation for engineering services as described herein, and as further defined in letters or exhibits to this Contract including profit (fee), out-of-pocket expenses, direct labor costs, direct overhead and indirect overhead shall not exceed the total dollar cost agreed upon, without a formal amendment to this Contract.
- (b) Compensation Determination: Payment for work accomplished is on the basis of the Engineer's fully burdened labor cost plus direct non-salary costs.
 - 1. Fully burdened labor costs are determined by multiplying the hours spent by employees on the project, times the employee's fully burdened billing rate. The fully burdened billing rates are identified on Exhibit "C" and include direct salary cost, overhead, and profit. Overhead includes federal, state, and local taxes; insurance and medical; professional development and education; vacations and holidays; secretarial and clerical work; GIS, CADD,

and computer equipment; owned survey equipment and tools; attendance at non-project-specific public meetings for the purpose of keeping the public informed in regard to infrastructure improvements in the community and how the public will be affected; rent, utilities, and depreciation; office expenses; recruiting; professional services; incentive and retirement; and facilities cost of capital.

2. The direct non-salary costs are those costs directly incurred in fulfilling the terms of this Contract including, but not limited to travel, reproduction, supplies and fees for special professional services of outside consultants. If the Engineer is directed to employ special, professional expertise, the Agency will be billed by the Engineer for the special service invoiced amount plus ten percent (10%) for administrative overhead.

Payment of compensation shall be upon submittal to the Agency of a bill by the Engineer at approximate monthly intervals for services rendered during the preceding time period.

The cost records and accounts pertaining to this Contract are to be kept available for inspection by representatives of the Agency for a period of three (3) years after final payment. In the event any audit or inspection identifies any discrepancy in the financial records, the Engineer shall provide clarification and/or make adjustments accordingly.

ARTICLE 5

ADDITIONAL WORK

If during the performance of this contract, or subsequent to completion of the work under this contract, other or additional services other than those previously specified, including but not limited to additions or revisions by the Agency are ordered in writing by the Agency, the Engineer agrees to provide the services and the Agency agrees to compensate the Engineer under the same method of Compensation Determination described herein, to be determined at the time the additional services are ordered. The Engineer agrees not to proceed with the additional services until such time as the costs for the additional services have been approved by the Agency.

ARTICLE 6

PUBLIC RECORDS REQUESTS

The Engineer shall comply with Agency requests for documents which are the result of public records requests made under the Public Records Act. The Agency hereby acknowledges that gathering, copying and transmitting documents requested in this manner is Additional Work and agrees to compensate the Engineer accordingly.

ARTICLE 7

MAJOR REVISIONS

If, after the design has been approved by the Agency, and the Engineer has proceeded with the final design, and has performed work in processing same and the Agency authorizes new or substantially alters the design, the Agency will pay the Engineer a just and equitable compensation as mutually agreed upon by the Agency and the Engineer, or if an agreement cannot be reached within thirty (30) days, the equitable compensation shall be determined by mediators.

ARTICLE 8

COST ESTIMATE

The Agency is herewith advised that the Engineer has no control over the cost of labor, material, and equipment, including the contractors' and suppliers' methods of producing and delivering such goods and services; or over the methods and styles of competitive bidding or market conditions; and, accordingly, the Engineer's cost estimates are made and furnished on the basis of his experience and qualifications and represent only his best judgment as a design professional and within his familiarity with the construction industry, and, as such, the Engineer cannot and does not warrant, in any other manner or style, the accuracy of the cost estimates, nor that the estimates will or will not vary significantly with bids received by or construction costs realized by the Agency.

ARTICLE 9

FACILITIES TO BE FURNISHED BY THE ENGINEER

The Engineer shall furnish and maintain a central office, work space and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established operating engineering practice.

ARTICLE 10

OWNERSHIP OF PLANS

All reports, designs, drawings and specifications prepared by the Engineer, as provided under this Contract shall be and do become the property of the Agency upon payment to the Engineer of his compensation as set forth in this Contract. Reuse of any of the instruments of services of the Engineer by the Agency on extensions of this project or on any other project without the written permission of the Engineer shall be at the Agency's risk and the Agency agrees to defend, indemnify and hold harmless the Engineer from all claims, damages and expenses including attorney's fees arising out of such unauthorized reuse of the Engineer's instruments of service by the Agency or by others acting through the Agency.

ARTICLE 11

SEVERABILITY

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

ARTICLE 12

MEDIATION

All claims, disputes and other matters in question between Agency and Engineer shall, in the first instance, be subject to mediation. Either party may notify the other, by certified mail, of the existence of a claim or dispute. If such claim or dispute cannot promptly be resolved by the parties, the Engineer shall promptly contact the Judicial Arbitration and Mediation Service, Inc., or any other recognized mediation service agreed to by the parties, to arrange for the engagement and appointment of a mediator for the purpose of assisting the parties to amicably resolve the claim or dispute. The cost of the mediator shall be borne equally by the parties. The Agency and Engineer further agree to cooperate fully with the appointed mediator's attempt to resolve the claim or dispute, and also agree that litigation may not be commenced, by either party, for a period of ninety calendar days following the receipt by the other party of the written notice of claim or dispute. This mediation provision may be asserted by either party as grounds for staying such litigation.

ARTICLE 13

ASSIGNABILITY

The Engineer shall not assign nor transfer any interest in this Contract without the prior written consent of the Agency.

ARTICLE 14

EQUAL EMPLOYMENT OPPORTUNITY

The Engineer agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

The parties hereby incorporate 41 C.F.R. 60-1.4(a)(7); 29 C.F.R. Part 471, Appendix A to Subpart A; 41 C.F.R. 60-300.5(a)11; and 41 C.F.R. 60-741.5(a)6; if applicable.

This contractor and subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 741.5(a). These regulations prohibit discrimination against qualified protected veterans, and qualified individuals on the basis of disability,

respectively, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and qualified individuals with disabilities, respectively.

ARTICLE 15

COVENANT AGAINST CONTINGENT FEES

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees. For breach or violation of this warranty, the Agency shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 16

SAFETY

The duty and/or Services furnished hereunder by the Engineer, does not include a review of the adequacy of any contractor's safety measures in, on, or near a project construction site. The contractor alone shall have the responsibility and liability thereof, and shall be insured accordingly. Neither the activities of the Engineer, nor the presence of the Engineer's employees at a site, shall relieve the contractor of their obligations, duties, and responsibilities with any health or safety precaution required to ensure the safety of the jobsite.

ARTICLE 17

INDEMNITY AGREEMENT

The Engineer shall hold the Agency harmless from, and shall indemnify the Agency against, any and all claims, demands, actions or liabilities caused by or occurring by reason of any negligent act or omission of the Engineer, its agents, employees or subcontractors, arising out of or in connection with the performance of this Contract.

In those cases where damages have been caused by the concurrent negligence of the Agency and Engineer, its agents, employees or subcontractors the Engineer shall be required to indemnify the Agency for that portion of the damages caused by the negligence of the Engineer, its agents, employees or subcontractors.

The Engineer has no duty to indemnify the Agency where damages were caused by the negligence of the Agency.

ARTICLE 18

INSURANCE

A. Public Liability

The Engineer shall provide evidence of comprehensive Public Liability and Property Damage Insurance which includes but is not limited to, operations of the Engineer, commercial general liability, and blanket limited contractual liability with limits of not less than:

COMPREHENSIVE GENERAL LIABILITY

Bodily Injury & Property Damage: \$1,000,000 each person
\$1,000,000 each occurrence
\$1,000,000 each aggregate

AUTOMOBILE LIABILITY

Bodily Injury: \$1,000,000 each person
\$1,000,000 each occurrence

Property Damage: \$1,000,000 single limit

The Agency shall be named as an additional insured as respects this Contract. In conjunction therewith, the Engineer shall furnish a certificate of such insurance to the Agency at the time of execution of this Contract.

B. Professional Liability

The Engineer shall provide Professional Errors and Omissions Liability Insurance which shall provide coverage for any negligent professional acts, errors or omissions for which the Engineer is legally responsible, with limits of not less than:

PROFESSIONAL ERRORS \$1,000,000 each occurrence
AND

OMISSIONS LIABILITY \$1,000,000 aggregate

The Engineer shall furnish a certificate of such insurance to the Agency at the time of execution of this Contract.

ARTICLE 19

STATUS OF ENGINEER

The Engineer is an independent contractor operating for its own account, and is in no way and to no extent an employee or agent of the Agency. The Engineer shall have the sole judgment of the means, mode or manner of the actual performance of this Contract. The Engineer, as an independent contractor, assumes the entire responsibility for carrying out and accomplishing this Contract.

ARTICLE 20

CERTIFICATION OF ENGINEER

Attached hereto is Exhibit "D" Certification Regarding Debarment, Suspension and Other Responsibility Matters.

ARTICLE 21

CHOICE OF LAW/JURISDICTION/VENUE

This Contract shall be governed as to validity, interpretation, construction and effect, and in all other respects, by the laws of the State of Washington. Jurisdiction of any suit or action arising out of or in connection with this Contract shall be in the State of Washington, and the venue thereof be in the same County as the Agency.

ARTICLE 22

NOTICES

In every case where, under any of the provisions of this Contract or in the opinion of either the Agency or the Engineer or otherwise, it shall or may become necessary or desirable to make, give, or serve any declaration, demand, or notice of any kind or character or for any purpose whatsoever, the same shall be in writing, and it shall be sufficient to either (1) deliver the same or a copy thereof in person to the Mayor, if given by the Engineer, or to the President or Secretary of the Engineer personally, if given by the Agency; or (2) mail the same or a copy thereof by registered or certified mail, postage prepaid, addressed to the other party at such address as may have theretofore been designated in writing by such party, by notice served in the manner herein provided, and until some other address shall have been so designated, the address of the Agency for the purpose of mailing such notices shall be as follows:

CITY OF MCCLEARY
100 South Third Street
McCleary, Washington 98557

and the address of the Engineer shall be as follows:

GRAY & OSBORNE, INC.
1130 Rainier Avenue South
Suite 300
Seattle, Washington 98144

ARTICLE 23

ATTORNEY'S FEES

The parties agree that in the event a civil action is instituted by either party to enforce any of the terms and conditions of this Contract, or to obtain damages or other redress for any breach hereof, the prevailing party shall be entitled to recover from the other party, in addition to its other remedies, its reasonable attorney's fees in such suit or action and upon any appeal therefrom.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year written below.

ENGINEER: Gray & Osborne, Inc.

AGENCY: City of McCleary

By: 
(Signature)

By: _____
(Signature)

Name/Title: Michael B. Johnson, P.E., President

Name/Title: Brenda Orffer, Mayor
(Print)

Date: 10/26/18

Date: _____

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT “A”

SCOPE OF WORK

CITY OF MCCLEARY CAPITAL FACILITY PLAN

The City of McCleary would like to develop a Capital Facility Plan to guide its budgeting and capital spending over the next several years. The City is currently in the process of completing a Water System Plan and a General Sewer Plan. The City has also adopted a 6-year street plan. It is anticipated that these plans will form the basis for the Water, Sewer, and Transportation elements of the Capital Facilities Plan. It is anticipated that additional effort will be required to develop the Stormwater, Public Facilities, and Park elements since recent planning efforts have not been completed in these areas.

Gray & Osborne has developed the following Scope of Work to complete this project.

Task 1 – Data Collection and Review

We will first develop list of required information from the City including any previous planning documents, studies and reports and previous capital budgets. We will then meet with City staff to review that information and identify current needs in each of the element areas. As part of this meeting, we will do field visits to all of the capital facilities to review condition and identify any required improvements.

Task 2 – Prepare Draft Plan

We will then prepare a draft Capital Facilities Plan. The plan will describe and provide estimated costs for capital projects that have been previously identified in other planning documents, have been identified by City staff, or are identified by Gray & Osborne in our review of the existing capital facilities. Projects for each capital facilities plan element will be prioritized and scheduled. The following elements will be included in the Capital Facilities Plan:

a. Water

Projects identified in the Water System Plan will be described and scheduled.

b. Wastewater

Projects identified in the General Sewer Plan will be described and scheduled.

c. Transportation

Projects identified in the six-year street plan will be described and

scheduled. Costs will be updated. Any additional projects identified will be described and costs estimates will be developed.

d. Stormwater

City stormwater facilities will be inventoried and described. Any planned or identified improvement projects will be described and provided with estimated costs.

e. Public Facilities

City public facilities will be inventoried and described. Any planned or identified improvement projects will be described and provided with estimated costs.

f. Parks

City parks will be inventoried and described. Any planned or identified improvement projects will be described and provided with estimated costs.

These elements will be assembled into a complete draft Capital Facilities Plan that will be submitted to the City for review. We will then meet with City to discuss any comments.

Task 3 – Prepare Final Plan

We will then incorporate any comments from City staff and prepare a final Capital Facilities Plan.

Task 4 – Complete QA/QC Review

We will complete internal Quality Assurance / Quality Control reviews of each work product.

Task 5 – Meetings

We will participate in the following meetings with City staff:

- Kickoff meeting and facility review
- Draft Capital Facility Plan review meeting

We will prepare agendas and meeting minutes for each meeting.

Deliverables

Project deliverables will include the following:

1. Three paper copies and one .pdf of the Draft Plan
2. Three paper copies and one .pdf of the Final Plan

Anticipated Schedule

Notice to Proceed	November 1, 2018
Submit Draft Plan	January 31, 2019
Submit Final Plan	14 days after receipt of comments

Assumptions

1. This scope does not include updating any capacity analysis for the various elements. This project will summarize the results of previous capacity analyses and update the estimated costs of previously identified projects to address capacity deficiencies.

EXHIBIT "B"

ENGINEERING SERVICES SCOPE AND ESTIMATED COST

City of McCleary - Capital Facilities Plan

TASKS	Principal Hours	Project Mgr. Hours	Civil Eng. Hours	CADD Tech. Hours
1. Data Collection and Review	1	8	16	
2. Prepare Draft Plan				
a. Water Element	1	4	8	8
b. Wastewater Element	1	4	8	8
c. Transportation Element	4	12	24	16
d. Stormwater Element	4	16	40	16
e. Public Facilities Element	4	16	40	16
f. Park Element	4	16	40	16
3. Prepare Final Plan	1	4	8	16
4. QA/QC	8	4	4	
5. Meetings		8	8	
Hour Estimate:	28	92	196	96
Estimated Fully Burdened Billing Rate:*	\$165	\$150	\$120	\$90
Direct Labor Cost	\$4,620	\$13,800	\$23,520	\$8,640

Subtotal Labor Cost:	\$ 50,580
Direct Non-Salary Cost:	
Mileage & Expenses (Mileage @ \$0.54/mile)	\$ 100
Printing	\$ 320
 TOTAL ESTIMATED COST:	 \$ 51,000

EXHIBIT "C"

GRAY & OSBORNE, INC.

PROFESSIONAL ENGINEERING SERVICES CONTRACT FULLY BURDENED BILLING RATES* THROUGH JUNE 15, 2019**

<u>Employee Classification</u>	<u>Fully Burdened Billing Rates</u>		
AutoCAD/GIS Technician/Engineering Intern	\$ 48.00	to	\$126.00
Electrical Engineer	\$113.00	to	\$190.00
Structural Engineer	\$106.00	to	\$167.00
Environmental Technician/Specialist	\$ 81.00	to	\$116.00
Engineer-In-Training	\$ 81.00	to	\$126.00
Civil Engineer	\$103.00	to	\$129.00
Project Engineer	\$113.00	to	\$145.00
Project Manager	\$119.00	to	\$190.00
Principal-in-Charge	\$129.00	to	\$190.00
Resident Engineer	\$122.00	to	\$167.00
Field Inspector	\$ 81.00	to	\$142.00
Field Survey (2 Person)***	\$166.00	to	\$213.00
Field Survey (3 Person)***	\$258.00	to	\$293.00
Professional Land Surveyor	\$113.00	to	\$145.00
Secretary/Word Processor***	N/A		

* Fully Burdened Billing Rates include overhead and profit.

** Updated annually, together with the overhead.

All actual out-of-pocket expenses incurred directly on the project are added to the billing. The billing is based on direct out-of-pocket expenses; meals, lodging, laboratory testing and transportation. The transportation rate is \$0.54 per mile or the current maximum IRS rate without receipt IRS Section 162(a).

*** Administration expenses include secretarial and clerical work; GIS, CADD, and computer equipment; owned survey equipment and tools (stakes, hubs, lath, etc. – Note: mileage billed separately at rate noted); miscellaneous administration tasks; facsimiles; telephone; postage; and printing costs, which are less than \$150.

EXHIBIT "D"

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- I. The Engineer, Gray & Osborne, Inc., certifies to the best of its knowledge and belief, that it and its principals:
- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - B. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 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 in paragraph (I)(B) of this certification; and
 - D. Have not within a 3-year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.



Michael B. Johnson, P.E., President
Gray & Osborne, Inc.

10/26/18

Date

The Agency may confirm the Engineer's suspension or debarment status on General Services Administration Excluded Parties List System website: www.epls.gov.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

10/26/2018

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

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

PRODUCER Hall & Company 19660 10th Ave NE Poulsbo WA 98370	CONTACT NAME: Allison Barga PHONE (A/C, No, Ext): 360-626-2007 E-MAIL ADDRESS: abarga@hallandcompany.com		FAX (A/C, No): 360-626-2007
	INSURER(S) AFFORDING COVERAGE		
INSURED 4 Gray & Osborne Inc 1130 Rainier Avenue South, Suite 300 Seattle WA 98144	INSURER A: Hartford Casualty Insurance Company		NAIC # 29424
	INSURER B: Travelers Casualty and Surety Company		19038
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 132222467

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> OCP/XCU/BFPD <input checked="" type="checkbox"/> Separation Instds GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			52SBADU7303	9/10/2018	9/10/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY			52UEJCS3276	9/10/2018	9/10/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			52SBADU7303	9/10/2018	9/10/2019	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N <input type="checkbox"/> N/A			52SBADU7303	9/10/2018	9/10/2019	<input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER WA Stop Gap E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional Liab: Claims Made Pollution Liab: Occurrence Form			105339819	9/10/2018	9/10/2019	\$1,000,000 Per Claim \$1,000,000 Aggregate

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

Re: Job #20182.86

The certificate holder is an additional insured per the attached.

CERTIFICATE HOLDER**CANCELLATION**

City of McCleary
100 South Third Street
McCleary WA 98557

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

AUTHORIZED REPRESENTATIVE

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- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

b. Real Estate Manager

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

c. Temporary Custodians Of Your Property

Any person or organization having proper temporary custody of your property if you die, but only:

- (1) With respect to liability arising out of the maintenance or use of that property; and
- (2) Until your legal representative has been appointed.

d. Legal Representative If You Die

Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance.

e. Unnamed Subsidiary

Any subsidiary and subsidiary thereof, of yours which is a legally incorporated entity of which you own a financial interest of more than 50% of the voting stock on the effective date of this Coverage Part.

The insurance afforded herein for any subsidiary not shown in the Declarations as a named insured does not apply to injury or damage with respect to which an insured under this insurance is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

3. Newly Acquired Or Formed Organization

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain financial interest of more than 50% of the voting stock, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and

- b. Coverage under this provision does not apply to:

- (1) "Bodily injury" or "property damage" that occurred; or
- (2) "Personal and advertising injury" arising out of an offense committed

before you acquired or formed the organization.

4. Operator Of Mobile Equipment

With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

5. Operator of Nonowned Watercraft

With respect to watercraft you do not own that is less than 51 feet long and is not being used to carry persons for a charge, any person is an insured while operating such watercraft with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the watercraft, and only if no other insurance of any kind is available to that person or organization for this liability.

However, no person or organization is an insured with respect to:

- a. "Bodily injury" to a co-"employee" of the person operating the watercraft; or
- b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

6. Additional Insureds When Required By Written Contract, Written Agreement Or Permit

The person(s) or organization(s) identified in Paragraphs a. through f. below are additional insureds when you have agreed, in a written



BUSINESS LIABILITY COVERAGE FORM

contract, written agreement or because of a permit issued by a state or political subdivision, that such person or organization be added as an additional insured on your policy, provided the injury or damage occurs subsequent to the execution of the contract or agreement, or the issuance of the permit.

A person or organization is an additional insured under this provision only for that period of time required by the contract, agreement or permit.

However, no such person or organization is an additional insured under this provision if such person or organization is included as an additional insured by an endorsement issued by us and made a part of this Coverage Part, including all persons or organizations added as additional insureds under the specific additional insured coverage grants in Section F. – Optional Additional Insured Coverages.

a. Vendors

Any person(s) or organization(s) (referred to below as vendor), but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business and only if this Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".

- (1) The insurance afforded to the vendor is subject to the following additional exclusions:

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- (b) Any express warranty unauthorized by you;
- (c) Any physical or chemical change in the product made intentionally by the vendor;
- (d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Subparagraphs (d) or (f); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- (2) This insurance does not apply to any insured person or organization from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

b. Lessors Of Equipment

- (1) Any person or organization from whom you lease equipment; but only with respect to their liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after you cease to lease that equipment.

c. Lessors Of Land Or Premises

- (1) Any person or organization from whom you lease land or premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the land or premises leased to you.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) Any "occurrence" which takes place after you cease to lease that land or be a tenant in that premises; or
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

d. Architects, Engineers Or Surveyors

- (1) Any architect, engineer, or surveyor, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In connection with your premises; or
- (b) In the performance of your ongoing operations performed by you or on your behalf.
- (2) With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:
- This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:
- (a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

e. Permits Issued By State Or Political Subdivisions

- (1) Any state or political subdivision, but only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit.
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- (a) "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

f. Any Other Party

- (1) Any other person or organization who is not an insured under Paragraphs a. through e. above, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:
- (a) In the performance of your ongoing operations;
- (b) In connection with your premises owned by or rented to you; or
- (c) In connection with "your work" and included within the "products-completed operations hazard", but only if
- (i) The written contract or written agreement requires you to provide such coverage to such additional insured; and
- (ii) This Coverage Part provides coverage for "bodily injury" or "property damage" included within the "products-completed operations hazard".
- (2) With respect to the insurance afforded to these additional insureds, this insurance does not apply to:
- "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

BUSINESS LIABILITY COVERAGE FORM

(a) The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs or drawings and specifications; or

(b) Supervisory, inspection, architectural or engineering activities.

The limits of insurance that apply to additional insureds are described in Section D. – Limits Of Insurance.

How this insurance applies when other insurance is available to an additional insured is described in the Other Insurance Condition in Section E. – Liability And Medical Expenses General Conditions.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. LIABILITY AND MEDICAL EXPENSES LIMITS OF INSURANCE

1. The Most We Will Pay

The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. Aggregate Limits

The most we will pay for:

- a. Damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" is the Products-Completed Operations Aggregate Limit shown in the Declarations.
- b. Damages because of all other "bodily injury", "property damage" or "personal and advertising injury", including medical expenses, is the General Aggregate Limit shown in the Declarations.

This General Aggregate Limit applies separately to each of your "locations" owned by or rented to you.

"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway or right-of-way of a railroad.

This General Aggregate limit does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire, lightning or explosion.

3. Each Occurrence Limit

Subject to 2.a. or 2.b above, whichever applies, the most we will pay for the sum of all damages because of all "bodily injury", "property damage" and medical expenses arising out of any one "occurrence" is the Liability and Medical Expenses Limit shown in the Declarations.

The most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses Limit shown in the Declarations.

4. Personal And Advertising Injury Limit

Subject to 2.b. above, the most we will pay for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization is the Personal and Advertising Injury Limit shown in the Declarations.

5. Damage To Premises Rented To You Limit

The Damage To Premises Rented To You Limit is the most we will pay under Business Liability Coverage for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner.

In the case of damage by fire, lightning or explosion, the Damage to Premises Rented To You Limit applies to all damage proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of these.

6. How Limits Apply To Additional Insureds

The most we will pay on behalf of a person or organization who is an additional insured under this Coverage Part is the lesser of:

- a. The limits of insurance specified in a written contract, written agreement or permit issued by a state or political subdivision; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be a part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

If more than one limit of insurance under this policy and any endorsements attached thereto applies to any claim or "suit", the most we will pay under this policy and the endorsements is the single highest limit of liability of all coverages applicable to such claim or "suit". However, this paragraph does not apply to the Medical Expenses limit set forth in Paragraph 3. above.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. Notice Of Occurrence Or Offense

You or any additional insured must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. Notice Of Claim

If a claim is made or "suit" is brought against any insured, you or any additional insured must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You or any additional insured must see to it that we receive a written notice of the claim or "suit" as soon as practicable.

c. Assistance And Cooperation Of The Insured

You and any other involved insured must:

BUSINESS LIABILITY COVERAGE FORM

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation, settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.

d. Obligations At The Insured's Own Cost

No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

e. Additional Insured's Other Insurance

If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent that you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance.

f. Knowledge Of An Occurrence, Offense, Claim Or Suit

Paragraphs a. and b. apply to you or to any additional insured only when such "occurrence", offense, claim or "suit" is known to:

- (1) You or any additional insured that is an individual;
- (2) Any partner, if you or an additional insured is a partnership;
- (3) Any manager, if you or an additional insured is a limited liability company;
- (4) Any "executive officer" or insurance manager, if you or an additional insured is a corporation;
- (5) Any trustee, if you or an additional insured is a trust; or
- (6) Any elected or appointed official, if you or an additional insured is a political subdivision or public entity.

BUSINESS LIABILITY COVERAGE FORM

This Paragraph f. applies separately to you and any additional insured.

3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

4. Legal Action Against Us

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this insurance or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

6. Representations**a. When You Accept This Policy**

By accepting this policy, you agree:

- (1) The statements in the Declarations are accurate and complete;
- (2) Those statements are based upon representations you made to us; and

- (3) We have issued this policy in reliance upon your representations.

b. Unintentional Failure To Disclose Hazards

If unintentionally you should fail to disclose all hazards relating to the conduct of your business at the inception date of this Coverage Part, we shall not deny any coverage under this Coverage Part because of such failure.

7. Other Insurance

If other valid and collectible insurance is available for a loss we cover under this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) Your Work

That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(2) Premises Rented To You

That is fire, lightning or explosion insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(3) Tenant Liability

That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner;

(4) Aircraft, Auto Or Watercraft

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section A. – Coverages.

(5) Property Damage To Borrowed Equipment Or Use Of Elevators

If the loss arises out of "property damage" to borrowed equipment or the use of elevators to the extent not subject to Exclusion k. of Section A. – Coverages.

BUSINESS LIABILITY COVERAGE FORM

(6) When You Are Added As An Additional Insured To Other Insurance

That is other insurance available to you covering liability for damages arising out of the premises or operations, or products and completed operations, for which you have been added as an additional insured by that insurance; or

(7) When You Add Others As An Additional Insured To This Insurance

That is other insurance available to an additional insured.

However, the following provisions apply to other insurance available to any person or organization who is an additional insured under this Coverage Part:

(a) Primary Insurance When Required By Contract

This insurance is primary if you have agreed in a written contract, written agreement or permit that this insurance be primary. If other insurance is also primary, we will share with all that other insurance by the method described in c. below.

*** (b) Primary And Non-Contributory To Other Insurance When Required By Contract**

If you have agreed in a written contract, written agreement or permit that this insurance is primary and non-contributory with the additional insured's own insurance, this insurance is primary and we will not seek contribution from that other insurance.

Paragraphs (a) and (b) do not apply to other insurance to which the additional insured has been added as an additional insured.

When this insurance is excess, we will have no duty under this Coverage Part to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

8. Transfer Of Rights Of Recovery Against Others To Us

a. Transfer Of Rights Of Recovery

If the insured has rights to recover all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

*** b. Waiver Of Rights Of Recovery (Waiver Of Subrogation)**

If the insured has waived any rights of recovery against any person or organization for all or part of any payment, including Supplementary Payments, we have made under this Coverage Part, we also waive that right, provided the insured waived their rights of recovery against such person or organization in a contract, agreement or permit that was executed prior to the injury or damage.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED AND RIGHTS OF RECOVERY AGAINST OTHERS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

- A. Any person or organization whom you are required by contract to name as additional insured is an "insured" for LIABILITY COVERAGE but only to the extent that person or organization qualifies as an "insured" under the WHO IS AN INSURED provision of Section II - LIABILITY COVERAGE.
- B. For any person or organization for whom you are required by contract to provide a waiver of subrogation, the Loss Condition - TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US is applicable.

TAB - F

CONTRACT

THIS CONTRACT, made and entered into by and between the CITY OF McCLEARY, a municipal corporation, hereinafter " McCLEARY ", and THOMAS E. CREEKPAUM III, of INGRAM, ZELASKO & GOODWIN, LLP, WSBA #45386, whose address is 120 East 1st Street, Montesano, Washington 98563, hereinafter "CREEKPAUM".

RECITALS:

1. The Mayor has recommended to the City Council that CREEKPAUM provide indigent defense services to qualifying individuals charged in the Court of Limited Jurisdiction (the Court) in which McCLEARY files criminal charges. The Council has confirmed that recommendation and authorized the execution of this agreement.

2. The Parties wish to memorialize their agreement as to the terms of this relationship and also make provision for automatic renewal unless notice is given.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

SECTION I: McCLEARY shall pay CREEKPAUM the sum of SEVEN HUNDRED HUNDRED DOLLARS (\$700) per month until further modified by agreement of the parties or upon the giving of notice of termination or request for renegotiation. The flat fee of \$700 per month is based on an average case load of 40 assigned case points per calendar year.

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SECTION II: Scope of Services:

A. General Statement: Pursuant to RCW Chapter 10.101, all indigent criminal defendants determined to be eligible for appointed counsel and charged under ordinances of the City who qualify, will be referred to CREEKPAUM. CREEKPAUM will provide legal representation for each of these defendants from court appointment through trial, sentencing, post-conviction review, and any appeals to Superior Court. Such cases shall include domestic violence cases.

CREEKPAUM shall be responsible for representing every indigent person who is, or has been, arrested or charged with any crime or violation of probation before the Court for which court-appointed counsel for indigent defendants is required, either under the Constitution of the United States or under the Constitution, laws, court rules, or case law of the State of Washington.

B. Time of Commencement: This representation shall be commenced whenever such arrested or accused person, having been apprised of his constitutional and statutory rights to counsel, requests the appointment of counsel to represent him or her or the Court orders that he or she be represented by counsel. Such obligation is waived where the arrested or accused person, having been apprised of his or her right to counsel in open court, affirmatively rejects or intelligently repudiates his constitutional and statutory rights to be represented by counsel. If good cause is shown or when there is more than one defendant with conflicting interests, or in any case, the Court may, upon its own motion or upon application of CREEKPAUM or the indigent accused, appoint counsel other than CREEKPAUM for the accused. The fees of said additional attorney will be paid by the Court.

C. Client Contact: CREEKPAUM will provide criminal defense services at in-custody bail hearings and will be available to talk and meet with indigent defendants who may be held in the Grays Harbor County Jail. Further, CREEKPAUM will make arrangements to meet with clients prior to the pre-trial date.

D. Telephone Access: CREEKPAUM shall provide to the City Police Department the telephone number or numbers at which CREEKPAUM can be reached for critical stage advice to defendants during the course of police investigations and/or arrests twenty-four (24) hours each day.

E. Duty in Event of Ineligibility: Should CREEKPAUM determine a defendant is not eligible for assigned counsel, CREEKPAUM shall so inform the court and move to withdraw from the case.

SECTION III: GENERAL CONDITIONS:

A. Staffing: It is recognized that during the term of this contract CREEKPAUM may utilize the services of other counsel to assist him. Any counsel associated with, employed by, or utilized by CREEKPAUM to provide the services required under this contract shall have the authority to perform the services called for herein. As indicated, CREEKPAUM may employ associated counsel to assist at CREEKPAUM's expense.

CREEKPAUM and all associated counsel hired pursuant to this section shall be admitted to practice pursuant to the rules of the Supreme Court of the State of Washington. Sufficient counsel shall be provided to represent defendants during vacation, illnesses, and settings in more than one courtroom. No legal interns shall be used unless agreed to in

advance by McCLEARY. CREEKPAUM shall have staff available to receive contacts from clients and court staff during normal business hours.

Further, CREEKPAUM shall have a facsimile machine available to receive transmissions from the Court or City Attorney twenty-four hours per day, seven days per week. Additionally, he shall maintain and provide the address of an e-mail account having adequate capacity to receive the dockets transmitted by the Clerk of the Court.

B. Professional Liability Coverage: During the term of the Contract, CREEKPAUM shall have professional liability coverage in a minimum amount of \$1,000,000.00. He shall provide proof of such insurance upon McCLEARY's request.

C. Indemnification: CREEKPAUM shall indemnify, defend, and hold McCLEARY, its elected officials and employees, agents and volunteers harmless from any and all claims, losses, or liability, including all costs and attorneys' fees, arising out of CREEKPAUM's performance of obligations pursuant to the Contract, including claims arising by reason of accident, injury, or death caused to persons or property of any kind occurring by the fault or negligence of CREEKPAUM, his associates, agents, and employees.

To the extent that any of the damages referenced by this paragraph are caused by or resulting from the concurrent negligence of McCLEARY, its agents or employees, this obligation to indemnify, defend, and hold harmless is valid and enforceable only to the extent of the negligence of CREEKPAUM, his associates, agents, and employees.

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

CREEKPAUM and McCLEARY, its officers, officials, employees, and volunteers, CREEKPAUM's liability hereunder shall be only to the extent of CREEKPAUM 's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes, to the extent that it might possibly exist in a contract for provision of professional services, CREEKPAUM '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.

D. Standards for Public Defense Services:

1. CREEKPAUM shall comply with the standards for public defense services as may be adopted by McCLEARY pursuant to chapter 10.101 RCW. In addition to any standards adopted specifically by McCLEARY, the standards adopted by the Washington State Bar Association and the Supreme Court of the State of Washington shall govern. In provision of services to any individual to whom CREEKPAUM is appointed to provide defense services under this Contract, those standards shall govern the provision of their services under this contract.

2. CREEKPAUM shall submit all certifications, whether in relation to qualification of counsel utilized, compliance with training requirements, certification of caseload limits, or otherwise, required under the standards set for in sub-paragraph 1 of this Section.

SECTION IV: TRANSITION: At such time as this Contract is brought to termination, the parties agree that, to allow a transition, the following payment pattern shall apply:

1. As of the month in which cases are no longer allocated to CREEKPAUM and in furtherance of bringing the cases to a point of resolution, CREEKPAUM shall receive an amount which shall be equal to 60 percent of the normal monthly amount.

2. For the second month following the termination of appointments, CREEKPAUM shall receive 30 percent of the contract balance so long as he in fact is continuing to work on the resolution of cases.

3. As to any and all cases pending at the end of the second month, if the Defendants have failed to appear, then CREEKPAUM shall be relieved of any further responsibility of representation. In the event the matters have been set for trial, then CREEKPAUM shall complete the trial process without additional compensation.

In effectuating any such transition, CREEKPAUM recognizes that he shall use all reasonable efforts to resolve the cases during that two month period.

SECTION V: McCLEARY's Assistance:

A. Documents & Codes: McCLEARY agrees to provide to CREEKPAUM, without cost to CREEKPAUM, copies of such police reports as may be provided to the City Attorney. Further, McCLEARY shall provide CREEKPAUM with a copy of the City Criminal Code and any amendments thereto adopted during the term of this Contract.

B. Expert Witness Fees: McCLEARY shall pay directly or reimburse CREEKPAUM for reasonable expert witness fees if the Court orders an expert witness upon motion of CREEKPAUM.

SECTION VI: This contract shall be deemed to commence as of _____, and end _____, unless earlier terminated by the Parties. It shall

thereafter be renewed for additional one-year periods subject to the same terms and conditions, until such time as one of the Parties gives notice of intent to terminate or to modify terms. It is agreed this contract may be terminated by either party upon the giving of sixty (60) days' written notice of termination during the initial term or any extension thereof. Such termination shall not affect CREEKPAUM's duties as set forth in this agreement, nor McCLEARY's duties as set forth under this agreement. In the absence of any such notice of desire to terminate, the one year renewals shall be automatic.

SECTION VII: Notices:

A. Method: Notices shall be given in writing. If mailed, they shall be deemed received upon the third business day following their mailing, properly addressed and postage prepaid, certified mail, return receipt requested, to the address stated below. If personally delivered, they shall be deemed received upon the date of actual receipt.

B. Location:

1. McCLEARY: Any notice to be given to McCLEARY shall be given to the CFO/City Clerk of McCleary. For purposes of receipt of notice, McCLEARY's address for personal delivery shall be 100 South 3rd Street, McCleary, Washington 98557, and is the same for mailing purposes.

2. CREEKPAUM: Any notice, whether by mail or personally, to be given to CREEKPAUM shall be given to CREEKPAUM at the physical address stated above.

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EXECUTED IN MULTIPLE COPIES UPON THE DATES STATED BELOW.

INGRAM, ZELASKO & GOODWIN, LLP

DATE

By _____
THOMAS E. CREEKPAUM III

CITY OF McCLEARY:

DATE

BRENDA ORFFER, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

CHRISTOPHER JOHN COKER, City Attorney