



McCleary City Council

AGENDA

December 2, 2015

- **Flag Salute**
- **Roll Call**
- **Public Hearings** - Final Budget

- **Public Comment**
- **Executive Session**
- **Minutes:**
 - Approval (Tab A)
 - Approval (Tab B)

- **Mayor's Comments:** -

- **Staff Reports:** - Dan Glenn, City Attorney (Tab C)

- **Old Business:**
 - Mayor Appointment (Tab D)
 - Rate Study RFP (Tab E)
 - Building Official Contract (Tab F)
 - Pole Attachment Agreement-Wave/Astound Broadband (Tab G)

- **New Business:**
 - Hearings Examiner Referral-Zoning Amendment Change (Tab H)
 - Wildcat Liftstation Rehab Scope of Work (Tab I)
 - 3rd Street Water Line Replacement Scope of Work (Tab J)
 - Purchase of Shoring and Steel Road Plates (Tab K)
 - Children's Advocacy Center Contract (Tab L)

- **Ordinances:** -
- **Resolutions:**

- **Approval of Vouchers**
- **Mayor/Council Comments**
- **Public Comment**
- **Executive Session**
- **Adjournment or Recess Meeting**

Americans with Disabilities Act (ADA)
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

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CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, November 12, 2015

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Ator, Peterson and Mayor Pro Tem Schiller were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Paul Nott, John Graham, and Dan Glenn.
EXECUTIVE SESSION	None.
PUBLIC HEARING	Mayor Pro Tem Schiller opened the public hearing at 7:02 pm on the proposed budget. Mayor Pro Tem Schiller gave a brief review of the proposed budget. He is working with Elma on contract discussions for police services. All options are being considered and researched. The public hearing closed at 7:07.
PUBLIC COMMENT	Brenda Orffer asked if the council will be moving on a rate study. Mayor Schiller said it will not happen until next year.
MINUTES APPROVED	It was moved by Councilmember Reed, seconded by Councilmember Peterson to approve the October 28, 2015 minutes. Motion Carried 4-0. It was moved by Councilmember Ator seconded by Councilmember Peterson to approve the November 3, 2015 minutes. Motion Carried 4-0.
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available, if they have any questions.
MAYOR'S COMMENTS	None.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided a written report for the Council and is available, if they have any questions.
BUILDING OFFICIAL	It was moved by Councilmember Reed, seconded by Councilmember Peterson to authorize the chair to negotiate a contract with BHC Consultants for building official services. Motion Carried 4-0.
APPOINT COUNCIL POSITION #1	It was moved by Councilmember Ator, seconded by Councilmember Reed to appoint Brenda Orffer to the vacant Councilmember #1 position. Motion Carried 4-0. Wendy Collins swore Brenda Orffer into office and she sat at the Council table and began work. Helen Hamilton asked the council to please keep the Children's Advocacy budgeted for 2016 because it is such a good program. Mayor Schiller said there is no plan to cut it. Brenda Orffer complimented Brent Schiller on stepping up so quickly and filling the role of Mayor and the council seems to have a renewed unity at the table.
SUNSET AIR ENERGY CONSERVATION MEASURES	It was moved by Councilmember Ator, seconded by Councilmember Peterson to authorize the Energy Conservation Measures Agreement with Sunset Air. Motion Carried 5-0.
DEPT. OF ENTERPRISE INTERAGENCY AGREEMENT	It was moved by Councilmember Ator, seconded by Councilmember Reed to authorize the Interagency Agreement with the State of Washington Department of Enterprise Services. Motion Carried 5-0.
REED COMMITTEE APPOINTMENT	It was moved by Councilmember Ator, seconded by Councilmember Peterson to appoint Doug Krikava and Pam Ator to the REED Committee, along with Mayor Pro Tem Schiller. Motion Carried 5-0.

FINANCE COMMITTEE
APPOINTMENT

It was moved by Councilmember Ator, seconded by Councilmember Orffer to appoint Pam Ator and Brenda Orffer to the Finance Committee. Motion Carried 5-0.

ORDINANCE # 814
DEVELOPMENT AGREEMENT

It was moved by Councilmember Ator, seconded by Councilmember Reed to adopt Ordinance 814 relating to governmental administration, adding a new chapter to Title 17 of the Municipal Code, providing for severability and an effective date. Roll Call taken in the affirmative. Ordinance Adopted 5-0.

APPROVAL OF VOUCHERS

Accounts Payable vouchers/checks approved were 40256 - 40315 including EFT's in the amount of \$70,790.62.

It was moved by Councilmember Peterson, seconded by Councilmember Reed to approve the vouchers. Motion Carried 5-0.

Councilmember Peterson asked how to go about rescinding his previous vote on preventing marijuana growing and manufacturing. Dan Glenn said they will have to have another public hearing with the Hearing Examiner for another recommendation. Todd Baun will arrange a new hearing.

Todd Baun is working on arranging a rate study for the utilities per the auditor's request.

Doug Krikava encouraged Brent Schiller to apply and finish out the Mayor's term. He said Brent has worked really hard for the city for the past six years and will continue to work hard for the next two years. Larry Peterson said he would second that.

EXECUTIVE SESSION

None.

MEETING ADJOURNED

It was moved by Councilmember Ator, seconded by Councilmember Reed to recess the meeting at 7:34 pm. The next meeting will be Tuesday, November 18, 2015 at 7:00 pm for a general work session on the budget. Motion Carried 5-0.

Approved by Mayor Pro Tem Brent Schiller and Clerk-Treasurer Wendy Collins.

CITY OF MCCLEARY
Budget Work Session/Council Meeting
Wednesday, November 18, 2015

ROLL CALL AND FLAG SALUTE Councilmember's Reed, Ator, Peterson, Orffer and Mayor Pro Tem Schiller were in attendance.

ABSENT None.

STAFF PRESENT Present at the meeting were Todd Baun, Wendy Collins and Paul Nott.

BUDGET WORKSHOP The Council discussed the 2016 budget.

POLICE FUNDING **It was moved by Councilmember Peterson, seconded by Councilmember Reed to fund the police department through December 31, 2015. Motion Carried 5-0.**

MEETING ADJOURNED **It was moved by Councilmember Ator, seconded by Councilmember Peterson to recess the meeting at 8:11 pm. The next meeting will be Wednesday, December 2, 2015 at 7:00 pm. Motion Carried 5-0.**

Approved by Mayor Pro Tem Brent Schiller and Clerk-Treasurer Wendy Collins.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary

FROM: DANIEL O. GLENN, City Attorney

DATE: November 25, 2015

RE: LEGAL ACTIVITIES as of DECEMBER 2, 2015

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

1. **CHEHALIS TRIBAL JAIL SERVICES CONTRACT:** As of the time of the preparation of this Report, I have yet to receive a response from Mr. Tiam as to my suggestion to implement a short term services contract (Sounds a lot like the last update.) I did attempt to contact him by email but received a response that he will be out of the office until November 30 so I hopefully will have some guidance by the time of this meeting.

2. **ZONING CHANGE: CONSIDERATION OF ALLOWANCE OF CERTAIN I 502 ACTIVITIES IN SPECIFIC ZONE:** At the last meeting Council Member Peterson raised the matter of consideration of amending the existing zoning code provisions so as to allow commercial growing and processing in the industrial zone. My advice then, an now, is that will require an amendment to the existing code. Thus, as required by Section 17.40.130.B.2 of the Municipal Code, which is set out below, the Council would refer the issue to the Hearing Examiner, who acts as the City's Planning Commission/Agency, for public hearing and provision of findings, conclusions, and recommendation on the matter. Staff felt that it perhaps could be handled as through "rescinding" of the prior enactment. After the meeting

apparently Todd contacted Mr Aaland who confirmed that the 17.40.030 process would be required.

Thus, if the Council wishes this matter to be considered, I would recommend taking the action to refer it to the Hearing Examiner.

3. **2016 BUDGET DEVELOPMENT:** Well, the budget process will continue to move forward. Obviously it involves a number of interrelated issues, all of them having fiscal impacts.

A. Labor Negotiations: The IBEW and Teamster contracts are in place. As to the FOP, I have no doubt that the ambiguous nature of the future of the method for provision of law enforcement services for the City is not making the negotiations any easier for either the City or the FOP. Mr. Snyder may have additional information available for you on this area.

B. Fiscal Matters: As part of that process, the Council and Staff have had the memo containing my analysis of the applicable statutes relating to the 4% "charge" authority and the REED fund utilization. Obviously it represents my legal opinion on the various aspect after doing the "due diligence" I could do. I would note that any transfer of funds from an utility to the current expense fund under the authority of the 4% provision would be different in terms of basis than the transfers about which the SAO previously expressed concern. Also, the fact that the City is likely to issue the RFQ for a rate study would deal with one of the concerns expressed by the SAO in their prior reports. However, that does not mean that they might not disagree with my analysis. However, as you are aware give the indication received as to the likely timing of response we will likely not know what the SAO's positions are in relation to the questions I tendered to it until after the budget must be in place.

4. **ASTOUND BROADBAND/WAVE POLE USE AGREEMENT:** The Company was granted a franchise to utilize the City's rights of way earlier this year. At this stage, they have been negotiating a pole usage agreement with the PUD and have "morphed" it so that it would apply to the City as well. Earlier I have provided Paul and Todd a draft pole use

agreement which I had developed specifically for City use. However, if Paul and Todd are comfortable with the PUD pattern, there may be an advantage to consistency. I would note that it is likely that we will be receiving one or more additional requests from other providers so we will want to be certain that it fits the City's needs over the long term.

I would suggest that it be held over for final consideration for a second reason as well. That ties to the fees charged by the City for the use of its poles. Paul and I have been researching what rates are currently applied to the various users, including the telephone and cable users. It appears that certain of them have not been modified for an extended period I anticipate providing you with an updated ordinance at the first meeting in January so as to "standardize" the approach.

5. **BUILDING OFFICIAL SERVICES CONTRACT**: I was provided a copy of the draft contract the firm has provided to Mr. Baun. Upon review, certain questions arose in terms of the language provided. They included the following:

A. Fee Basis: While any initial services in terms of handling a permit are in fact compensated through the percentage of permit fee paid approach, the review disclosed that provisions were included which limit the amount of service to be provided for the percentage after which an hourly fee goes into place, including for travel time and the like.

B. Role: The draft indicated that the Company is not the City's agent. While I normally prefer that approach, given a recent appellate decision as well as the reality that they are providing services which would normally be provided by the City, I have asked that area be clarified to what I perceive to be the factual and legal reality, they are the City's agent I these areas.

C. Maintenance of Records: Since they are providing building official services, there was concern about the contract provision which provided a very limited time period during which the records relating to the projects upon which they have provided services were to be maintained. Give the

mandates of the Public Records Act, as applied by that appellate decision mentioned above, I have asked that the record retention provision be modified to reflect that it shall be in compliance with the PRA. (The appellate decision involved the City of Marysville for which, ironically, I believe this company always provides services. What the Division I Court of Appeals held was that a company which provided certain consulting services for the City was an agent of the City for purposes of the Act and thus had to respond to requests for records.)

My understanding is that Todd has tendered the concerns on to the company and has not yet received a response.

6. **APPOINTMENT OF MAYOR:** Based upon disclosed scheduling the appointment of a successor to Mayor Dent is on the agenda tonight. While I am not certain that I am aware of all the applicants, at least one of the applicants is a Council Member. For guidance, I will indicate as follows:

A. Eligibility: RCW 35A.12.050 states as follows:

"A vacancy in the office of mayor or in the council shall be filled as provided in chapter 42.12 RCW. An incumbent councilmember is eligible to be appointed to fill a vacancy in the office of mayor."
Thus there is no question that if that is the situation, the request for consideration is legal.

B. Methodology & Term: RCW 42.12.070, which governs the filling of vacancies in non-partisan offices such as the City's council, provides the following guidance:

"A vacancy on an elected nonpartisan governing body of a special purpose district where property ownership is not a qualification to vote, a town, or a city other than a first-class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1). Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position....

(4). If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy....

(6). As provided in chapter 29A.24 RCW, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected. The person elected shall take office immediately and serve the remainder of the unexpired term."

Thus, the bottom line is that the choice is made by the members of the Council and an applicant serving on the Council may vote for themselves. Also, the person chosen will serve the remainder of Mayor Dent's term since it is my memory that the next election at which City offices will be on the ballot will be held in 2017.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

17.40.130 Amendments.

A. The city council may amend the text of the zoning ordinance, including the city of McCleary zoning map, whenever public necessity, convenience, or general welfare require such action and the proposed amendment is consistent with the city of McCleary comprehensive land use plan in accordance with RCW 35A.63.105.

B. Amendments to the text of the zoning ordinance may be initiated by:

1. One or more owners of property within the corporate boundaries of the city of McCleary;

2. A motion of the city council requesting the planning commission to set the matter for hearing; ...

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: Rate Study RFP

A draft Request for Proposal (RFP) was given to Council for review at the November 12th meeting. This RFP was created due to the recommendation of the State Auditor's Office.

The purpose of the study is going to be a detailed utility cost of service study followed with a rate design development process that will provide justifiable and equitable methodologies for appropriate user fees that are adequate to fully fund the expenses associated with the electrical utility systems, equipment repair and replacement, and capital.

This will update our last rate study, which was completed in 2008.

Action Requested:

Please discuss and let me know if you would like to send the RFP out.

Request for Proposals Cost of Service Study & Rate Design

The City of McCleary is soliciting proposals to develop a Comprehensive Utility System Cost of Service Study and Rate Design for its electrical utility. It is expected that the selection will be made and work can commence by the end of January 2016. Please submit a copy of the proposal electronically to:

Todd Baun
toddb@cityofmccleary.com

And mail 5 hard copies of the RFP to:
City of McCleary
100 100 S. 3rd Street
McCleary, WA 98557

Deadline for submission is no later than **4:00 p.m., Monday, January 4th, 2016**. Please direct your questions regarding this RFP to Todd Baun, at 360.495.3667 or toddb@cityofmccleary.com.

I. BACKGROUND

The City of McCleary had a 2010 population of 1,653 and is located 20 minutes west of I-5 in Grays Harbor County on "the road to the beach." The City is also located at the southern terminus of SR 108, the "shortcut from Shelton to the beach." Established as McCleary Camp in 1898 by mill owner Henry McCleary, the City was not incorporated until 1943, about a year after the mill was sold to Simpson Timber. High quality interior doors are still manufactured at the mill.

McCleary city services are dominated by its utilities, as property and sales tax revenues are quite small. McCleary is one of seventeen (17) cities in the state of Washington that has its own electric utility. The City of McCleary also owns and operates water, wastewater, and stormwater systems, transportation facilities, and recreational facilities. Capital Improvement Plans have recently been prepared for all services.

The City is a full requirements BPA customer and serves approximately 1,300 meters, the majority being residential.

SCOPE OF WORK

The City currently relies on BPA's load forecast to develop the City's forecast of sales and revenue. Additionally, a detailed utility cost of service study followed with a rate design development process that will provide justifiable and equitable methodologies for appropriate user fees that are adequate to fully fund the expenses associated with the utility systems, equipment repair and replacement, and capital. This will include a review and evaluation of the City's current operating revenues and expenses and a comparison to similar utilities.

COST OF SERVICE STUDY

The City desires to ensure that, to the extent practical, we recover from each customer the cost of providing service to that customer. The cost of service includes recovery of all operating

costs, amounts necessary to maintain reasonable operating reserves after funding operations, debt service, and capital projects. Furthermore, the City desires to ensure that our customer classifications are appropriate.

The cost of service study will define and separate fixed and variable costs. The study should identify costs to be allocated across all customer classes and those costs that are specific to a class. In determining the actual cost of providing electric service to each customer class, traditional cost of service and rate setting principles and approaches should be employed such that the City can ensure that class rate requirements are equitable.

Planning Criteria (Tasks):

- Review proposed capital improvement plan and total projected project costs
- Review financial history, including revenues and expenses, and current rate and fee structure
- Develop requisite Revenue Requirement analysis of test period system revenue and expenses as the foundation of the cost of service class analysis

- Identify annual and peak requirements and usage by customer class
- Identify current electric load and project future loads based on anticipated community growth
- Examine customer database and review current customer classifications
- Identify largest users and determine if users are being charged under the appropriate rate schedule

- Review charges for fixed cost items such as street lights and security lights
- Review current transmission delivery and power charges
- Review current fixed and variable energy and demand charges
- Design a pole attachment charges based on RCW 80.54
- Review and development of hookup/construction related costs and revenues

Reporting:

The Consultant is to present the findings and conclusions of each task and resulting recommendations in the cost of service study final report in a clear and concise manner. A written report is required and periodic presentation to management. A summary presentation to the City of McCleary Council will be requested during a regularly scheduled public workshop.

RATE DESIGN DEVELOPMENT

The City seeks to ensure our utility rate(s) cover the true cost of providing electrical service to our customers. This includes but is not limited to: power and transmission purchase, O & M and equipment repair and replacement costs; maintaining appropriate working capital and cash balances as well as meeting debt service requirements, and capital improvements needs. In doing so, the proposed rate/fee structure shall ensure an equitable treatment of all charges on future and current users.

Specific Issues for Consideration:

The Consultant shall develop a utility rate mode by addressing, at a minimum, the following requirements:

- Review of existing rate structure
- Consistency between rate schedules and fee schedules
- Consumption/revenue elasticity based on any proposed rate increases/decreases
- Adequate and equitable usage, demand, and basic charges
- Fully consider the positive and negative impacts of wholesale power costs and revenues
- Conservation costs and reimbursements
- Aid to construction payments from developers
- Net metering costs and benefits
- Low income rates and charges
- Effect of distributed generation

Rate Design Investigation:

Utility rate modeling, and associated long-range forecasting of revenue and expenses, necessitates careful scrutiny of available data upon which a study is predicated so that the model can be implemented with confidence and with reasonable certainty of fairness and equity. Evaluation of accepted policies, practices and procedures to ensure model reliability, predictability and rate stability over the long term is essential for model usefulness. Accordingly, Consultant shall meet with City Staff to review and discuss available documentation including, but not limited to, Utility Billing records, historical budget documents and audit reports, resolutions, policies, operation and maintenance practices.

Evaluation:

Specifically, the Consultant shall review, analyze, validate the reasonableness, and recommend changes where appropriate for the following:

- Methodologies of fee structure, rates and charges
- Utility Repair/Replacement Funding Methodology, considering long-term capital improvement needs, debt service opportunities and associated funding sources/levels

Rate Design Study to Include:

- 1) Analyze and discuss impact of existing and future capital improvements.
- 2) Assess revenue needs for the next six-year planning period (2017 – 2023), to include adequate coverage for operations and maintenance, capital projects and program activities and debt service.
- 3) Analyze existing rate and fee structure and recommend alternatives based on findings.
- 4) Consultant will advise the City on industry-accepted methodologies for allocating costs to the various customer classes. Types of cost include but are not limited to cost of materials, personnel and other administrative costs, equipment cost, transformer cost and cost of street and security lighting. Consultant will provide a breakdown of these expenses and show how they relate to providing electric services.

- 5) Examine current user classes and current rate approaches.
- 6) Evaluate existing rate structure with regard to changing patterns of consumption, growth in customer base, annual revenues from rates, price elasticity of consumption, demands on rate revenue (from Cost of Service Study) and the effects of conservation on annual revenues any future power resources needs.
- 7) Examine adequacy of reserves for operating revenues and capital projects to determine sufficient levels to offset low consumption/revenue years while also reducing spikes in annual rate increases.
- 8) Examine the City's use of Debt financing for capital improvements and make recommendations related to its uses and limitations relative to maintaining a proper balance for debt coverage and rate stabilization over this five-year period.
- 9) Consultant shall structure proposed rate schedules on the basic premise that each customer should be classified and served under a schedule that will cover all costs of that customer's service plus return a reasonable margin for proper operating reserves, capital improvements, adequate inventories, and contributions to general City government. New rate schedules must classify each customer into the fewest possible reasonable classifications.
- 10) For proposed rate schedules, Consultant shall provide a sampling of a minimum of three (3) customers per classification showing the difference of charges between existing and proposed rates. The Consultant shall show a sampling of data for one calendar year by month for each customer.
- 11) Consultant shall provide a comparison of current and alternative City of McCleary rates to surrounding utilities.
- 12) Any preferences in long-term versus short-term rate benefits.

Reporting:

The Consultant is to present the findings and conclusions of the tasks in the rate study final report in a clear and concise manner. The report should include detailed recommendations for changes, if any, to current practices and/or procedures. Provide a schedule for timely and coordinated execution of all essential aspects of the report. A written report supporting the recommendations is required and presentation to management. A summary presentation to the McCleary City Council will be requested during a regularly scheduled public workshop. Material to support City rate hearings must be included.

III. COMPLETION EXPECTATIONS

The City expects the Cost of Service Study to be completed no later than April 29th, 2016, the Rate Design Development to be completed no later than May 13, 2016. This may necessitate that some work be done on parallel paths.

Assist with Plan Implementation:

If requested, the Consultant shall be prepared to assist the City in implementing any new or revised rate schedules, to include attendance at several anticipated rate hearings.

IV. PROPOSAL FORMAT AND CONTENT

Please review this RFP carefully to ensure your understanding of all City requirements prior to developing your proposal. Proposals shall clearly reflect an understanding of the agreement with the stated requirements. Submission of a proposal indicates acceptance of the conditions contained in the RFP unless clearly indicated otherwise.

Prepare and submit the following in a brief, narrative format or other stated format (in the order noted):

1. Basic Information

Provide the following information:

- Contact person name, Firm name, address, telephone number, fax number, and email address
- Sub consultant(s)' name(s)
- State the office location(s) where the services and work will be performed, and identify the office location(s) and percentage of activities of other offices/sub consultant offices involved in performing the services and work

2. Firm Experience

Provide the following information, with a particular emphasis on experience that relates to capital plans, cost of services studies, rate studies, on-call professional services, and related functions:

- Provide a narrative description of the company and why it is best-qualified to provide the desired services
- Describe the general experience and specialties of the company
- Identify specific experience with capital plan preparation, rate studies, and on call professional services
- Identify other public utility, municipal and co-op clients
- Identify experience with net-metering and distributed energy impacts

3. Proposed Team

Provide the following information:

- Identify names and positions of key personnel anticipated to work on each Schedule of Work. Identify tasks assigned to each individual and percentage of time individual is intended to serve on the project. This requirement also applies to sub consultants.
- Provide a resume, including education and experience, for key team members. Include summary of work on similar projects, approximate dates, and individual's responsibility in the assignment. This requirement also applies to sub consultants.

4. References

- List 3-5 project references, including contact names and telephone numbers for projects of comparable size and scope performed by the key personnel listed above. To the extent any references for individual employees of either the Consultant or sub consultant are different from those noted in the previous section, they should also be provided.
- Provide a current client list including jurisdiction name, contact name, and telephone number, and length of engagement.

- Provide an example of a recently completed rate study.

5. Work Summary

Provide a narrative description summarizing the expected tasks and activities, with a description of the analysis, reports and participation, which the Consultant expects to provide pertaining to that activity. This would include a summary of the steps to be completed to accomplish the scope of work, approaches to the project, and your firm's understanding of the project requirements.

6. Work Plan and Project Schedule

Submit a work plan upon which the estimate for the total contract price should be based. This should demonstrate an understanding of the issues and subjects which will be addressed and provide City Staff and the Consultant a written document to refer to throughout the project.

The project schedule shall include the estimated time required to complete each step in the scope of work, including estimated start and completion dates (non-binding). The number of hours allocated to each individual by each task should be indicated with a project schedule type display showing each activity in the proposed work plan. A summary time estimate will work closely with the Consultant throughout the engagement in order to assess the project's progress and status. The plan must include an appropriate number of kick-off and regular meetings, information gathering and disseminating sessions, and updates with key City personnel to understand and discuss the City's issues and concerns, become acquainted with key Staff, and identify persons who will provide data. Ensure a sufficient number of meetings with City Staff to provide Staff with preliminary findings and strategies based upon the available data. This shall include conducting "reality checks" with Staff and feedback regarding the projects, phasing, intentions, rate suggestions, revenue sources, and the like that would be acceptable to field Staff and elected officials. Consultant shall meet with Staff to identify potential changes to projects and/or phasing of projects, to present findings, to demonstrate the effect(s) of various scenarios on the comprehensive plan and rate structures, and to obtain a consensus on the scenario(s) to present to the McCleary City Council.

7. City-Furnished Documentation

The City will assist with data collection for each Schedule whenever possible. Appropriate City Staff will be made available for interviews and to gather data the Consultant determines is essential to complete the cost of service analysis, rate study models, and final reports. Proposal must be clear in addressing what the City will be expected to assist with. Therefore, provide a description of required documentation and estimated time and effort required by City Staff to assist in the preparation of the work plan and study.

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: Building Official Contract

This issue has been in front of you for the past couple of months.

I have been in contact with you about the Building Official duties. We currently don't need a full time Building Official, so contracting with a consultant that provides the Building Official services is going to be our best way to keep up with our Building Department duties.

I have had 3 proposals come in for the Building Official duties. I have met with representatives from each company. Each company is highly qualified to perform the work and each has outstanding references. The only real difference is the cost to the City and its permit applicants, since the cost will be passed on to the permit applicants. Here is the cost break down.

- Code Pros- Based out of Allyn, WA. Will provide plan review, permit issuance and inspection at 80% of our permit fees. Additional items (code enforcement, re-inspection fees etc...) will be billed on an hourly basis that ranges from \$75.00 to \$125.00 per hour.
- Skillings Connolly – Based out of Lacey, WA. Will provide plan review, permit issuance, inspection and additional items at an hourly basis. Their rates range from \$91.38 to \$110.00 per hour.
- BHC- Inspector based out of Aberdeen, WA. Will provide plan review at 75% of our plan review fee. Permit issuance, inspection and additional items at an hourly basis. Their rates range from \$70.00 to \$150.00 an hour.

Based on our needs, I feel that BHC will provide the best value for the City and its customers. Our current building rate structure will be able to pay for the services, plus give the city more revenue than the other consultants.

Action Requested:

Please discuss and let me know if you would like to enter into a contract with BHC Consultants or another consultant.

THIS PROFESSIONAL SERVICES AGREEMENT, which is referred to hereinafter as “this Agreement”, is made and entered by and between BHC Consultants, LLC (“BHC”) and the City of McCleary (“CITY”) and is effective as of the last date written below.

Scope of Services

The scope of services to be performed, and the schedule and compensation for performing those services, shall be as described on Exhibit “A”, attached, and hereby incorporated into this Agreement.

In witness whereof, the parties have made and executed this Agreement.

BHC Consultants, LLC

City of McCleary
(City)

By: Craig Chambers

By: _____

Title: President

Title: _____

Signature: _____

Signature: _____

Date: November , 2015

Date: _____

GENERAL CONDITIONS

Independent Contractor: BHC is an independent contractor and is not an agent or employee of CITY.

Assignment: Neither party may assign this Agreement or any rights or responsibilities under it, whether during performance or after performance, without first obtaining the other party’s written consent.

Compliance with Laws, Permits and Licenses: BHC shall comply with responsible interpretations of applicable laws, regulations, ordinances and permits that are in effect at the time of performance.

Taxes: BHC shall comply with federal, state, and local tax laws, Social Security Acts, Unemployment Compensation and Workers’ Compensation Acts in so far as applicable to the performance of this Agreement.

Provision of Documents: CITY shall provide BHC with pertinent information concerning the City’s requirements for the Project. This includes providing drawings, specifications, schedules and other information prepared by or available to CITY pertinent to the services.

Authorization: BHC shall begin performance upon receipt of a copy of this Agreement bearing the CITY’s signature unless stated otherwise in writing.

Changes and Additional Services: CITY and BHC may agree to modify the scope of services and may agree to the performance of additional services for additional compensation. All changes shall be in writing and shall take effect only when signed by both parties.

Invoicing: BHC shall submit monthly progress billings to CITY. If services are performed on a lump sum fee basis, progress billings shall be on a percent-complete basis. If services are performed on a time-and-materials basis, progress billings shall itemize actual hours worked, equipment, outside services and a brief description of the services provided; hourly rates shall be in accordance with the current BHC Rate Schedule.

Payment: Payment to BHC for services performed and reimbursable costs incurred shall be made within 30 days of receipt of invoice. All payments shall be delivered to: BHC Consultants, LLC, 1601 Fifth Avenue Suite 500, Seattle WA 98101.

Termination for Convenience: CITY, for its convenience, may terminate the services of BHC in whole or in part at any time by written notice, which shall state the extent and effective date of such termination. CITY shall reimburse BHC for reasonable costs necessarily incurred by BHC following receipt of the notice of termination.

Termination for Default: Either party may terminate this Agreement if the other party substantially fails to meet its obligations under this Agreement. Said termination will become effective upon five (5) business days' written notice unless the defaulting party cures the default or provides satisfactory evidence to the non-defaulting party that such default will be cured within a satisfactory time.

Records: BHC shall maintain all records (fiscal and other) pertaining to the Project for a period of not less than two years.. These shall be available to CITY for its review upon reasonable notice.

Confidentiality: BHC will not disclose any documents, reports, disclosures, plans or other information that CITY identifies as proprietary or confidential to any third party except as necessary to perform services pursuant to this Agreement or except as required by law.

Ownership of Documents: All documents prepared by BHC pursuant to this Agreement are instruments of service intended for use solely with respect to this Project. These instruments of service shall become the property of CITY upon CITY's performance of its payment obligations under this Agreement. Any reuse or modification of such instruments of service by CITY or others without BHC's written consent shall be without liability on the part of BHC or its employees or sub-consultants.

INSURANCE: *BHC SHALL MAINTAIN CONTINUOUSLY DURING THE LIFE OF THIS AGREEMENT THE FOLLOWING MINIMUM INSURANCE REQUIREMENTS:*

- A. Worker's Compensation Insurance with statutory limits
- B. Comprehensive General Liability with limits of not less than \$1,000,000 applicable to bodily injury, sickness, or death in any one occurrence or in the aggregate and not less than \$1,000,000 for loss of, or damage to, property in any one occurrence or in the aggregate. This coverage shall include the following: (1) Comprehensive form; (2) Premises operations; (3) Contractual liability; (4) Broad form property damage; (5) Personal injury.
- C. Automobile Liability covering all owned, non-owned, or hired vehicles used by BHC with limits of not less than \$1,000,000 applicable to bodily injury, sickness, or death of any one person per occurrence and \$10,000 for loss of or damage to property in any one occurrence.
- D. Professional Liability Insurance in the amount of \$1,000,000 per claim and annual aggregate covering BHC's negligent acts, errors, or omissions.
- E. **Additional Insured:** By endorsement to the general liability insurance policy evidenced by BHC, the City of McCleary, Washington, its officers and employees shall be named as additional insured's for all liability arising from this contract.

BHC will provide CITY with evidence of the above-stated coverages upon written request received.

Except to the extent that it impairs coverage, each party waives all claims for recovery of costs, losses and damages from the other to the extent covered by insurance carried by or for the benefit of the party incurring the costs, losses or damages.

Construction: Only CITY has the right to reject or stop work of its contractors or agents. BHC will notify CITY of non-conforming work performed by the CITY's contractor(s) coming to the attention of BHC, but BHC is not responsible for inspecting the construction work or for performing exhaustive observations of the construction work. BHC is not responsible for, and does not have control or charge of, the specific means, methods, techniques, sequences or procedures employed by the CITY's contractor(s) or for jobsite safety or jobsite safety programs. BHC is not responsible for any failure on the part of the contractor(s) to perform work in accordance with the plans and specifications.

Laws: This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Washington.

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Force Majeure: BHC shall not be liable for failure to perform when its performance is hindered or prevented by an occurrence beyond the reasonable control of BHC.

No Third Party Rights: All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of the parties hereto. There shall be no third party beneficiaries of this Agreement.

DISPUTE RESOLUTION: City and BHC agree that all disputes between them arising out of or related to this Agreement, or the breach or alleged breach of this Agreement, that cannot be resolved by direct discussions shall be submitted to and considered in nonbinding mediation before either party may commence litigation. Unless the parties subsequently agree otherwise, the mediation shall be administered by the American Arbitration Association in Seattle acting under its Construction Industry Mediation Rules. Should there be litigation, it shall be resolved in Grays Harbor County, Washington.

Entire Agreement: This Agreement, including attachments incorporated herein by reference, states all of the terms of the agreement between the parties and supersedes all prior and contemporaneous written and unwritten negotiations, proposals, representations, commitments and agreements. This Agreement may be modified only by way of an instrument signed by authorized representatives of both parties.

ATTACHMENT - A

SCOPE OF SERVICES

1. PLAN REVIEW

BHC will review plans submitted with building permit applications for structural and nonstructural code compliance in accordance with the currently adopted construction codes as adopted and amended by the state of Washington and City of McCleary (City), except that BHC will confer with the Building Official and his/her agent on any portion of the review that specifically requires the approval of the Building Official as specified in the code(s).

- A. The specified services to be performed by BHC shall be specified in a letter of Authorization issued by the City.
- B. The BHC will not design for the applicant, make any structural changes on the plans, or make any changes that directly contradict other information on the plans. Significant changes must be made by or under the direction of the applicant or design professional.
- C. Reviews shall be done by BHC, an approved representative, or an outside consultant. The name of the reviewer or outside consultant shall be submitted to the City upon request.
- D. If corrections or additions are required, the Consultant will write a review letter addressed to the applicant. This review letter will be sent to the City's agent. The City will then send the BHC review letter, along with any additional City requirements sent to the applicant. The correction letter will indicate to the applicant that they are required to submit the revisions/additions to the City per the submittal requirements for the permit type under review.
- E. BHC will indicate that the drawings have been reviewed and found to be in substantial compliance with applicable construction codes and ordinances. The reviewer's name and date of compliance will be affixed to each sheet in up to two sets of drawings including the cover sheet.

- F. Complete reviews will include structural, nonstructural, accessibility, energy, and ventilation requirements. Partial reviews will be indicated as either structural or nonstructural or as mutually agreed upon.

2. PROCESS

- A. The City will determine which plans are to be reviewed by the Consultant.
- B. The City will intake, track, and process the permit applications and all revisions per current building and permit administration procedures.
- C. BHC will be responsible for the transportation and cost of returning permit review documents back to the City. The City will be responsible for the transportation and cost of delivering permit review documents to BHC.
- D. The Consultant will complete the initial review and will have either approved the application and notified the City of approval or contacted the applicant and the City with corrections within the time frames listed below:

Project Type	Initial Review	Re-Review
Single-Family	10 days (2 weeks)	5 days (1 week)
Multi-Family	15 days (3 weeks)	10 days (2 weeks)
Commercial	20 days (4 weeks)	15 days (3 weeks)

Turn-around for all other types of permit applications is to be negotiated.

- E. The Consultant will review any revisions or additional information and will either indicate compliance with the code(s) against which it was checked and notify the City of compliance, or if the drawings are still not complete, contact the applicant and the City with additional revision requests within the time frames specified above.
- F. The review time may be negotiated based on the number and complexity of projects to be reviewed. The Consultant will not be held responsible for delays beyond the Consultant's control. During heavy workloads or schedule delays, the Consultant shall notify the City of revisions to estimated target dates.

3. BUILDING INSPECTION SERVICES

BHC will provide a certified building inspector on an “as needed” basis to perform the following services:

- A. Upon authorization by the CITY, inspector will perform building inspection work for the City.
- B. At the request by the CITY, the inspector shall be asked to perform one or more of the following inspection tasks:
 - a. non-structural fire and life safety inspections
 - b. structural inspections
 - c. energy code inspections
 - d. barrier free inspections

- e. mechanical & plumbing inspections
- C. Inspector will provide building inspections in accordance with the currently adopted International Codes, Washington State Building Code (WAC 51-50 and 51-51), and Energy Code (WAC 51-11), and the applicable City Building Codes, except that inspector will confer with the Building Official or his/her agent on any portion of the review that specifically requires an approval of the Building Official under the applicable Code(s), or that involves an unusual interpretation.
- D. Inspections will be done in accordance codes, ordinances and regulations in effect and will be performed in a courteous and professional manner. Up-to-date records of inspection status will be maintained on the job card in the field and on the office copy of the permit.
- E. CITY shall guarantee a minimum of two (2) hours inspection work each day inspection services are provided.

4. ADDITIONAL SERVICES REQUIRED

- A. Building Officials services can be provided for code interpretation and administrative needs such as ordinance review and update, staffing needs and department budget development and review.
- B. Civil/Site plan reviews will be charged at the hourly rates shown in Labor Rate Schedule.
- C. Pre permit plan review meetings to review code requirements and city department permit coordination will be charged at the hourly rates shown in Labor Rate Schedule.
- D. Review of deferred submittals will be charged at the hourly rates shown in Labor Rate Schedule.
- E. Revisions to plans that require additional plan review will be charged at the hourly rates shown in Labor Rate Schedule.
- F. Attendance at meetings when requested by the CITY will be charged at the hourly rates shown in Labor Rate Schedule.
- G. Fire Code, Fire Sprinkler, Fire Alarm plan reviews when requested by the CITY will be charged at the hourly rates shown in Labor Rate Schedule.
- H. Separate (not part of full review) mechanical and plumbing plan reviews will be charged at the hourly rates shown in Labor Rate Schedule.

ATTACHMENT - B
SCHEDULE OF RATES, CHARGES AND FEES

<u>Classification</u>	<u>Hourly Rate</u>
Building Inspector	\$70
Plan Reviewer - nonstructural	\$120
Structural P.E.	\$150
Civil/site plan review (P.E.)	\$130

1. PLAN REVIEW FEES:

(For reviews sent to BHC due to complexity or project size, these fees are not intended for reviews performed at the City of McCleary by onsite inspector).

Residential:

Single Family Dwellings will be charged at 75% of City's collected Plan Review fee (complete review including structural, non-structural, mechanical, plumbing, State Energy, and applicable items in the City's Municipal Code .

At the request of the City and with concurrence by Consultant, plan review fees may be determined to be charged at the hourly rate as identified in labor rate schedule as opposed to the following "fixed fee" rates.

Non-Residential:**A. Complete Plan Review**

IBC Non-structural Fire & Life Safety + Structural, disabled accessibility and/or State Energy Code, *IMC and/or UPC*.

75% of the City collected Plan Review fee.
(\$250 minimum)

B. Partial Review:

Will consist of one of the following:

- IBC Non-structural Fire & Life Safety including mechanical/plumbing when issued as part of a combination building permit, and State Energy and Accessibility review

-OR-

- IBC Structural ONLY

50% of the plan review fee calculated. (\$250 minimum)

C. Mechanical/Plumbing (issued as separate permit)

When permit for such work is issued separately from a building combination permit and permit fee is based on valuation of such work separate from building permit, fee will be assessed at the partial review percentage noted above. If permit fee is based on unit fee per the IMC or UPC, fee will be charged the hourly rate.

D. IF requested, Civil/Site Plan review will be charged at the hourly civil plan review rates.

These fees include the initial plan review plus one (1) recheck. When substantial revisions occur to previously reviewed and /or approved plans, additional fees shall be charged at the hourly rates shown in Labor Rate Schedule.

2. ADDITIONAL:

A. All other review services and reviews in excess of two (the initial review plus one re-check) shall be paid on a time-and-expense basis using the hourly rate.

B. In-house (at City's location) plan review and other services will be provided as directed by the City and agreed upon by the Consultant on a time-and-expense basis using an hourly rate.

- C. Valuation figures used to determine the plan review fees will be calculated based on the City's adopted Fee Schedule or Resolution.
- D. Each billing statement will include the permit application number and owner or project name of the plans reviewed with the fee.
- E. Billing statements will be issued for reviews that receive a complete initial review in the preceding month or other acceptable time period. A complete initial review shall constitute an earned fee for both City and Consultant.
- F. The City shall have the right to withhold payment to the Consultant for any work not completed in a satisfactory manner until such time that the consultant modifies such work to the satisfaction of the City.
- G. The cost of delivering plans for review to BHC will be incurred by the CITY. The cost of delivering reviewed plans back to city will be incurred by BHC.
- H. Mileage travel rates shown are portal to portal from inspector's residence or the Seattle office, whichever is less for on-call services. One hour of travel time will be charged for each day of travel to City's location.
- I. All mileage included by BHC inspector will be reimbursed at the most current IRS rate, currently .575 cents per mile. Mileage will not be assessed on travel using City supplied vehicle.
- J. Consultant staff's normal work days are Monday through Friday (8am~5pm). Office work on Saturdays, Sundays or CITY Holidays will be performed only at specific request of the City. Billing for work performed outside normal work hours are on Saturdays, Sundays, or CITY Holidays shall be at 150% of the rates shown above.
- K. This Schedule of Hourly Rates is effective as of January 1, 2015. Rates are subject to annual review.

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: Pole Attachment Agreement

Paul, Dan and I have been working on a pole attachment agreement with Astound Broadband. This is an agreement that will allow Astound to attach communication wires to our poles for a small fee for each connection. We currently have a franchise agreement with Astound Broadband that allows them to perform their business in the City.

This draft of the agreement is the same agreement that they have with Grays Harbor PUD. Grays Harbor PUD charges somewhere in the area of \$20 + per attachment. Other utilities are all charging similar pole attachment rates.

In our draft, we still have to complete the appendix sections, but in order to complete that, we need to know what the City would like to charge per attachment. Currently, we charge CenturyLink and Comcast, each April, a “pole rental fee” of \$7.00 per pole. CenturyLink is charged for 574 poles for a total of \$4,018.00. Comcast is charged for 539 poles for a total of \$3,773.00.

Action Requested:

Please discuss and let me know if you would like to move forward with the pole attachment agreement with Astound Broadband and what rate you recommend on charging per attachment.

POLE ATTACHMENT LICENSE AGREEMENT

This Pole Attachment License Agreement (“Agreement”), dated this ____ day of November, 2015, is made by and between CITY OF MCCLEARY, WASHINGTON dba MCLEARY LIGHT & POWER (“CITY”), a Washington municipality, and Astound Broadband, LLC, a limited liability company organized under the laws of the State of Washington (hereinafter referred to as “Licensee”).

RECITALS

- A.** Whereas, Licensee proposes to install and maintain Communications Facilities and associated communications equipment on Poles to provide Communications Services to the public; and
- B.** Whereas, City is willing, when it may lawfully do so, to issue one or more Permits authorizing the placement or installation of Licensee’s Attachments on Poles, provided that City may refuse, on a nondiscriminatory basis, to issue a Permit where there is insufficient Capacity or for reasons relating to safety, reliability, generally applicable engineering purposes and/or any other Applicable Code; and

Now, therefore, in consideration of the mutual covenants, terms and conditions and remuneration herein provided, and the rights and obligations created hereunder, the parties agree as set out below.

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AGREEMENT

Article 1—Definitions

For the purposes of this Agreement, the following terms, phrases, words, and their derivations, shall have the meaning given below, unless more specifically defined within a specific Article or Paragraph of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

- 1.1 **Affiliate**: when used in relation to Licensee, means another entity that owns or controls, is owned or controlled by, or is under common ownership or control with Licensee.
- 1.2 **Applicable Codes**: means all applicable engineering and safety codes governing the installation, maintenance and operation of facilities and the performance of all work in or around electric City Facilities and includes the most current versions of National Electric Safety Code (“NESC”), the National Electrical Code (“NEC”), Washington Administrative Code (“WAC”), Revised Codes of Washington (“RCW”) and the regulations of the Occupational Safety and Health Administration (“OSHA”), each of which is incorporated by reference in this Agreement, and/or other reasonable safety and engineering requirements of City or other federal, state or local authority with jurisdiction over City Facilities.
- 1.3 **Attaching Entity**: means any public or private entity, other than City, Licensee, or Licensee Affiliate, who, pursuant to a license agreement with City, places an Attachment on Poles to provide Communications Service.
- 1.4 **Attachment(s)**: means Licensee’s Communications Facilities that are authorized for placement directly on Poles. A riser or a service drop attached to a single Pole where Licensee has an existing Attachment on such Pole is not considered an additional Attachment.
- 1.5 **Capacity**: means the ability of a Pole to accommodate an additional Attachment based on Applicable Codes, including space and loading considerations.
- 1.6 **Climbing Space (see Drawing SP1780)**: means that portion of a Pole’s surface and surrounding space that is free from encumbrances to enable City employees and contractors to safely climb, access and work on City Facilities and equipment, in accordance with Applicable Code requirements.

- 1.7 Common Space (see Drawing SP1780):** means space on Poles that is not used for the placement of wires or cables but which jointly benefits all users of the Poles by supporting the underlying structure (support space) and/or providing safety clearance between attaching entities and electric City Facilities (safety space).
- 1.8 Communication Space (see Drawing SP1780):** means space defined by City on Poles that can be used, as defined by the Applicable Codes, for the attachment or placement of wires, cables and associated equipment for the provision of Communications Service. The neutral zone or safety space is not considered Communication Space. The Common Space which includes the support and safety space is not considered Communication Space.
- 1.9 Communications Facilities:** means wire or cable facilities including but not limited to fiber optic, copper and/or coaxial cables or wires utilized to provide Communications Service including any and all associated equipment. Unless otherwise specified by the parties, the term “Communications Facilities” does not include wireless antennas, amplifiers, receivers, or transceivers.
- 1.10 Communications Service:** means the transmission or receipt of voice, video, data, Internet or other forms of digital or analog signals over Communications Facilities.
- 1.11 Licensee:** means Astound Broadband, LLC, its authorized successors, Affiliates, and assignees.
- 1.12 Make-Ready Work:** means all work, as reasonably determined by City, required to accommodate Licensee’s Communications Facilities in accordance with all Applicable Codes. Such work includes, but is not limited to, Pre-Construction Survey, rearrangement and/or relocation of City Facilities or any existing attachments, inspections, engineering work, permitting work, tree trimming (other than tree trimming performed for normal maintenance purposes), or Pole replacement and construction.
- 1.13 Nonfunctional:** means no longer able to be used or no longer useful for transmission of Communications Service.
- 1.14 Occupancy:** means the use or specific reservation of Communication Space for Attachments on the same Pole.
- 1.15 Overlash:** means to place an additional wire or cable onto an existing Attachment owned by Licensee.
- 1.16 Pedestals/Vaults/Enclosures:** means above- or below-ground housings that are used to enclose a cable/wire splice, power supplies, amplifiers, passive devices and/or provide a

service connection point and that are not attached to Poles (see **Appendix D - Specifications**).

- 1.17 Permit:** means written or electronic authorization (in the form of **Appendix C**) from City for Licensee to make or maintain Attachments on specific Poles pursuant to the requirements of this Agreement.
- 1.18 Pole:** means a pole owned by City used for the distribution of electricity and/or Communications Service that is capable of supporting Attachments for Communications Facilities, in accordance with Applicable Codes.
- 1.19 Post-Construction Inspection:** means the inspection that may be performed by City to determine and verify that the Attachments have been made in accordance with Applicable Codes and the Permit.
- 1.20 Pre-Construction Survey:** means all work or operations required by Applicable Codes and/or City to determine the potential Make-Ready Work necessary to accommodate Licensee's Communications Facilities on a Pole in accordance with Applicable Codes. Such work includes, but is not limited to, field inspection and administrative processing. The Pre-Construction Survey may be coordinated with City and include Licensee.
- 1.21 Reserved Capacity:** means capacity or space on a Pole that City has identified and reserved for its own electric City requirements, including the installation of communications circuits, pursuant to a reasonable projected need or business plan.
- 1.22 Riser:** means rigid metallic or plastic encasement materials placed vertically on the Pole to guide and protect communications wires and cables.
- 1.23 Tag:** means to place distinct markers on wires and cables, coded by color or other means that will readily identify the type of attachment (*e.g.*, cable TV, telephone, high-speed broadband data, public safety) and its owner.
- 1.24 City Facilities:** means all personal property and real property owned or controlled by City, including Poles.

Article 2—Scope of Agreement

- 2.1 Grant of License.** Subject to the provisions of this Agreement, City hereby grants Licensee a revocable, nonexclusive license authorizing Licensee to install and maintain Attachments on Poles.

- 2.2 Parties Bound by Agreement.** Licensee and City agree to be bound by all provisions of this Agreement, except to the extent the Agreement conflicts with applicable law or any subsequent law made following the execution of the Agreement.
- 2.3 Permit Issuance Conditions.** City will issue a Permit(s) to Licensee only when City determines, in its sole judgment, exercised reasonably, that
- (i) It has sufficient Capacity to accommodate the requested Attachment(s),
 - (ii) Licensee meets all requirements set forth in this Agreement, and
 - (iii) Such Permit(s) comply with all Applicable Codes.
- 2.4 Access to Reserved Capacity.** Access to Reserved Capacity on City Poles will be made available to Licensee with the understanding that such access is subject to being reclaimed by the City on giving Licensee at least ninety (90) calendar days prior notice. City may reclaim such Reserved Capacity anytime during the period following the installation of Licensee's Attachment in which this Agreement is effective if required for City's future electric service use. City shall give Licensee the option to remove its Attachment(s) from the affected Pole(s) or to pay for the cost of any Make-Ready Work needed to expand Capacity so that Licensee can maintain its Attachment on the affected Pole(s). The allocation of the cost of any such Make-Ready Work (including the transfer, rearrangement, or relocation of third-party Attachments) shall be determined in accordance with Article 9.
- 2.5 No Interest in Property.** No use, however lengthy, of any City Facilities, and no payment of any fees or charges required under this Agreement, shall create or vest in Licensee any easement or other ownership or property right of any nature in any portion of such City Facilities. Neither this Agreement, nor any Permit granted under this Agreement, shall constitute an assignment of any of City's rights to City Facilities. Notwithstanding anything in this Agreement to the contrary, Licensee shall, at all times, be and remain a licensee only.
- 2.6 Licensee's Right to Attach.** Unless otherwise specified in this Agreement, Licensee must have a Permit issued pursuant to Article 6, prior to attaching Licensee's Communications Facilities to any specific Pole.
- 2.7 City's Rights over Poles.** The parties agree that this Agreement does not in any way limit City's lawful right to locate, operate, maintain or remove its Poles in the manner that will best enable it to fulfill its service requirements.
- 2.8 Other Agreements.** Except as provided herein, nothing in this Agreement shall limit, restrict, or prohibit City, on a non-discriminatory basis, from fulfilling any agreement or

arrangement regarding Poles into which City has previously entered, or may enter in the future, with any third parties.

- 2.9 Expansion of Capacity.** City will take reasonable steps to expand Pole Capacity when necessary to accommodate Licensee's request for Attachment. Notwithstanding the foregoing sentence, nothing in this Agreement shall be construed to require City to install, retain, extend or maintain any Pole for use when such Pole is not needed for City's service requirements.
- 2.10 Permitted Uses.** This Agreement is limited to the uses specifically stated in the recitals stated above and no other use shall be allowed without City's express written consent to such use. Nothing in this Agreement shall be construed to require City to allow Licensee to use Poles after the termination of this Agreement, subject to the provisions of Article 11 and Article 23 of this Agreement.
- 2.11 Overlapping.** Licensee shall provide written notice to City within thirty (30) days of Overlapping and Overlapping shall not increase the Annual Pole Attachment Fee paid by Licensee pursuant to **Appendix A**, Item 1.
- 2.12 Enclosures.** Licensee shall not place Pedestals, Vaults and/or other Enclosures on or within ten (10) feet of any Pole or other City Facilities without City's prior written permission. If permission is granted, all such installations shall comply with the Specifications and Drawings in **Appendix D** of this Agreement and charges as provided in **Appendix A**. Such permission shall not be unreasonably withheld. Failure to obtain such permission prior to placement of such enclosures may result in the assessment of Unauthorized Attachment Penalty Fees. (per **Appendix A**)

Article 3—Fees and Charges

- 3.1 Payment of Fees and Charges.** Licensee shall pay to City the fees and charges specified in **Appendix A** and shall comply with the terms and conditions specified herein.
- 3.2 Payment Period.** Unless otherwise expressly provided, Licensee shall pay any invoice it receives from City pursuant to this Agreement within thirty (30) calendar days after City issues the invoice.
- 3.3 Billing of Annual Pole Attachment Fees.** City shall invoice Licensee for the Annual Pole Attachment Fee on a calendar year basis. City will submit to Licensee an invoice for the annual rental period on or about January 15 of each year. The initial annual rental period shall commence on _____, 2015 and conclude on December 31, 2015. Any billing period not paid under a previous pole attachment agreement shall be prorated for a partial initial period. Each subsequent annual billing period shall commence on the

beginning of the calendar year and conclude on the end of the calendar year. The invoice shall set forth the total number of Poles on which Licensee is obligated to pay Annual Pole Attachment Fees, and if requested the City will provide calculations and underlying data used to determine the Annual Pole Attachment Fee.

3.4 Refunds. No fees and charges specified in **Appendix A** shall be refunded on account of any surrender of a Permit granted under this Agreement. Nor shall any refund be owed if a Pole is abandoned by City.

3.5 Late Charge. If City does not receive payment for any fee or other amount owed within thirty (30) calendar days after it becomes due, Licensee, upon receipt of fifteen (15) calendar days written notice from City, shall pay interest to City, at the rate of 12% per year/(1%) per month, on the amount due.

3.6 Determination of Billing Charges. Wherever this Agreement requires Licensee to pay for work done or contracted by City, the charge for such work shall include all necessary and reasonable material, engineering, and labor costs associated with such work. City shall invoice its services based upon actual costs, and such costs will be determined in accordance with City's cost accounting systems used for recording capital and expense activities. If requested, City invoices shall include an itemization of dates of work, location of work, labor costs per hour, persons employed and materials used and cost of materials. If Licensee was required to perform work and fails to perform such work necessitating its completion by City, Licensee will reimburse City upon demand City's cost per above.

3.7 Payment for Work. Licensee will be responsible for payment to City for all necessary and reasonable work City or City's contractors perform pursuant to this Agreement to accommodate Licensee's Communications Facilities and ensure safety, including but not limited to, Make-Ready Work and other work performed for the benefit of Licensee.

3.8 Advance Payment. At the discretion of City, Licensee may be required to pay in advance all reasonable costs or a part of the charges for work, including but not limited to construction, inspections, and Make-Ready Work expenses, in connection with the initial installation or rearrangement of Licensee's Communications Facilities pursuant to the procedures set forth in Articles 6 and 7 below.

3.9 True Up. Whenever City, at its discretion, requires advance payment of estimated charges prior to undertaking an activity on behalf of Licensee and the actual cost of activity exceeds the advance payment of estimated charges, Licensee agrees to pay City for the difference in cost provided that City shall, when possible, provide Licensee of prompt notice when it determines that such actual costs may exceed the amount of the estimated charges by ten (10) percent or more. To the extent that the actual cost of the

activity is less than the estimated cost, City agrees to refund to Licensee the difference in cost.

- 3.10 Work Performed by City.** Wherever this Agreement requires City to perform any work, Licensee acknowledges and agrees that City, at its sole discretion, may utilize its employees or contractors, or any combination of the two to perform such work.
- 3.11 Default for Nonpayment.** Nonpayment of any amount due under this Agreement beyond ninety (90) days shall constitute a default of this Agreement.

Article 4—Specifications

- 4.1 Installation/Maintenance of Communications Facilities.** When a Permit is issued pursuant to this Agreement, Licensee's Communications Facilities shall be installed and maintained in accordance with the requirements and specifications identified in **Appendix D**. All of Licensee's Communications Facilities must comply with all Applicable Codes. Licensee shall be responsible for the installation and maintenance of its Communications Facilities. Licensee shall, at its own expense, make and maintain its Attachments in safe condition and good repair, in accordance with all Applicable Codes. Licensee is not required to update or upgrade its Attachments in any way if not required to meet either the NESC or the NEC, unless otherwise required in this Agreement.
- 4.2 Tagging.** Licensee shall Tag all Attachments installed after the execution of this Agreement as specified in **Appendix D** and/or applicable federal, state and local regulations upon installation of such Attachments. Prior authorized Attachments shall be Tagged within five years of the execution of this Agreement. Failure to provide proper Tagging will be considered a violation of the Applicable Codes.
- 4.3 Interference.** Based on the order in which the facilities were attached, Licensee shall not allow its Communications Facilities to impair the ability of City or any third party to use Poles, nor shall Licensee allow its Communications Facilities to interfere with the operation of any City Facilities.
- 4.4 Protective Equipment.** Licensee, and its employees and contractors, shall utilize and install adequate protective equipment to ensure the safety of people and facilities. Licensee shall at its own expense install protective devices designed to handle the voltage and current impressed on its Communications Facilities in the event of a contact with the supply conductor. Except as provided in Paragraph 16.1, City shall not be liable for any actual or consequential damages to Licensee's Communications Facilities or Licensee's customers' facilities.

- 4.5 Violation of Specifications/Applicable Codes.** If Licensee's Communications Facilities, or any part thereof, are installed, used or maintained in violation of this Agreement, and Licensee has not corrected the violation(s) within thirty (30) calendar days from receipt of written notice of the violation(s) from City, City at its option, may correct such conditions. City will attempt to notify Licensee in writing prior to performing such work whenever practicable. When City reasonably believes, however, that such violation(s) pose an immediate threat to the safety of any person, interfere with the performance of City's service obligations or pose an immediate threat to the physical integrity of City Facilities, City may perform such work and/or take such action as it deems necessary, including termination of Permit, without first giving written notice to Licensee. As soon as practicable thereafter, City will advise Licensee of the work performed or the action taken. Licensee shall be responsible for all reasonable costs incurred by City in taking action pursuant to this Paragraph.
- 4.6 Restoration of City Service.** City's service restoration requirements shall take precedence over any and all work operations of Licensee on Poles.
- 4.7 Effect of Failure to Exercise Access Rights.** If Licensee does not exercise any access right granted pursuant to any applicable Permit(s) within one hundred eighty (180) calendar days of the effective date of such right and any extension thereof, City may use the space scheduled for Licensee's Attachment(s) for its own needs or other Attaching Entities. In such instances, City shall endeavor to make other space available to Licensee, upon written application per Article 6, as soon as reasonably possible and subject to all requirements of this Agreement, including the Make-Ready Work provisions.
- 4.8 Interference Test Equipment.** To the extent Licensee furnishes Communication Services it shall maintain test equipment to identify signal interference to its customers, and shall not identify City as the source of such interference absent a test report verifying the source.
- 4.9 Removal of Nonfunctional Attachments.** At its sole expense, Licensee shall remove any of its Attachments or any part thereof that become nonfunctional and/or no longer fit for service ("Nonfunctional Attachment") as provided in this Paragraph 4.9. A Nonfunctional Attachment that Licensee has failed to remove as required in this paragraph shall constitute an unauthorized Attachment and is subject to the Unauthorized Attachment fee specified in Appendix A, Item 3. Except as otherwise provided in this Agreement, Licensee shall remove Nonfunctional Attachments within one (1) year of the Attachment becoming nonfunctional, unless Licensee receives written notice from City that earlier removal is necessary to accommodate City's or another Attaching Entity's use or removal of the affected Pole(s). Upon such notice, Licensee shall remove the Nonfunctional Attachment within sixty (60) days of receiving the notice. Where Licensee has received a

Permit to Overlash a Nonfunctional Attachment, such Nonfunctional Attachment may remain in place until City notifies Licensee that removal is necessary to accommodate City's or another Attaching Entity's use, or removal of the affected Pole(s). If Licensee does not remove the Nonfunctional Attachment according to this paragraph 4.9, then City shall have the right to remove the Nonfunctional Attachment and bill Licensee for all associated costs for the removal per paragraph 3.6.

Article 5—Private and Regulatory Compliance

- 5.1 Necessary Authorizations.** Licensee shall be responsible for obtaining from the appropriate public and/or private authority or other appropriate persons any authorization required by applicable law to construct, operate and/or maintain its Communications Facilities on public and/or private property before it occupies any portion of Pole. Evidence that appropriate authorization has been obtained shall be provided to City before any Permit is issued to Licensee. Licensee's obligations under this Article 5 include, but are not limited to, its obligation to obtain all necessary approvals to occupy public/private rights-of-way and to pay all costs associated therewith. Licensee shall defend, indemnify and reimburse City for all loss and expense, including reasonable attorney's fees, that City may incur as a result of valid claims by governmental bodies, owners of private property, or other persons, that Licensee does not have sufficient rights or authority to attach Licensee's Communications Facilities on Poles.
- 5.2 Lawful Purpose and Use.** Licensee's Communications Facilities must at all times serve a lawful purpose, and the use of such Facilities must comply with all applicable federal, state and local laws.
- 5.3 Forfeiture of CITY's Rights.** No Permit granted under this Agreement shall extend to any Pole on which the Attachment of Licensee's Communications Facilities would result in a forfeiture of City's rights. Any Permit, which on its face would cover Attachments that would result in forfeiture of City's rights, is invalid. Further, if any of Licensee's existing Communications Facilities, whether installed pursuant to a valid Permit or not, would cause such forfeiture, Licensee shall promptly remove its facilities upon receipt of written notice from City. If Licensee fails to remove its facilities upon request, City will perform such removal at Licensee's expense not sooner than the expiration of thirty (30) calendar days from City's issuance of the written notice.
- 5.4 Effect of Consent to Construction/Maintenance.** Consent by City to the construction or maintenance of any Attachments by Licensee shall not be deemed consent, authorization or an acknowledgment that Licensee has the authority to construct or maintain any other such Attachments. It is Licensee's responsibility to obtain all necessary approvals for each new Attachment from all appropriate parties or agencies.

Article 6—Pole Attachment Permit Application Procedures

6.1 Permit Required. Except for service drops, Licensee shall not install any new Attachments on any Pole without first applying for and obtaining a Permit pursuant to the applicable requirements of **Appendices B and C**. Unless otherwise notified, pre-existing authorized Attachment(s) of Licensee as of the effective date of this Agreement shall be grandfathered with respect to Permitting, but shall be subject to the Attachment Fees and Paragraph 13.1. Licensee shall provide City with a list, in the format shown in **Appendix E**, of all such pre-existing Attachments within twelve (6) months of the effective date of this Agreement. Rights to occupy City Facilities not covered by this Agreement must be separately negotiated.

6.2 Service Drops. The Licensee will notify the City within thirty (30) days of the attachment of a service drop where an existing permitted Attachment exists.

In the event that a service drop constitutes the initial Attachment to a given pole, Licensee will be required to follow the permitting process set forth in paragraph 6.1. In this case, the Licensee will be allowed 30 days after the Attachment is made to complete the permitting process.

6.3 Professional Certification. Excluding the placement of service drops, at Licensee's sole expense, a qualified and experienced professional engineer, or a qualified employee or contractor of Licensee who may be required to be approved by City at City's discretion, must participate in the Pre-Construction Survey, conduct the Post-Construction Inspection and certify that Licensee's Communications Facilities can be and were installed on the identified Poles in compliance with the codes in Paragraph 4.1 and in accordance with the Permit. The professional engineer's or Licensee's qualified employee's qualifications must include experience performing such work, or substantially similar work, on electric transmission or distribution systems.

6.4 CITY Review of Pole Attachment Permit Application. A Pole Attachment Permit Application shall include the Pre-Construction Survey and detailed plans for the proposed Attachments in the form specified in **Appendix C**. Upon receipt of a properly executed Pole Attachment Permit Application, City will grant or deny the Permit Application as promptly as possible, but in no event longer than forty-five (45) days unless extenuating circumstances require additional time, and discuss any issues with Licensee, including engineering or Make-Ready Work requirements associated with the Permit Application. City acceptance of the submitted design documents does not relieve Licensee of full responsibility for any errors and/or omissions in the engineering analysis.

6.5 Authorization to Proceed. If Make-Ready Work is required to proceed, written notice from City of completion shall serve as authorization for Licensee to make its Attachment(s). If no Make-Ready Work is required, City will issue permit(s) within forty five (45) days of receipt of properly executed Permit Application.

Article 7—Make-Ready Work/Installation

7.1 Estimate for Make-Ready Work. In the event City determines that it can accommodate Licensee’s request for Attachment(s), it will advise Licensee of any estimated Make-Ready Work charges necessary to accommodate the Attachments, within the forty-five (45) day timeframe provided in Section 6.5.

7.2 Who May Perform Make-Ready Work. Make-Ready Work shall be performed only by City and/or a contractor authorized by City to perform such work. If City cannot perform the Make-Ready Work to accommodate Licensee’s Communications Facilities within forty-five (45) calendar days of the execution of an Acceptance of Cost Estimate per **Appendix C**, Licensee may seek permission from City for Licensee to employ a qualified contractor to perform such work.

7.3 Scheduling of Make-Ready Work. In performing all Make-Ready Work to accommodate Licensee’s Communications Facilities, City will endeavor to include such work in its normal work schedule. In the event Licensee requests that the Make-Ready Work be performed on a priority basis or outside of City’s normal work hours, Licensee agrees to pay any resulting increased costs. Nothing herein shall be construed to require performance of Licensee’s work before other scheduled work or City service restoration.

7.4 Licensee’s Installation/Removal/Maintenance Work.

7.4.1 All of Licensee’s installation, removal and maintenance work shall be performed at Licensee’s sole cost and expense, in a good and workmanlike manner, and must not adversely affect the structural integrity of Poles, City Facilities, or other Attaching Entity’s facilities or equipment existing prior to Licensee’s Attachment installation. All such work is subject to the insurance requirements of Article 18.

7.4.2 All of Licensee’s installation, removal and maintenance work performed on Poles or in the vicinity of other City Facilities, either by its employees or contractors, shall be in compliance with Paragraph 4.1. Licensee shall assure that any person installing, maintaining, or removing its Communications Facilities is fully qualified and familiar with all Applicable Codes, the provisions of Article 17, and the Pole Attachments Requirements for Telecommunications contained in **Appendix D**.

Article 8—Relocations

- 8.1 Required Relocations of Licensee’s Communications Facilities.** If City reasonably determines that a relocation of Licensee’s Communications Facilities is necessary, Licensee agrees to allow such relocation. In such instances, City will, at its option, either perform the relocation using its personnel and/or contractors and/or require Licensee to perform such relocation at its own expense within forty-five (45) calendar days after receiving written notice from City. If Licensee fails to relocate its facilities within forty-five (45) calendar days after receiving such notice from City, City shall have the right to relocate Licensee’s facilities using its personnel and/or contractors at Licensee’s expense. City shall not be liable for damage to Licensee’s facilities except to the extent provided in Paragraph 16.1. The written advance notification requirement of this Paragraph shall not apply to emergency situations, in which case City shall provide such advance notice as is practical given the urgency of the particular situation. City shall then provide written notice of any such actions taken within ten (10) days of the occurrence.
- 8.2 Billing for Relocations Performed by City.** If City performs the relocation(s), City will bill Licensee for actual costs per Paragraph 3.6. Licensee shall reimburse City within thirty (30) calendar days of the receipt of the invoice.

Article 9—Pole Modifications and/or Replacements

- 9.1 Licensee’s Action Requiring Modification/Replacement.** In the event that any Pole to which Licensee desires to make Attachment(s) is unable to support or accommodate the additional facilities in accordance with all Applicable Codes or the City determines sufficient Communication Space is not available, City will notify Licensee of the necessary Make-Ready Work, and associated costs, to provide an adequate Pole, including but not limited to replacement of the Pole and rearrangement or relocation of City’s Facilities. Licensee shall be responsible for separately entering into an agreement with other Attaching Entities concerning the allocation of costs for the relocation or rearrangement of such entities’ existing Attachments. If Licensee elects to go forward with the necessary changes, Licensee shall pay to City the cost of the Make-Ready Work performed by City, per Paragraphs 3.6-3.9. City, at its discretion, may require advance deposit.
- 9.2 Treatment of Multiple Requests for Same Pole.** If City receives Permit Applications for the same Pole from two or more prospective licensees within sixty (60) calendar days of the initial request, and accommodating their respective requests would require modification or replacement of the Pole, City will allocate among such licensees the applicable costs associated with such modification or replacement. Such allocation

applies only to those attachments involving cable/wire and not Risers and/or service drops. Notwithstanding the above, once a permit has been issued, and within the agreed upon timeframe to exercise any access right, the attaching licensee will be responsible for their own costs resulting from Make-Ready Work and any other attaching entity will be responsible for their own cost resulting from any associated Make-Ready Work.

9.3 Guying. The use of guying to accommodate Licensee's Attachments shall be provided by and at the expense of Licensee and to the satisfaction of City as specified in **Appendix D**. On a going-forward basis Licensee shall not attach its guy wires to City's anchors without prior written permission of City, if permission is granted a Make Ready charge may apply.

9.4 Allocation of Costs. The costs for any rearrangement or relocation of Licensee's Communications Facilities or the replacement of a Pole (including any related costs for tree cutting or trimming required to clear the new location of City's cables or wires) shall be allocated to City and/or Licensee and/or other Attaching Entity on the following basis:

9.4.1 If City intends to modify or replace a Pole solely for its own requirements, it shall be responsible for the costs related to the modification/replacement of the Pole. Licensee, however, shall be responsible for all costs associated with the rearrangement or relocation of Licensee's Communications Facilities. Prior to making any such modification or replacement City shall provide Licensee written notification of its intent in order to allow Licensee a reasonable opportunity to elect to modify or add to its existing Attachment. Should Licensee so elect, it must seek City's written permission per this Agreement. The notification requirement of this Paragraph 9.4.1 shall not apply to routine maintenance or emergency situations. If Licensee elects to add to or modify its Communications Facilities, Licensee shall bear the total incremental costs incurred by City in making the space on the Poles accessible to Licensee.

9.4.2 If the modification or the replacement of a Pole is the result of an additional Attachment or the modification of an existing Attachment sought by an Attaching Entity other than City or Licensee, the Attaching Entity requesting the additional or modified Attachment shall bear the entire cost of the modification or Pole replacement, as well as the costs for rearranging or relocating Licensee's Communications Facilities. Licensee shall cooperate with such third party Attaching Entity to determine the costs of moving Licensee's facilities.

9.4.3 If the Pole must be modified or replaced for other reasons unrelated to the use of the Pole by Attaching Entities (*e.g.*, storm, accident, deterioration), City shall pay the costs of such modification or replacement; provided, however, that Licensee shall be responsible for the costs of rearranging or relocating its Communications Facilities.

9.4.4 If the modification or replacement of a Pole is necessitated by the requirements of Licensee, Licensee shall be responsible for the costs related to the modification or replacement of the Pole and for the costs associated with the relocation or rearrangement of any other Attaching Entity's Communications Facilities. Licensee shall submit to City written evidence that it has made arrangements to reimburse all affected Attaching Entities for the cost to relocate or rearrange such Entities' Facilities at the time Licensee submits a Permit Application to City. City shall not be obligated in any way to enforce or administer Licensee's responsibility for the costs associated with the relocation or rearrangement of another Attaching Entity's Facilities pursuant to Paragraphs 9.4.2, 9.4.4, and 5.1.

9.5 **City Not Required to Relocate.** No provision of this Agreement shall be construed to require City to relocate its Attachments or modify/replace its Poles for the benefit of Licensee, provided, however, any denial by City for modification of the Pole is based on nondiscriminatory standards of general applicability.

Article 10—Abandonment or Removal of City Facilities

10.1 **Notice of Abandonment or Removal of City Facilities.** If City desires at any time to abandon or remove any City Facilities to which Licensee's Communications Facilities are attached, it shall give Licensee notice in writing to that effect at least ninety (90) calendar days prior to the date on which it intends to abandon or remove such City Facilities. Notice may be limited to less than ninety (90) calendar days if City is required to remove or abandon its City Facilities as the result of the action of a third-party or authority and the greater notice period is not practical or permissible. Such notice shall indicate whether City is offering Licensee an option to purchase the Pole(s). If, following the expiration of the notice period, Licensee has not yet removed and/or relocated all of its Communications Facilities and has not entered into an agreement to purchase City Facilities pursuant to Paragraph 10.2, City shall have the right, subject to any applicable laws and regulations, to have Licensee's Communications Facilities removed and/or relocated from the Pole at Licensee's expense. City shall give Licensee prior written notice of any such removal or relocation of Licensee's Facilities.

10.2 Option to Purchase Abandoned Poles. Should City desire to abandon any Pole, City, in its sole discretion, may grant Licensee the option of purchasing such Pole at a price negotiated with City. Licensee must notify City in writing within thirty (30) calendar days of the date of City’s notice of abandonment that Licensee desires to purchase the abandoned Pole. Thereafter, Licensee must also secure and deliver proof of all necessary governmental approvals and easements allowing Licensee to independently own and access the Pole within forty-five (45) calendar days. Should City and Licensee fail to enter into an agreement for Licensee to purchase the Pole prior to the end of the forty-five (45) calendar days, Licensee must remove its Attachments as required under Paragraph 10.1. City is under no obligation to sell to Licensee Poles that it intends to remove or abandon.

10.3 Underground Relocation. If City moves any portion of its aerial system underground (other than pursuant to any private party requests), Licensee shall remove its Communications Facilities from any affected Poles within ninety (90) calendar days of receipt of notice from City and either relocate its affected Communication Facilities underground or find other means to accommodate its Communication Facilities. If Licensee was required to remove its Communication Facilities and fails to perform such work necessitating its completion by City, City will charge Licensee per Paragraph 3.6 through 3.9.

Article 11—Removal of Licensee’s Facilities

Removal Upon Termination. Upon the termination of this License Agreement or individual Permit(s), Licensee shall remove its Communications Facilities from the affected Poles at its own expense. If Licensee fails to remove such Communications Facilities within one-hundred-eighty (180) calendar days of termination of this License Agreement or sixty (60) calendar days upon termination of individual Permit(s), or some greater period as allowed by City, City shall have the right to have such Communications Facilities removed at Licensee’s expense.

Article 12—Termination of Permit

12.1 Automatic Termination of Permit. Any Permit issued pursuant to this Agreement shall immediately terminate when Licensee ceases to have lawful authority to construct and operate its Communications Facilities on public or private property at the location of the particular Pole(s). Notwithstanding the foregoing, to the extent Licensee is actively pursuing a challenge of the revocation of any such permission, Licensee may remain on the particular Pole(s) until such time as all appeals and remedies are exhausted.

12.2 Surrender of Permit. Licensee may at any time surrender any Permit and remove its Communications Facilities from the affected Pole(s). All such work is subject to the

insurance requirements of Article 18. No refund of any fees or costs will be made upon removal. Licensee shall be liable for Annual Pole Attachment Fees until it surrenders the relevant Permit, removes its Attachments from City Facilities, and submits a completed Notice of Removal of Attachments per **Appendix C**.

Article 13—Inspection of Licensee’s Facilities

- 13.1 Inspections.** City may conduct an inventory and inspection of Attachments at any time. Licensee shall correct all Attachments that are not found to be in compliance with Applicable Codes within sixty (60) calendar days of notification unless City determines a safety condition exists, where in such case the correction shall be made immediately. Except for existing Attachments as provided for in Article 6.1, if it is found that Licensee has made an Attachment without a Permit, Licensee shall pay a fee as specified in **Appendix A**, Item 3 in addition to applicable Permit and Make-Ready charges. If it is found that five percent (5%) or more of inspected Licensee’s Attachments are either in non-compliance or not permitted, Licensee shall reimburse City for all actual, necessary and reasonable costs associated with such inventory and inspection.
- 13.2 Notice.** City will give Licensee reasonable advance written notice of such inspections, except in those instances where safety considerations justify the need for such inspection without delay.
- 13.3 No Liability.** Inspections performed under this Article 13, or the failure to do so, shall not operate to impose upon City any liability of any kind whatsoever or relieve Licensee of any responsibility, obligations or liability whether assumed under this Agreement or otherwise existing.
- 13.4 Attachment Records.** Notwithstanding the above inspection provisions, Licensee shall furnish on an annual basis, an up-to-date map depicting the locations of its Attachments on paper and in an electronic format specified by City.

Article 14—Unauthorized Occupancy or Access

- 14.1 Penalty Fee.** If any of Licensee’s Attachments are found occupying any Pole for which no Permit has been issued, City, without prejudice to its other rights or remedies under this Agreement, may assess an Unauthorized Attachment Penalty Fee as specified in **Appendix A**, Item 3. In the event Licensee fails to pay such Fee within forty-five (45) calendar days of the billing date of the invoice thereof, City has the right to remove such Communications Facilities at Licensee’s expense.

14.2 No Ratification of Unlicensed Use. No act or failure to act by City with regard to any unlicensed use shall be deemed as ratification of the unlicensed use and if any Permit should be subsequently issued, such Permit shall not operate retroactively or constitute a waiver by City of any of its rights or privileges under this Agreement or otherwise; provided, however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regards to the unauthorized use from its inception.

Article 15—Reporting Requirements

Concurrently with Licensee’s Attachment Fee payment, Licensee shall report attachments per Article 13.4

Article 16—Liability and Indemnification

16.1 Liability. City reserves to itself the right to maintain and operate its Poles in such manner as will best enable it to fulfill its statutory service requirements. Licensee agrees to use Poles at Licensee’s sole risk. Notwithstanding the foregoing, City shall exercise reasonable precaution to avoid damaging Licensee’s Communications Facilities and shall report to Licensee the occurrence of any such damage caused by its employees, agents or contractors. Subject to Paragraph 16.5, City agrees to reimburse Licensee for all reasonable costs incurred by Licensee for the physical repair of such facilities damaged by the negligence or willful misconduct of City.

16.2 Indemnification by Licensee. In addition to the indemnification obligations in Paragraphs 5.1, 16.5 and 18.3, Licensee, and any agent, contractor or subcontractor of Licensee, shall defend, indemnify and hold harmless City and its officials, commissioners, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by City under any Workers’ Compensation Laws or under any plan for employees’ disability and death benefits), and expenses (including reasonable attorney’s fees of City and all other costs and expenses of litigation) arising from third-party claims or actions (“Licensee Covered Claims”) arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, use, relocation, removal or operation by Licensee or by Licensee’s officers, directors, employees, agents or contractors, of Licensee’s Communications Facilities, except to the extent of City’s negligence or willful misconduct giving rise to such Licensee Covered Claims. Such Licensee Covered Claims include, but are not limited to, the following:

- 16.2.1** Intellectual property infringement, libel and slander, trespass, unauthorized use of television or radio broadcast programs and other program material, and infringement of patents;
- 16.2.2** Cost of work performed by City or others that was necessitated by Licensee failure, or the failure of Licensee's officers, directors, employees, agents or contractors, to install, maintain, use, relocate or remove Licensee's Communications Facilities in accordance with the requirements and specifications of this Agreement, or from any other work this Agreement authorizes City to perform on Licensee's behalf, except to the extent of City's negligence or willful misconduct;
- 16.2.3** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by Licensee, or Licensee's officers, directors, employees, agents or contractors, pursuant to this Agreement, except to the extent of City's negligence or willful misconduct;
- 16.2.4** Liabilities incurred as a result of Licensee's violation, or a violation by Licensee's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Washington or any other governmental entity or administrative agency.

16.3 Indemnification by City. City, and any agent, contractor or subcontractor of City, shall defend, indemnify and hold harmless Licensee and its members, officers, directors, affiliated entities under common ownership or control, representatives, employees, agents, and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, payments (including payments made by Licensee under any Workers' Compensation Laws or under any plan for employees' disability and death benefits), and expenses (including reasonable attorney's fees of Licensee and all other costs and expenses of litigation) arising from third-party claims or actions ("City Covered Claims") arising in any way, including any act, omission, failure, negligence or willful misconduct, in connection with the construction, maintenance, repair, relocation, removal or operation by City's officials, commissioners, employees, agents or contractors, of City's Facilities, except to the extent of Licensee's negligence or willful misconduct giving rise to such City Covered Claims. Such City Covered Claims include, but are not limited to, the following:

- 16.3.1** Damage to property, injury to or death of any person arising out of the performance or nonperformance of any work or obligation undertaken by City, or

City's officials, commissioners, employees, agents or contractors, pursuant to this Agreement, except to the extent of Licensee's negligence or willful misconduct;

16.3.2 Liabilities incurred as a result of City's violation, or a violation by City's officers, directors, employees, agents or contractors, of any law, rule, or regulation of the United States, State of Washington or any other governmental entity or administrative agency.

16.4 Procedure for Indemnification.

16.4.1 The party to be indemnified ("Indemnitee") shall give prompt notice to the party to provide the indemnification ("Indemnitor") of any claim or threatened claim, specifying the factual basis for such claim and the amount of the claim. If the claim relates to an action, suit or proceeding filed by a third party against Indemnitee, Indemnitee shall give the notice to Indemnitor no later than fifteen (15) calendar days after Indemnity receives written notice of the action, suit or proceeding.

16.4.2 Indemnitee's failure to give the required notice will not relieve Indemnitor from its obligation to indemnify Indemnitee unless Licensee is materially prejudiced by such failure.

16.4.3 Indemnitor will have the right at any time, by notice to Indemnitee, to participate in or assume control of the defense of the claim with counsel of its choice. The parties agree to cooperate fully with each other. If Indemnitor assumes control of the defense of any third party claim, Indemnitee shall have the right to participate in the defense at its own expense. If Indemnitor does not so assume control or otherwise participate in the defense of any third party claim, Licensee shall be bound by the results obtained by Indemnitee with respect to the claim, to the extent permitted by applicable law.

16.4.4 If Indemnitor assumes the defense of a third party claim as described above, then in no event will Indemnitee admit any liability with respect to, or settle, compromise or discharge, any third party claim without Licensee's prior written consent, and Indemnitee will agree to any settlement, compromise or discharge of any third party claim which Licensee may recommend which releases Indemnitee completely from such claim.

16.5 Environmental Hazards. Licensee represents and warrants that its use of Poles will not generate any Hazardous Substances, that it will not store or dispose on or about Poles or transport to Poles any hazardous substances and that Licensee's Communications Facilities will not constitute or contain and will not generate any hazardous substance in

violation of federal, state or local law now or hereafter in effect including any amendments. “Hazardous Substance” shall be interpreted broadly to mean any substance or material designated or defined as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, dangerous radio frequency radiation, or other similar terms by any federal, state, or local laws, regulations or rules now or hereafter in effect including any amendments. Licensee further represents and warrants that in the event of breakage, leakage, incineration or other disaster, its Communications Facilities would not release any Hazardous Substances. Licensee and its agents, contractors and subcontractors shall defend, indemnify and hold harmless City and its respective officials, commissioners, representatives, employees, agents and contractors against any and all liability, costs, damages, fines, taxes, special charges by others, penalties, punitive damages, expenses (including reasonable attorney’s fees and all other costs and expenses of litigation) arising from or due to the release, threatened release, storage or discovery of any Hazardous Substances on, under or adjacent to Poles attributable to Licensee’s use of Poles, except to the extent of City’s negligence or willful misconduct.

Should Poles be declared to contain Hazardous Substances, City, Licensee and all Attaching Entities shall share proportionately in the cost of disposal of the affected Poles based on each entity’s individual percentage use of same. For Attaching Entities, such percentage shall be derived from the sum of Communication Space occupied by each Attaching Entity. For City, such percentage shall be equal to the space above the NESC 40-inch safety space. Provided, however, if the source or presence of the Hazardous Substance is solely attributable to particular parties, such costs shall be borne solely by those parties.

- 16.6 Municipal Liability Limits.** No provision of this Agreement is intended, or shall be construed, to be a waiver for any purpose by City of any applicable State limits on municipal liability. No indemnification provision contained in this Agreement under which Licensee indemnifies City shall be construed in any way to limit any other indemnification provision contained in this Agreement.

Article 17—Duties, Responsibilities, And Warranties

- 17.1 Duty to Inspect.** Licensee acknowledges and agrees that City does not warrant the condition or safety of City’s Facilities, or the premises surrounding the Facilities, and Licensee further acknowledges and agrees that it has an obligation to inspect Poles and/or premises surrounding the Poles, prior to commencing any work on Poles or entering the premises surrounding such Poles.
- 17.2 Knowledge of Work Conditions.** By executing this Agreement, Licensee warrants that it has acquainted, or will fully acquaint, itself and its employees and/or contractors and agents with the conditions relating to the work that Licensee will undertake under this

Agreement and that it fully understands or will acquaint itself with the facilities, difficulties and restrictions attending the execution of such work.

17.3 DISCLAIMER. CITY MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO CITY POLES, ALL OF WHICH ARE HEREBY DISCLAIMED, AND CITY MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, EXCEPT TO THE EXTENT EXPRESSLY AND UNAMBIGUOUSLY SET FORTH IN THIS AGREEMENT. CITY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

17.4 Duty of Competent Supervision and Performance. The parties further understand and agree that in the performance of work under this Agreement, Licensee and its agents, employees, contractors and subcontractors will work near electrically energized lines, transformers or other City Facilities, and it is the intention that energy therein will not be interrupted during the continuance of this Agreement, except in an emergency endangering life or grave personal injury or property damage. Licensee shall ensure that its employees, agents, contractors and subcontractors have the necessary qualifications, skill, knowledge, training and experience to protect themselves, their fellow employees, employees of City and the general public, from harm or injury while performing work permitted pursuant to this Agreement. In addition, Licensee shall furnish its employees, agents, contractors and subcontractors competent supervision and sufficient and adequate tools and equipment for their work to be performed in a safe manner. Licensee agrees that in emergency situations in which it may be necessary to de-energize any part of City's equipment, Licensee shall ensure that work is suspended until the equipment has been de-energized and that no such work is conducted unless and until the equipment is made safe.

17.5 Requests to De-energize. In the event City de-energizes any equipment or line at Licensee's request and for Licensee's benefit and convenience in performing a particular segment of any work, Licensee shall reimburse City in full for all costs and expenses incurred, in accordance with Paragraph 3.6, in order to comply with Licensee's request. Before City de-energizes any equipment or line, it shall provide, upon request, an estimate of all costs and expenses to be incurred in accommodating Licensee's request. Notwithstanding the foregoing de-energization shall be at the District's sole discretion and the District shall determine the schedule for de-energization.

17.6 Interruption of Service and Damage to City's Equipment. In the event that Licensee, and any agent, contractor or subcontractor of Licensee, causes an interruption of service by damaging or interfering with any equipment of City, Licensee at its expense shall immediately do all things reasonable to avoid injury or damages, direct and incidental, resulting therefrom and shall notify City immediately. Additionally, Licensee shall

reimburse City for all actual costs and expenses incurred to replace service and/or repair or replace such damaged equipment.

- 17.7 Duty to Inform.** Licensee further warrants that it understands the imminent dangers (INCLUDING SERIOUS BODILY INJURY OR DEATH FROM ELECTROCUTION) inherent in the work necessary to make installations on Poles by Licensee's employees, agents, contractors or subcontractors, and accepts as its duty and sole responsibility to notify and inform Licensee's employees, agents, contractors or subcontractors of such dangers, and to keep them informed regarding same.

Article 18—Insurance

- 18.1 Policies Required.** At all times during the term of this Agreement, Licensee shall keep in force and effect all insurance policies as described below:

18.1.1 Workers' Compensation and Employers' Liability Insurance. Statutory workers' compensation benefits and employers' liability insurance with a limit of liability no less than that required by Washington law at the time of the application of this provision for each accident. Licensee shall require subcontractors and others not protected under its insurance to obtain and maintain such insurance.

18.1.2 Commercial General Liability Insurance. Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with Limits of liability not less than \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$2,000,000 personal injury, \$2,000,000 each occurrence.

18.1.3 Automobile Liability Insurance. Business automobile policy covering all owned, hired and non-owned private passenger autos and commercial vehicles used in conjunction with work under this Agreement. Limits of liability not less than \$1,000,000 each occurrence, \$1,000,000 aggregate.

18.1.4 Umbrella Liability Insurance. Coverage is to be in excess of the sum of employers' liability, commercial general liability, and automobile liability insurance required above. Limits of liability not less than \$4,000,000 each occurrence, \$4,000,000 aggregate.

18.1.5 Property Insurance. Each party will be responsible for maintaining property insurance on its own facilities, buildings and other improvements, including all

equipment, fixtures, and City structures, fencing or support systems that may be placed on, within or around City Facilities to fully protect against hazards of fire, vandalism and malicious mischief, and such other perils as are covered by policies of insurance commonly referred to and known as “extended coverage” insurance or self-insure such exposures.

- 18.2 Qualification; Priority; Contractors’ Coverage.** The insurer must be authorized to do business under the laws of the State of Washington and have an “A” or better rating in Best’s Guide. Such insurance will be primary. All contractors and all of their subcontractors who perform work on behalf of Licensee shall carry, in full force and effect, workers’ compensation and employers’ liability, comprehensive general liability and automobile liability insurance coverages of the type that Licensee is required to obtain under this Article 18 with the same limits.
- 18.3 Certificate of Insurance; Other Requirements.** Prior to the execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, Licensee will furnish City with a certificate of insurance (“Certificate”) and, upon request, all copies of the required insurance policies. The Certificate shall reference this Agreement. City shall be given thirty (30) calendar days advance notice of cancellation or nonrenewable of insurance during the term of this Agreement. City, its commissioners, agencies, officers, officials, employees and representatives (collectively, “Additional Insureds”) shall be named as Additional Insureds under all of the policies, except workers’ compensation, which shall be so stated on the Certificate of Insurance. All policies, other than workers’ compensation, shall be written on an occurrence and not on a claims-made basis. All policies may be written with deductibles, not to exceed \$100,000, or such greater amount as expressly allowed in writing by City. Licensee shall defend, indemnify and hold harmless City and Additional Insureds from and against payment of any deductible and payment of any premium on any policy required under this Article. Licensee shall obtain Certificates from its agents, contractors and their subcontractors and provide a copy of such Certificates to City upon request.
- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgments or the passage of state, federal or other governmental compensation plans, or laws which would materially increase or decrease Licensee’s exposure to risk.
- 18.5 Prohibited Exclusions.** No policies of insurance required to be obtained by Licensee or its contractors or subcontractors shall contain provisions (1) that exclude coverage of liability assumed by this Agreement with City except as to infringement of patents or

copyrights or for libel and slander in program material, (2) that exclude coverage of liability arising from excavating, collapse, or underground work, (3) that exclude coverage for injuries to City's employees or agents caused by the negligence of Licensee, or (4) that exclude coverage of liability for injuries or damages caused by Licensee's contractors or the contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

18.6 Deductible/Self-insurance Retention Amounts. Licensee shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program or for any deficiencies in the amounts of insurance maintained.

Article 19—Authorization Not Exclusive

The grant of license and permits issued pursuant to this Agreement shall be nonexclusive. City shall have the right to grant, renew and extend rights and privileges to others not party to this Agreement, by contract or otherwise, to use City Facilities covered by this Agreement. Such rights shall not interfere with the rights granted to Licensee by the specific Permits issued pursuant to this Agreement.

Article 20—Assignment

- 20.1 Limitations on Assignment.** Licensee shall not assign its rights or obligations under this Agreement, nor any part of such rights or obligations, without the prior written consent of City, which consent shall not be unreasonably withheld, except in case of the assignment to an affiliate under common ownership or control with Licensee or to an entity that acquires all or substantially all of the assets of Licensee.
- 20.2 Obligations of Assignee/Transferee and Licensee.** No assignment or transfer under this Article 20 shall be allowed until the assignee or transferee becomes a signatory to this Agreement and assumes all obligations of Licensee arising under this Agreement.
- 20.3 Sub-licensing.** Without City's prior written consent, Licensee shall not sub-license or sub-lease to any third party, including but not limited to allowing third parties to place attachments on City's Facilities or to place attachments for the benefit of such third parties on Poles. Any such action shall constitute a material breach of this Agreement. The use of Licensee's Communications Facilities by third parties (including but not limited to the lease of dark fiber) that involves no additional Attachment is not subject to this Paragraph 20.3.

Article 21—Failure to Enforce

Failure of City or Licensee to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect until terminated, in accordance with this Agreement.

Article 22—Termination of Agreement

- 22.1** Notwithstanding Licensee’s rights under Article 12, City shall have the right, pursuant to the procedure set out in Paragraph 22.2, to terminate this Agreement, whenever Licensee is in default of any term or condition of this Agreement, including but not limited to the following circumstances:
- 22.1.1** Construction, operation or maintenance of Licensee’s Communications Facilities in violation of law or in aid of any unlawful act or undertaking; or
 - 22.1.2** Construction, operation or maintenance of Licensee’s Communications Facilities after any authorization required of Licensee has lawfully been denied or revoked by any governmental or private authority, subject to Section 12.1; or
 - 22.1.3** Construction, operation or maintenance of Licensee’s Communications Facilities without the insurance coverage required under Article 18.
 - 22.1.4** Failure to pay any amount due under this Agreement beyond ninety (90) days.
- 22.2** City will notify Licensee in writing of any condition(s) applicable to Paragraph 22.1 above. Licensee shall take immediate corrective action to eliminate any such condition(s) within thirty (30) calendar days, or such longer period mutually agreed to by the parties, and shall confirm in writing to City that the cited condition(s) has (have) ceased or been corrected. If Licensee fails to discontinue or correct such condition(s) and/or fails to give the required confirmation, City may terminate this Agreement or any Permit(s) thirty (30) days after issuance of the written notice. In the event of termination of this Agreement or any of Licensee’s rights, privileges or authorizations hereunder, City may seek removal of Licensee’s Communications Facilities pursuant to the terms of Article 11, provided, that Licensee shall be liable for and pay all fees and charges pursuant to terms of this Agreement to City until Licensee’s Communications Facilities are actually removed.

Article 23—Term of Agreement

- 23.1** This Agreement shall be effective when executed and continue in force and effect for an initial term of three (3) years and thereafter for successive one (1) year terms and shall terminate by either party giving two hundred seventy (270) calendar days written notice of its intention to do so prior to the end of any such term. Upon termination of this Agreement, Licensee shall remove its attachments from the poles of City within sixty (60) days after the effective date of such termination. Should the Licensee fail to comply, the City may elect to do such work and the Licensee shall pay the City the cost.
- 23.2** Even after the termination of this Agreement, each party's responsibility and indemnity obligations shall continue with respect to any claims or demands related to this Agreement.

Article 24—Amending Agreement

Notwithstanding other provisions of this Agreement, the terms and conditions of this Agreement shall not be amended, changed or altered except in writing and signed by authorized representatives of both parties.

Article 25—Notices

- 25.1** Wherever in this Agreement notice is required to be given by either party to the other, such notice shall be in writing and shall be effective when delivered by certified mail, return receipt requested, with postage prepaid or sent via overnight delivery by a nationally-recognized carrier and, except where specifically provided for elsewhere, properly addressed as follows:

If to City, at:

City of McCleary
Attn: Director of Public Works
100 South 3rd Street
McCleary, WA 98557

If to Licensee, at: Astound Broadband, LLC
Attn: James A. Penney
401 Parkplace Center
Suite 500
Kirkland, WA 98033

Or to such other address as either party, from time to time, may give the other party in writing.

- 25.2** Licensee shall maintain a staffed 24-hour emergency telephone number, not available to the general public, where City can contact Licensee to report damage to Licensee's facilities or other situations requiring immediate communications between the parties. Such contact person shall be qualified and able to respond to City's concerns and requests. Failure to maintain an emergency contact shall subject Licensee to a penalty of \$100 per incident, and shall eliminate City's liability to Licensee for any actions that City deems reasonably necessary given the specific circumstances.

Article 26—Entire Agreement

This Agreement supersedes all previous agreements, whether written or oral, between City and Licensee for placement and maintenance of Licensee's Communications Facilities on City's Poles covered by this Agreement; and there are no other provisions, terms or conditions to this Agreement except as expressed herein. Except as provided for in Article 4.1, any Attachments existing under prior authorization shall continue in effect, provided they meet the terms of this Agreement.

Article 27—Severability

If any provision or portion thereof of this Agreement is or becomes invalid under any applicable statute or rule of law, such provision shall not render unenforceable this entire Agreement but rather it is the intent of the parties that this Agreement be administered as if not containing the invalid provision.

Article 28—Governing Law, Venue, and Attorney's Fees

The validity, performance and all matters relating to this Agreement and any amendment hereto shall be governed by the laws (without reference to choice of law) of the State of Washington. The sole and exclusive venue of any legal action in regard to this Agreement shall be the Superior Court of Grays Harbor County, Washington.

If litigation arises out of this Agreement, the substantially prevailing party shall be entitled to recover all reasonable legal expenses including, but not limited to, attorney fees, expert witness fees, and travel and lodging expenses at trial and appellate court level.

Article 29—Incorporation of Recitals and Appendices

The recitals stated above and all appendices to this Agreement are incorporated into and constitute part of this Agreement.

Article 30—Performance Bond

On execution of this Agreement, Licensee shall provide to City a performance bond in an amount in an amount equal to two (2) times the annual Pole attachment fee set forth in Appendix A, Item 1 per Licensee Pole Attachment or Ten Thousand Dollars (\$10,000.00), whichever is greater. The required bond amount may be adjusted periodically to account for additions or reductions in the total number of Licensee's Pole Attachments. The bond shall be with an entity and in a form acceptable to the City. The purpose of the bond is to ensure Licensee's performance of all of its obligations under this Agreement and for the payment by Licensee of any claims, liens, taxes, liquidated damages, penalties and fees due to City which arise by reason of the construction, operation, maintenance or removal of Licensee's Communications Facilities on or about Poles.

The City, in its sole discretion, may waive the requirement of a Performance Bond if the propose Licensee, or its predecessor, is a regionally or nationally recognized company having formally been in existence for a minimum of ten years and can demonstrate to City financial responsibility. The City may waive the provisions of this Article for small government Licensees.

Article 31—Force Majeure

- 31.1** In the event that either City or Licensee is prevented or delayed from fulfilling any term or provision of this Agreement by reason of fire, flood, earthquake or like acts of nature, wars, revolution, civil commotion, explosion, acts of terrorism, embargo, acts of the government in its sovereign capacity, material changes of laws or regulations, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts, unavailability of equipment of vendor, or any other such cause not attributable to the negligence or fault of the party delayed in performing the acts required by the Agreement, then performance of such acts shall be excused for the period of the unavoidable delay, and any such party shall endeavor to remove or overcome such inability as soon as reasonably possible. Licensee shall not be responsible for any charges associated with District Facilities for any periods that such facilities are unusable.
- 31.2** With the exception of emergency work done to Licensees facilities to correct for a violation in Licensees attachments (including emergency transfers), the City shall not impose any charges on Licensee stemming solely from Licensee's inability to perform required acts

during a period of unavoidable delay as described in Paragraph 31.1, provided that Licensee present City with a written description of such *force majeure* within a reasonable time after occurrence of the event or cause relied on, and further provided that this provision shall not operate to excuse Licensee from the timely payment of any fees or charges due City under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and year first written above.

<u>Astound Broadband, LLC</u>	<u>City of McCleary, Washington</u>
By: _____	By _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: Hearings Examiner Referral

At the meeting on November 12th, Larry asked about rescinding his previous vote on allowing marijuana growing and manufacturing in City limits. According to our McCleary Municipal Code (MMC), 17.40.130 says this:

"Amendments to the text of the zoning ordinance may be initiated by:

1. One or more owners of property within the corporate boundaries of the city of McCleary;
2. A motion of the city council requesting the planning commission to set the matter for hearing; or,
3. A motion of the planning commission."

If council were to want to look at this matter again and possibly amend the existing zoning ordinance, the council would need to make a motion to refer to the hearing examiner, as subsection 2 states. If a motion is approved, that will then start the 20 day clock after which the hearings examiner can hold a hearing

Action Requested:

Please discuss and if you would like, make motion to refer issue of allowing marijuana growing and manufacturing in City limits to the City Hearings Examiner.

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: Wildcat Lift Station Scope of Work and Contract

We have a 32 year old sewer pump lift station on Wildcat Drive that serves approximately 15 homes. Over the past several months, we have started getting failures at this pump station. We have had to find/replace several electrical components that are now obsolete and no longer made, repaired floats, and have recently found that both pumps are “waterlogged”. That means that both pumps have water inside of them and their cords and we are on borrowed time with these pumps. This station is also a major contributor to our sewer I&I problem with all the groundwater leaking into the pump station during the winter.

We are looking to design and construct improvements to upgrade the existing, old sewage pump station on Wildcat Drive. To perform this design and construction management, I recommend that Gray and Osborne be given the opportunity to do this work. They are very familiar with our system and know what we are looking for in rehabbing this sewer lift station.

The estimated cost for Gray and Osborne to perform this work is \$38,800. It is estimated that the construction costs will be \$130,000 to \$150,000. We have budgeted \$200,000 in 2016 for this project.

Action Requested:

Please allow the mayor to sign the contract for professional engineering services for the Wildcat Lift Station.

**PROPOSAL AND CONTRACT
FOR
PROFESSIONAL ENGINEERING SERVICES**

**CITY OF MCCLEARY
WASHINGTON**

NOVEMBER 2015

**GRAY & OSBORNE, INC.
CONSULTING ENGINEERS
SEATTLE, OLYMPIA, YAKIMA,
VANCOUVER & ARLINGTON**

**CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES**

THIS Contract, entered into this _____ day of _____, 20_____, 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 it 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 the Wildcat Drive Sewage Pump Station Upgrade, 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, plus a proportionate percentage of the fee amount stipulated above.

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

The drawings, specifications, and other documents, including such items prepared in CAD form and stored on magnetic media, prepared for a Project are intended for use solely with respect to that Project. Engineer agrees the Agency is the owner of any and all field notes, field data, test data, calculations, estimates, documents, data, drawings, specifications, software application, and other products or materials, whether in a print form, electronic data form, or otherwise gathered, produced, or developed by Engineer or any subconsultant thereof in the course of the performance of this Contract: PROVIDED THAT, with the sole exception of the printed final documents, Engineer shall have the

right to remove all indicia of its ownership and/or involvement with all electronic records provided to the Agency pursuant to a request made under this section. Further, that upon the request of the Agency, the printed final documents of all items shall be tendered to Agency. Agency shall assume all responsibility for Agency's use of the Engineer's material upon other projects and shall indemnify the Engineer for its reuse. Engineer agrees to not release any project documents to third parties without the prior written authorization of Agency unless the Engineer is required to do so by applicable law, rule, regulation, or court order. Agency agrees that all work furnished to it, but which is not paid for pursuant to the terms of this Contract without legitimate cause, shall be returned to Engineer upon demand and will not be used by Agency for any purpose whatsoever.

Engineer agrees to maintain its records governing and recording its performance of this contract for a minimum of four years from the date of completion of the contractual services and shall make them available to the Agency, its agents, employees, or designees to the extent necessary to confirm the provision of the services required under this contract.

Engineer shall fully cooperate with any monitoring, review, auditing, or evaluation activities carried out by Agency, its agents, employees, or designees, in relation to the activities conducted by or upon behalf of Agency in relation to the performance of this contract.

Any review of records shall be carried out with reasonable advance notice being provided to Engineer and during ordinary business hours and upon normal business days. By definition, this shall be between 8:00 a.m. and 5:00 p.m., Monday through Friday, holidays excluded.

ARTICLE 11

DISPUTE RESOLUTION

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.

In the event any dispute arising out of this Contract is not resolved by informal discussions or mediation, either party may demand the matter in dispute be submitted to binding arbitration under the then prevailing rules of the American Arbitration Association for construction industry disputes. The arbitrator shall be selected from the same Service as provided the mediation service unless one party gives written notice of disagreement. In the event of such notice, then the arbitrator shall be chosen in the manner set forth in the AAA's rules: In the event either party objects to the submission of the dispute to arbitration within 30 days after demand for arbitration has been filed with an appropriate agency and served upon the other party, then the procedure shall be terminated and the matter shall be processed as the parties deem appropriate by filing an action in the Superior Court of the State of Washington in and for the County of Grays Harbor.

ARTICLE 12

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 13

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 14

ASSIGNABILITY

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

ARTICLE 15

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 16

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 17

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 18

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.

The Engineer shall be required to indemnify the Agency in those cases where damages have been caused by the concurrent negligence of the Agency and Engineer, its agents, employees or subcontractors. In those cases, the liability of the Engineer for indemnifications shall be limited to 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 19

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 20

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 21

CERTIFICATION OF ENGINEER

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

ARTICLE 22

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 23

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 98551

and the address of the Engineer shall be as follows:

GRAY & OSBORNE, INC.
701 Dexter Ave. North
Suite 200
Seattle, Washington 98109-4339

ARTICLE 24

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: *TL M. Zerkel*
(Signature)

By: _____
(Signature)

Name/Title: Thomas M. Zerkel, P.E., President

Name/Title: Donald Gary Dent, Mayor
(Print)

Date: 11/20/2015

Date: _____

ATTEST

Wendy Collins, Clerk-Treasurer

APPROVED AS TO FORM

Daniel O. Glenn, City Attorney

"Equal Opportunity/Affirmative Action Employer"

EXHIBIT “A”

SCOPE OF WORK

CITY OF MCCLEARY WILDCAT DRIVE SEWAGE PUMP STATION UPGRADE

PROJECT UNDERSTANDING

The City of McCleary (the Agency) desires to design and construct improvements to upgrade the existing, 32 year old sewage pump station on Wildcat Drive that serves approximately 15 homes. The City desires the design to provide a reliable, cost effective facility, minimizing optional design features that increase costs.

SCOPE OF WORK

Design

Plans and specifications will be prepared for construction of the Wildcat Drive Sewage Pump Station Project. This work will include providing:

- Plan sheets.
- Specifications for materials, methods, and testing.
- Bid forms for contractors to estimate construction cost and for Agency to select contractor.
- General contract conditions to specify legal and financial requirements for the contractor.
- Address comments and questions from approval and permitting agencies, and incorporate any required changes into the contract documents as necessary.

Facilities to be included in the Plans and Specifications include the piping, equipment, precast concrete structures, valves, electrical components and site work required to construct the improvements necessary to provide a new, reliable wastewater pumping facility.

Construction Management

Construction management services will be provided to assure that a competent contractor is retained at a competitive cost, the contractor's equipment, materials and methods meet the contract standards, keeping accurate construction records, assuring fair progress payments to the contractor during construction, assisting with project startup, assuring

that equipment operates as intended, and providing recommendation for project acceptance when the project is satisfactorily completed.

Construction management services include the following:

- Bid and award services as follows:
 - Prepare an advertisement for bid for publication in selected papers requirements.
 - Address questions from contractors and equipment suppliers during the bid process.
 - Issue addendums as necessary during the bid process.
 - Attend and provide direction during the bid opening.
 - Prepare and certify bid tabulations, and distribute to bidders and other interested parties.
 - Check the low bidder's references and previous experience, and make recommendation for contract award.
 - Review contractor's bonds and insurance forms.
 - Prepare contracts for signature and distribute contracts to all parties.
- Review and approve materials and equipment submittals from the contractor.
- Schedule and attend a pre-construction meeting with the contractor, the owner, and other involved or impacted utilities and agencies.
- Provide part time construction inspection to assure compliance with the contract documents, maintain records of construction details, and provide direction to the contractor during construction.
- Attend construction meetings as necessary to assure that construction is proceeding in a timely manner, answer contractor questions, and expedite coordination with other agencies.
- Prepare change orders as necessary to address unforeseen conditions that may be encountered during construction.

- Prepare partial pay estimates in compliance with contract documents, based on contract prices and percent of completion of various contract items.
- Supervise project startup to trouble-shoot, test and verify proper operation of the new facilities.
- Prepare a notice of substantial completion when all major portions of the project are usable by the Agency.
- Prepare project completion punch-lists to assure all final details of the project are completed satisfactorily.
- Prepare final project quantities for approval prior to project closeout.
- Prepare a final pay estimate for approval by all parties to the contract.
- Prepare project closeout paperwork and recommendation of project acceptance.

DELIVERABLES

The following project deliverables will be provided during the task activities outlined above:

- Contract plans, specifications and cost estimates at the 60 percent and 100 percent design completion level.

Contract Documents (Construction Plans and Specifications) must meet the requirements of WAC 246-290-120, the Agency's standard plans and specifications, and all local standards and permitting requirements. Contract documents and construction plans provide a basis for obtaining approval from Washington State Department of Health, receiving construction bids from contractors, executing a construction contract with the selected contractor, and providing the detailed design for constructing the desired facilities.

Construction Plans shall incorporate available as-built information and plat map (property line) information into the plan set. Plans shall be prepared on 22" x 34" sheet size and 11" x 17" half scale sheets. Construction plans and specifications shall undergo a QA/QC review at the 60 percent and 90 percent design completion phases. Construction plans and specifications, contract documents and cost estimates shall be provided for the Agency's review at the 60 percent and 90 percent design completion phases. Final plans, specifications, contract documents, and cost estimates shall incorporate all previous and applicable review comments from the Agency and the QA/QC reviews.

COSTS

Engineering cost details are included in Exhibit B. Total engineering and construction management cost shall not exceed \$38,800 without written authorization from the Agency. The Cost by task is:

Design	\$21,800
Construction Mgmt.	<u>\$17,000</u>
Total	\$38,800

SCHEDULE

Our estimated schedule for this work is 12 months from the notice to proceed based on the following timeline.

Months	1	2	3	4	5	6	7	8	9	10	11	12
Site Survey	■											
Pump and pipe sizing		■										
Pipe/Structure Layout		■										
Plan Sheets		■	■	■								
Specifications			■	■								
Bid and Award					■	■						
Project Submittals							■					
Construction								■	■	■		
Systems Startup											■	
Project Punch list											■	
Project Closeout												■

EXHIBIT B
ENGINEERING SERVICES
SCOPE AND ESTIMATED COST

Wildcat Drive Sewage Pump Station Upgrade

Tasks	Principal Hours	Civil Eng. Hours	Field Inspector Hours	Electrical Eng. Hours	CADD Tech. Hours	PLS Hours	Survey Crew Hours
Site Survey	0.5	0.5				2	8
1 Pump and Pipe Sizing	1	8					
2 Pipe and Structure Layout	1	16			16		
3 Plan Sheets	2	16		16	24		
4 Specifications	1	8		8			
5 Electrical	1	6		16	24		
6 QA/QC	4	4		4	8		
7 Constuction Management	6	32	80	10	16		
Hour Estimate:	16.5	90.5	80	54	88	2	8
Estimated Hourly Rates:	\$140	\$113	\$120	\$147	\$70	\$128	\$250
Labor Cost	\$2,310	\$10,227	\$9,600	\$7,938	\$6,160	\$256	\$2,000

Total Labor: \$ 38,491

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ current IRS rate)

Printing

\$ 209

\$ 100

TOTAL ESTIMATED COST:


\$ 38,800

* Actual labor cost will be based on each employee's actual rate. Estimated rates are for determining total estimated cost only. Fully burdened billing rates include direct salary cost, overhead, and profit.

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 indicated 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.



Thomas M. Zerkel, P.E., President
Gray & Osborne, Inc.



Date

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

STAFF REPORT

To: Mayor and Council
From: Todd Baun- Director of Public Works
Date: November 25, 2015
Re: 3rd Street Water line Scope of Work and Contract.

We are requesting Skillings Connolly to provide final design, construction documents, and construction administration to replace the existing asbestos cement waterline on the west side of Third Street from Main Street to East Oak Street.

The design for relocating this waterline to the east side of 3rd Street has been done on the 3rd Street Improvement Project currently being prepared for construction. This project will take the plans from the 3rd Street Improvement Project and modify them to develop a standalone plan set for advertisement in March 2016.

We have budgeted \$225,000 in 2016 to complete this work.

Action Requested:

Please authorize the Mayor to sign a contract with Skillings Connolly to provide final design, construction documents, and construction administration for the 3rd Street water line replacement.

STAFF REPORT

To: Mayor and Council
 From: Todd Baun- Director of Public Works
 Date: November 25, 2015
 Re: Purchase of Shoring and Steel road plates.

In 2015 we budgeted \$10,000 to purchase some shoring and steel road plates. These items will be used to increase our employee's safety in trenches. By state law, a protective system must be used if an excavation is 4 feet or greater in depth. We currently do not have an adequate protective system if we have to excavate deeper than 4 feet.

I have contacted 3 companies about the vertical shoring. Here are the cost below.

	GME	Speed Shore	Trench Tech
1.5' Rail Shoring x 4	1724	1760	1240
Hydraulic Pump	764	1140	790
Release Tool- 48"	77	79	45
Removal Hook- 48"	58	63.50	45
Finn Form Sheeting 4 @ 4 x 8	1040	780	500
Total Cost	\$3663	\$3822.50	\$2620.00

As you can see Trench Tech is the lowest cost, but they are located in Pennsylvania. The cost of the shipping and product support will not be adequate if we order through them. I believe we should purchase from GME, which is represented by United Rentals that is located in Olympia and Tacoma.

I would also like to purchase some steel road plates from United Rentals. I would like to purchase 2 sheets of 6⁷/₁₀' by 1" thick sheets for \$3084 and 2 sheets of 5⁷/₈' by 1" thick sheets for \$2053.80.

The total cost of these items will be \$8800.80.

Action Requested:

Please authorize the Mayor to sign the Purchase Order with United Rental for \$8800.80 plus tax for trench shoring and steel road plates.

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East
Montesano, Washington 98563
Voice: 360.249.0005 or 1.800.959.1467
Fax: 360.249.0030

November 18, 2015

Chief George Crumb
City of McCleary Police Department
100 S Third Street
McCleary, WA 98557

Dear Chief Crumb:

I am writing this letter with the understanding that your department wishes to enter into a contract for services with the Children's Advocacy Center of Grays Harbor. The contract is attached and if you have any questions about the contract or the services that we provide, please feel free to contact me at any time. Once you have had an opportunity to review the contract, please forward both copies to your mayor for a signature and send them back to me. I will have our Board president sign both copies and we will send you a copy and keep one for our records.

We would like to invite your officers to attend our Multi-Disciplinary Team meetings that are held the first and third Weds of every month at 12:30 PM at the CAC. The first meeting each month will be devoted to Case Review, in which we discuss cases and review the team's progress on any given case. The second monthly meeting will be reserved for team trainings and logistical issues, such as reviewing and revising our County Guidelines. Law Enforcement Professionals are an invaluable addition to this team and we rely on their presence in our meetings.



"Making a difference, one child at a time."

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East
Montesano, Washington 98563
Voice: 360.249.0005 or 1.800.959.1467
Fax: 360.249.0030

The following information highlights the pertinent components of the contract:

- The annual \$4,000 fee remains the same as last year. Your funds pay for interviewer services. As an accredited CAC, we receive state and federal grants. These grants and other solicited funds supplement the costs of these services. Monthly salary for a full time position is approximately \$3,470.00 per month.
- The interviewer's reports will be reviewed by the Sheriff's Department.
- Your detective will receive a completed report within seven business days of the interview.
- The position is yours to use for up to 87 hours in a calendar year for any and all interviews of children for any purpose you deem necessary. I would encourage you to use these hours as best fits with your current resources.

The CAC hires the interviewer on a monthly salary and provides benefits. We have not refunded funds for unused hours at the end of the year because that would necessitate laying off the person at the end of the year. This would cause a great deal of difficulty with the other cities that use their hours and need the interviewer. This employment insecurity could make it virtually impossible to hire and retain a qualified employee.

The CAC staff (myself and the Child Abuse Interviewer) will present a status report quarterly (January, April, July, and October) during the chief's meeting. In addition to meeting with the chiefs, we will generate a written report every quarter that details the activities that we perform related to your cases.



"Making a difference, one child at a time."

Children's Advocacy Center of Grays Harbor



514 Broadway Ave. East
Montesano, Washington 98563
Voice: 360.249.0005 or 1.800.959.1467
Fax: 360.249.0030

Your cost for this service has remained the same for at least the past nine years and due to increases in salaries and other costs, the Executive Board will be reviewing the amount we charge for our service during the summer of 2016. Please contact me with any feedback about a possible increase in our cost prior to May 1, so that we can consider your concerns during our discussions. Any cost increase would not take place until January 1, 2017 at the earliest.

Thank you for past participation in this unique and mutually beneficial contract. I look forward to another year of working together.

Sincerely,

A handwritten signature in cursive script that reads "Angela M Coulter".

Angela M Coulter,
Executive Director



"Making a difference, one child at a time."

MUNICIPAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this day by and between the **CITY OF McCleary**, a municipal corporation, hereinafter referred to as the “**CITY**”, and the **CHILDREN’S ADVOCACY CENTER of GRAYS HARBOR**, hereinafter referred to as the “**AGENCY**”.

WITNESSETH: It is hereby covenanted and agreed as follows:

WHEREAS, the CITY desires to have certain services performed, as hereinafter set forth, requiring specialized skills and other support capabilities; and

WHEREAS, the AGENCY represents that it is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise where required, to perform the services set forth in this contract;

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. **SERVICES.** The AGENCY shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance, as are identified as AGENCY responsibilities throughout this Agreement. The AGENCY agrees to provide child assault criminal investigation consultation when requested, forensic child victim interviews when requested, training to law enforcement personnel when requested, full case investigations when requested, suspect interviews when requested, investigation related documentation and reports, court related testimony and child and family support services.
2. **REPORTING REQUIREMENTS.** The AGENCY shall submit periodic reports as required by the CITY, which may include, but not be limited to, a fiscal year, revenue and expenditure report, and final evaluation report.
3. **DURATION OF AGREEMENT.** The effective date of this Agreement shall be **January 1, 2016** and shall terminate on **December 31, 2016**. The Agreement may be extended or amended upon mutual agreement between the parties hereto and pursuant to the terms and conditions of this Agreement.
4. **COMPENSATION AND METHOD OF PAYMENT.** The CITY shall compensate the AGENCY for the services performed under this Agreement in an amount of **\$4,000** payable in one annual or in four quarterly installments. The AGENCY will provide up to **87** hours of service for this fee. The AGENCY will provide a quarterly report denoting hours used and the balance remaining.

5. **ESTABLISHMENT AND MAINTENANCE OF RECORDS.** The AGENCY agrees to maintain books, records, documents and accounting procedures, and practices, which accurately reflect all direct and indirect costs related to the performance of this Agreement. The AGENCY shall retain all books, records, documents, and other material relevant to this Agreement for three (3) years after its expiration. The AGENCY agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

6. **COMPLIANCE WITH LAWS.** The AGENCY, in performance of this Agreement, agrees to comply with all applicable Federal, State, and local laws or ordinances, including standards for licensing, certification, and operation of facilities, programs, and accreditation, and licensing of individuals and any other standards or criteria as described in this Agreement to assure quality of services.

7. **NON-DISCRIMINATION.** AGENCY agrees not to discriminate against any client, employee, or applicant for employment or for services because of race, creed, national origin, marital status, sex, age, or disability except for a bona fide occupational qualification with regard to, but not limited to, the following: employment upgrading, demotion or transfer, recruitment or any recruitment advertising, a layoff or termination, rates of pay or other forms of compensation, selection for training, or rendition of services. During the performance of this agreement AGENCY shall comply with federal and state nondiscrimination statutes and regulations, including the Americans with Disabilities Act of 1990, as amended.

8. **INDEMNIFICATION/HOLD HARMLESS.** The Contractor shall defend, indemnify, and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been *mutually negotiated* by the parties. The *provisions* of this section shall survive the expiration or termination of this Agreement.

9. **TERMINATION.** If the AGENCY fails to comply with the terms and conditions of this Agreement, the CITY may pursue such remedies as are legally available including, but not limited to, the suspension or termination of this Agreement. Either party may terminate this Agreement upon giving 30 days notice in writing of intent to terminate.

10. **RECAPTURE OF FUNDS.** In the event that the AGENCY fails to expend funds under this Agreement in accordance with State law, or Federal law where applicable, and/or the provisions of this Agreement, or fails to perform any and all tasks under this Agreement, the CITY reserves the right to recapture CITY funds in an amount equivalent to the extent of the noncompliance.

Such right of recapture shall exist for a period not to exceed three (3) years following contract termination.

11. **NOTICE AND CONTRACT ADMINISTRATION.** The contract administrator for the CITY for this Agreement shall be the **Chief of Police**. Any official notice that either party hereto desires to give the other shall be deemed delivered upon deposit thereof in the United States mail by certified mail, return receipt requested, with postage thereon fully prepaid, addressed as follows:

CITY: CITY OF McCleary
POLICE DEPARTMENT
100 S. Third Street
McCleary, WA 98557
Attention: **Chief George Crumb**

AGENCY: GRAYS HARBOR CHILDREN'S ADVOCACY CENTER
514 Broadway Avenue East
Montesano, WA 98563
Attention: **Angela Coulter, Executive Director**

Either party may change the addresses above specified hereto by giving written notice thereof to the other pursuant to this paragraph.

12. **ENTIRE AGREEMENT.** The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties.

DATED: _____

**CHILD ADVOCACY CENTER
OF GRAYS HARBOR**

By *JoAnn Yost*
JoAnn Yost, Board President

CITY OF McCleary

By _____
~~Gary Dent, Mayor~~
Brent Schiller, Mayor Pro-Tem