



# McCleary City Council

## AGENDA

**March 11, 2015**

### **7:00 City Council Meeting**

- **Flag Salute**
- **Roll Call**
- **Public Comment**
- **Public Hearings**
  
- **Minutes:** - Approval (Tab A)
  
- **Mayor's Comments:** - Discussion
  
- **Staff Reports:** - Dan Glenn, City Attorney (Tab B)  
- Todd Baun Staff Report (Tab C)  
- Staff Reports (Tab D)
  
- **Old Business:**
  
- **New Business:** - Council Calendar (Tab E)  
- Grays Harbor County Sheriff Draft Contract (Tab F)  
- Councilmember Schiller is sponsoring a Town Hall meeting to receive community input on how to move the City forward (Discussion)  
- John Deere Mower Purchase (Tab G)
  
- **Ordinances:** - ATV Ordinance (Tab H)  
- Astound WAVE Broadband Ordinance Draft B (Tab I)
  
- **Resolutions:**
  
- **Approval of Vouchers**
- **Mayor/Council Comments**
- **Public Comment**
- **Executive Session**
- **Adjournment**
  
- **Council Members to review police expenditures by Tuesday, March 17th to discuss state of the police budget**

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, February 11, 2015**

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Schiller, Catterlin, Ator and Peterson.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, Paul Nott and Randy Bunch.
PUBLIC COMMENT	<p>Joy Iverson announced there will be a new urgent care clinic opening at the Summit Pacific Hospital in Elma. She also stated there will be a new clinic opening in McCleary before the end of the year.</p> <p>June Arndt thanked the McCleary Police after they had a terrifying experience. She said John Graham and Justin Ralkey responded within approximately two minutes. She said her son had taken some bad drugs and went crazy. He went after her and her husband with a machete. She said the McCleary Police saved her son's life because they knew him and were able to talk him out of what he was doing. If it were another police agency, she believes they may have killed her son. She said her house has been ransacked twice, and her shed broken into, and she wants to put in a good word for the police department because we need them.</p> <p>Gary Atkins thanked John Graham for his help this week. He is tired of the drugs in town and is frustrated that the business he refers to as the "candy store" is back open. He asked why the city doesn't have a B&amp;O tax . He would like to see a business go through an approval process through a board before operating. He believes it could prevent a business from opening up as a front. Mayor Dent said it is up to the Council to impose a B&amp;O tax, and he will pass on his appreciation to Officer Graham.</p>
MINUTES APPROVED	<b>It was moved by Councilmember Ator, seconded by Councilmember Schiller to approve the minutes from the January 28, 2015 meeting. Motion Carried 5-0.</b>
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council.
MAYOR'S COMMENTS	None.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided a written report to the Council.
IBEW UNION CONTRACT	Attorney Scott Snyder met with the Mayor and the Council prior to the meeting to discuss both the FOP union and the IBEW union's progress. Mayor Dent's direction was to provide a settlement in the range reached by the Teamsters Union, which was three annual consecutive increases of 2%, 2% and 2.25%. <b>It was moved by Councilmember Ator, seconded by Councilmember Reed to reject the IBEW proposal and proceed with negotiations in accordance with Mayor Dent's direction. Motion Carried 4-0 with Councilmember Catterlin recusing himself from voting due to the conflict of interest of his son working in the IBEW union.</b>
INTERNATIONAL PROPERTY MAINTENANCE	The City has been dealing with properties which are not being properly maintained or utilized. This can result from the time it takes to clear ownership upon a property in foreclosure/forfeiture or simply through neglect. Through Dan Glenn's research, he confirmed that a number of governmental entities within the State have adopted International Property Maintenance Code as an enforcement tool and has found it useful. This is not a Code that has been adopted by the City of McCleary so it cannot be used. Dan provided a draft ordinance, which would adopt the Code and allow the City to utilize it. He asked the Council to review it and consider adopting it at a future meeting.
ATV VEHICLES ORDINANCE	Discussion took place regarding an ATV ordinance. The Cities of Elma and Montesano adopted an ordinance but Oakville chose not to. <b>It was moved by Councilmember Schiller, seconded by Councilmember Peterson to table the ATV ordinance until the next meeting. Motion Carried 5-0.</b>
ASTOUND WAVE BROADBAND ORDINANCE	Tabled.

PUBLIC COMMENT

Paul Nott stated that two months back, the Council discussed marijuana. A lot of communities in Grays Harbor are turning to manufacturing marijuana but not distributing it. He asked the Council to please reconsider their decision to prohibit manufacturing. He said the manufacturers use a lot of electricity and water, which will benefit the City, plus the amount of additional tax dollars earned could be used to help save the police department. He believes manufacturing marijuana is more controllable than selling it. He believes the City of McCleary is missing out on a huge opportunity. He said we need something that will create tax revenue and encourage employment and he would like to see the City Council change their stance on "total prohibition" to "only manufacturing" marijuana and not distributing or selling it.

Councilmember Schiller added that the Hearing Examiner held a Public Hearing last year and only a couple people attended it. The Hearing Examiner advised the City to either manufacture or distribute marijuana. He advised the City to not adopt total prohibition.

Terri Mount agrees with Paul's standpoint. She recently listened to talk radio and they were saying that a lot of income can be made from manufacturing, if it is maintained properly.

Patrick Saller asked what the Council's plans are to bring in more revenue when there are so many empty businesses in town. Mayor Dent said the topic can be added to a future meeting and was not on the planned agenda for this meeting.

APPROVAL OF VOUCHERS

Accounts Payable vouchers/checks approved were 39126 - 39157 including EFT's in the amount of \$38,392.64.

Payroll checks approved were 39030 - 39064 including EFT's in the amount of \$158,739.42.

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

EXECUTIVE SESSION

**None.**

MEETING ADJOURNED

**It was moved by Councilmember Ator, seconded by Councilmember Peterson to adjourn the meeting at 7:32 pm. The next meeting will be Wednesday, February 25, 2015 at 7:00 pm. Motion Carried 5-0.**

Mayor Gary Dent:

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Clerk-Treasurer Wendy Collins:

\_\_\_\_\_

**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL, City of McCleary  
FROM: DANIEL O. GLENN, City Attorney  
DATE: March 5, 2015  
RE: LEGAL ACTIVITIES as of MARCH 11, 2015.

**SECTION I: . LAW ENFORCEMENT:**

A. Police Services Contract: In a separate document I have provided you my analysis of the draft contract provided by the Office of the County Sheriff to Council Member Catterlin.

B. Jail Services: The City received a proposal from the Sheriff's Office to amend the existing contract under which that office provides jail services for the City. Basically, if executed, it would eliminate the assurance that, if a City prisoner is taken to the facility, he or she will be held. Given the tone of the transmittal letter, it appears to me it does make sense to look at alternative locations for provision of immediate incarceration as contrasted with the long term incarceration services provided by facilities such as those of the City of Forks.

C. Collective Bargaining Status: It is my understanding Mr. Snyder will be meeting with the Unit's representatives in the next couple of weeks following his return from a period out of his office.

2. ASTOUND BROADBAND FRANCHISE ORDINANCE: Astound's counsel has reviewed the draft franchise ordinance I provided to them. Counsel proposed certain modifications within the draft. I have incorporated certain of those modifications in the "B" version of the ordinance.

As you will note, it is a very long ordinance. However, that is the nature of action in this area of activity since both federal and state regulations become involved. Among the matters implemented by the ordinance, if adopted, are the following:

1. Grants Astound a non-exclusive franchise to install their lines under, on, and above the City's rights of way.

2. Requires that all plans be submitted to the City for review and approval. Provision is made for payment of the necessary and associated costs of review and supervision.

3. Provides for movement of items installed at Astound's expense if the City's use of ROW changes.

4. Has a term of 15 years.

5. Affirms the City's authority to assess revenue taxes upon revenue which might be generated although, at this stage, it is my understanding they do not anticipate any customers within the City.

At this time the "B" draft is provided for your review and review by City Staff. It has also been provided to Astound for review by their staff. Thus, I would not request any action at this time.

Two additional and associated matters. First, as to the question raised by Paul Nott at the last meeting in terms of payment of attachment fees if they wish to attach their facilities to the City's light poles, the right to charge for that connection is preserved. I have suggested we take a look at the existing bases under which connections are allowed for other users, such as Comcast and the telephone company. Second, Todd was contacted by Reach One about connecting their wires to certain of the City's poles. We will be looking at this request, not only in terms of charges, but also in terms of whether or not a separate franchise agreement is appropriate.

3. **FIRE DISTRICT #5 REQUEST FOR AUTOMATIC RESPONSE AGREEMENT:** Chief Prater was at a recent meeting of the Elma City Council to discuss the District's request to update an agreement under which the two department's would be subject to an automatic response agreement. That is an agreement under which the GHCC would tone out both entities' units to respond to a fire call or call for medical services. Apparently, he discovered either that they did not have such an agreement with McCleary or that he would like to update an existing one since, at the same time he sent a draft to Elma, he transmitted a draft to Mr. Nott and myself.

At this meeting, I am not suggesting action. What I am recommending is that, in addition to each of you reviewing the document, you request from Paul the Department's analysis of the potential impacts of such an automatic response approach. Given

our Department's volunteer structure, I have some concern about the effect of the likely increased demand for call out of Department members. However, Paul and his compatriots would know a lot better than I in relation to that issue. Also, it should be noted that, although it is "automatic", the actual decision to respond is discretionary.

4. **PROBLEM RENTAL STRUCTURES**: As you know, we have certain rental structures within the corporate limits which generate more than the normal number of complaints or police calls for service. In doing my usual due diligence for approaches to deal with the problem, it is clear from communications among my compatriots in the Municipal Attorneys Association that we are not alone. A number of discussions have taken place about the use of a particular statutory chapter, RCW 35.106, which is named the "Crime-free Rental Housing" chapter. Unlike the Uniform Property Maintenance Code, it looks to the issues related to violations relating to controlled substances.

In any event, Chief Crumb, Mr. Mercer, Mr. Baun, and I will be taking a look at this chapter to determine whether or not it could be a useful tool in relation to dealing with these situations. Since it is a statutory provision applicable throughout the state, it likely would not have to be adopted by the City specifically.

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

DG/le

LAW OFFICES  
OF  
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A PROFESSIONAL SERVICES CORPORATION

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**MEMORANDUM**

**TO:** D. GARY DENT, MAYOR & MEMBERS, McCLEARY CITY COUNCIL  
**FROM:** DANIEL O. GLENN  
**DATE:** March 4, 2015  
**RE:** GHSO INTERLOCAL AGREEMENT DRAFT

**A. INTRODUCTION:** Ms. Collins provided me with a copy of the interlocal agreement proposed by the Sheriff's Office which Council Member Catterlin provided to her on Monday. At this stage, I am uncertain as to what distribution has been made of this proposal. I have had the opportunity to review the draft and will submit the following comments and recommendation.

For your information, I will also attach a number of documents relating to the existing authority and responsibility of a County Sheriff in relation to providing law enforcement services to the citizens of a county, whether they reside within or without corporate limits in the absence of a specific contract? They are as follows:

1. A copy of an email response from Patrick Mason, Senior Legal Consultant at MRSC, to a query I directed to him in relation to their opinion on an issue which I had been researching due to both McCleary and Oakville facing the same situation.

2. A copy of AGO 1990 #4, one of the Opinions of the Attorney General referenced in Mr. Mason's response.

3. Copies of RCW 36.28.010, .011, & .020 setting forth the duties and responsibilities of a County Sheriff and his or her deputies.

**B. RECOMMENDATION:** As the document currently exists, I would not recommend its execution. The bases for my recommendation will hopefully be clear as you read through the following section. The bottom line is the issues include a lack

*carpe' diem*

of specificity in terms of the amount of service to be provided and who, if anyone, would have the duty to enforce the provisions of the City Code not specifically accepted by the Sheriff's Office.

**C. ANALYSIS:** I will not comment as to all of the sections of the Agreement since certain of them (Sections 3 as to reporting) and Section 5 (dealt with in Section 2.1) are not core to the fundamental issues, in my view.

**Section I: Services to be Provided:** The agreement breaks the services to be provided to the City into six elements.

**Section 1.1:** Based upon history, the most important element is that characterized as "patrol services." What is made clear within the section is the specific commitment is for "reactive" response for calls for service with other patrols to be "limited". Going to specific concerns, in my opinion two very core elements of that section and reflective of the general tone are as follows:

A. For interpretive purposes, in my opinion the most crucial element is set out in the last sentence of that section. That sentence states "(a)ny and all patrol services provided under this Agreement, including but not limited to deputy time assigned to patrol, are at the discretion of the Sheriff." That makes clear there is no specific responsibility of time as to patrol services to be provided by the Sheriff's Office under this agreement.

B. The limitation as to what will be enforced by the Sheriff's staff is also significant. That limitation states the "County will provide first response for the enforcement of state law and limited response to city adopted municipal, criminal, and traffic codes." It then goes on to reference two specific chapters of the Municipal Code, the first of which relates to animals and the second of which relates to litter control.

**Sections 1.2 & 1.3:** 1.2 relating to investigative services is basically something in which there has been historical cooperation, such as in the investigation relating to the disappearance of Ms. Baun. 1.3 relating to "special services" again has the caveat language "at the discretion of the Sheriff."

**Section II: Organization:** The language is consistent with the approach taken in Section I. It indicates the commitment is



the Sheriff's Office "will designate fully commissioned sheriff's deputies to patrol the City as part of its regular law enforcement services customarily provided to unincorporated areas of the County."

**Section IV: Personnel & Equipment:** This section is reaffirmation of the fact the deputies who would provide the services are employees of the County and the equipment purchased by the County is the County's. 4.1.3 reaffirms what is stated in 1.1, the Sheriff, in his or her sole discretion and without the necessity of consulting with or implementing recommendations of the City, establishes "work schedules, enforcement issues and priorities" of the deputies assigned to provide the services. I would note the latter two of that trilogy could be significant at various times.

**Section VI: Compensation:** As you have noted, the figure for the first two years is \$225,000.00 with adjustments of what appear to be 4% for the remaining three years. Again, this is in consideration of providing what, in my opinion, is a very vague level of services.

**Section VII: City Responsibilities:** Ironically, while the sections setting out the County's responsibilities under this contract are, in my opinion, very generalized, the City's responsibilities are very specific. Subsections 7.1, 7.2, 7.6, and 7.8 are not surprising and would not result in unanticipated costs. Section 7.3, 7.4, & 7.9 would be basically additional costs which, if the City maintained its own Police Department, the City would absorb. However, these should be viewed as costs to be added on to the actual cost of this contract.

7.5 which mandates that the City would transfer to the County such items of equipment related to its Police Department as the County might want and desire to utilize is, again, a cost which should be recognized. For example, the two patrol vehicles, the debt for which is being paid off this year, would likely be requested. If so, upon return in five years they likely would have little value. 7.7 is interesting in relation to jail services. While Section 1.6 indicates that, with a limited exception, any jail services "for which the City may wish to contract" are not included in the agreement. Section 7.7 mandates that the City contract with the County for such services. The goal would appear to be to eliminate the options of contracting with entities such as the City of Forks or the Chehalis Tribal Correctional Facility which provide services for a lesser per diem.

**Section VIII: Duration:** It provides a five year term with either party having the right to terminate upon the giving of 90 days' notice. I would indicate that, if the City were to enter into this type of contract, 90 days is not long enough for the City to reactivate a police department if the County were to opt out with that length of notice. Also, it should be noted there is language in this section which seems to indicate, if there is an absence of a legislative appropriation, the 90 day period would not apply. That would be even worse.

**Section X: Notices:** My usual suggestion that, if a notice is sent by mail, it be sent by both certified and regular mail and it be deemed delivered upon the fifth business day following the day it properly mailed. This is to recognize both that mail does take time to be delivered, especially if the entity utilizes the mail service provided by the State, and sometimes certified mail notices can get lost or ignored.

**Section XI: Indemnification:** 11.1 & 11.2 are not unusual provisions. Again, it is my normal approach that, in addition to hold the other party from "negligence or willful misconduct", it be confirmed that "willful" includes intentional actions. Common sense indicates it does, but one can never depend upon common sense to prevail. I can understand the County's desire to have 11.3 present.

I would recommend that, at a minimum, this specific section be referred to our insurance cooperative, WCIA, for their review and comment. However, I would recommend the entire contract be so referred.

**Section XII: Audits & Inspections:** Given time for filing of claims and the like, I would recommend the period of retention of records be no less than five years. Of course, there is a state law that sets out how long public records, which these would be, must be retained and I believe that period should govern the situation.

**Sections XII-XVII:** These sections are operational with Section 14 being beneficial to both parties. Given the parties, Section 16 likely would benefit from providing the option of any suit being filed in Superior Courts of Grays Harbor or Thurston or in the Federal District Court for Western Washington.

**Section XVIII: Dispute Resolution:** Inclusion of a formal requirement of mediation is not unusual. However, given all of the elements present, I would not recommend utilization of our local agency. Rather, I would recommend a regional entity such as the Washington Arbitration & Mediation Service or the Judicial

Memorandum  
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Arbitration & Mediation Service.

**Section XIX: Entire Agreement:** Most of this section is what we lawyers normally put in place. The most interesting portion is it references there is already in place an existing agreement for emergency response. So that all will have a full understanding of the current situation, I would recommend the Mayor and Council review the provisions of that agreement. I am assuming Ms. Collins or Chief Crumb may have a copy of that document. If not, a copy could be requested from the County.

In closing, it is my hope the foregoing will aid in the analysis of the agreement and, more globally, the alternative approaches available to the City. If there are questions, feel free to direct them to me.

DG/le

cc: GEORGE CRUMB, CHIEF  
WENDY COLLINS, CLERK-TREASURER

**Daniel Glenn**

**From:** "Pat Mason" <pmason@mrsc.org>  
**To:** "Glenn, Daniel" <glennsatsop@msn.com>  
**Sent:** Tuesday, February 10, 2015 12:47 PM  
**Subject:** Sheriff Duties

Hi Dan -

This is a response we have provided before in regard to the general obligation of a sheriff to provide police services within a city. I hope this helps:

We have been asked in the past about the responsibility of the sheriff to provide police protection within a city.

The best answer comes from an Attorney General's Opinion, AGO 1990 No. 4. I am attaching a link to this opinion below.

<http://www.atg.wa.gov/opinion.aspx?section=archive&id=6040>

Here is an excerpt with some helpful language from that AGO that indicates that the sheriff does have some responsibility for law enforcement within the city limits:

"Indeed, this office has twice previously concluded that where the statutory powers and duties granted to municipal police departments coincides with those granted to county sheriffs, the municipality's jurisdiction is concurrent, not exclusive, within the municipality's boundaries.2/

AGO 61-62 No. 25 at 6 [[Orig. Op. Page 5]] (county sheriff and municipal police department have concurrent authority to investigate felony cases occurring within a city or town); AGLO 1974 No. 96 at 3 (county sheriff and municipal police department have concurrent authority over state traffic law violations occurring within a city or town).

Thus, the statutory duties of the sheriff apply equally within and without municipal boundaries. That being said, however, it is equally important to stress the nature of those duties. As noted at the outset, the sheriff's duties are set forth in RCW 36.28.010-[36.28].011. In *State ex rel. Zempel v. Twitchell*, 59 Wn.2d 419, 427, 367 P.2d 985 (1962), the state Supreme Court held that the sheriff is obligated to "devote unceasing effort toward performing and discharging those duties of the office which are imposed by law. . . ." That is, the sheriff may not simply refuse to perform his or her statutory duties altogether. Such a refusal has been held a wilful neglect of duty. *State v. Twitchell*, 61 Wn.2d 403, 378 P.2d 444 (1963). Other courts have similarly ruled that the sheriff must "exercise [a] reasonable degree of activity and diligence" to carry out his or her duties. *State ex rel. Windham v. LeFever*, 486 S.W.2d at 744; *State ex rel. Thompson v. Reichman*, 135 Tenn. 653, 188 S.W. 225, 228 (1916); *Brownstown Township v. County of Wayne*, 68 Mich. App. 244, 242 N.W.2d 538, 540 (1976); see also *Orton*, 465 S.W.2d at 627 (the sheriff has an "official duty to make reasonable efforts to enforce [the] laws both within and without the cities").

There may be instances in which a sheriff would be found to have "wilfully neglected" his or her duties. But one should note, in this regard, that the statutes do not obligate the sheriff to provide cities



(or the unincorporated areas of the county) with a specific number of police officers, or with a specific level of police services. Whether the sheriff has in fact carried out his or her statutory duties will therefore depend on the facts and circumstances of the particular case. We conclude here, in answer to your first question, simply that the sheriff's statutory duties apply to both the incorporated and unincorporated areas of the county.

And here is some language from AGO 1996 No. 7 that summarizes the conclusion and may be easier to refer to:

"In AGO 1990 No. 4, we laid out the basic relationship of county to city law enforcement in Washington. We noted that the county sheriff has a duty to enforce state law everywhere within the county, including those areas within the boundaries of incorporated cities and towns. However, we noted, the sheriff is entitled to take into account the existence of city and town police departments in allocating the resources available. Also, the sheriff's efforts may logically be concentrated in those portions of the county which have no other police protection. Finally, we concluded that if a city wants to obtain a particular level of police service, and does not wish to form its own police department, the Interlocal Cooperation Act (chapter 39.34 RCW) provides authority for the city to contract with the county to provide those services."

So it is not correct to say that a county sheriff has no obligation for police protection within a city.

Pat Mason

Senior Legal Consultant

[pmason@mrsc.org](mailto:pmason@mrsc.org)

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# SHERIFF -- LAW ENFORCEMENT -- CITIES AND TOWNS -- CONTRACTS -- INTERLOCAL COOPERATION ACT -- COUNTIES

AGO 1990 No. 4 - May 24 1990

(<http://www.atg.wa.gov>)

Attorney General Ken Eikenberry

## SHERIFF -- LAW ENFORCEMENT -- CITIES AND TOWNS -- CONTRACTS -- INTERLOCAL COOPERATION ACT -- COUNTIES

1. The county sheriff's duty to enforce state law applies equally in incorporated and unincorporated areas of the county.
2. If a city is unable to provide for adequate police protection, the county sheriff must take this factor into account in allocating the resources of the sheriff's office. However, the statutes do not obligate the sheriff to provide a city with a specific number of police officers or a specific level of police services.
3. If a city wants to obtain a specific number of county police officers or level of police services, the Interlocal Cooperation Act empowers the city to contract with the county to provide those services.

May 24, 1990

Honorable Scott Barr  
State Senator, Seventh District  
Institutions Building  
Olympia, WA 98504

Cite as: AGO 1990 No. 4

Dear Senator Barr:

By letter previously acknowledged, you requested our opinion on the following two questions:  
[[Orig. Op. Page 2]]

1. To what extent does a county sheriff have an obligation to enforce state law/ in an incorporated city or town within the county?
2. Does the answer to question 1 differ depending upon the existence of a functioning city or town police department?

We answer your questions in the manner set forth below.

### ANALYSIS

#### Question 1

We commence by analyzing the statutory duties of the sheriff, with particular reference to the territorial directives contained therein. The Legislature has set forth the general duties of the sheriff in RCW 36.28.010 as follows:

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his office, he and his deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful order or directions;  
[[Orig. Op. Page 3]]
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.  
(Emphasis added.)

RCW 36.28.011 further provides:

In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

The statutes plainly state that the sheriff is a county officer. Where territorial references are made, the statutes direct the sheriff to "defend the county" and to take various actions "within the county" or "in their [the sheriffs'] respective counties". Nowhere has the Legislature indicated that the sheriff's powers and duties are limited to the unincorporated areas of the county. Nor is there any statutory language from which such a limitation might be inferred. We note, in addition, that the sheriff at common law was the chief law enforcement officer of the county, and that the office of sheriff retains its common law powers and duties unless modified by the constitution or statutes. 70 Am. Jur. 2d Sheriffs, Police, and Constables § 2 (1987); see State ex rel. Johnston v. Melton, 192 Wash. 379, 388-89, 73 P.2d 1334 (1937); AGO 51-53 No. 322 at 2. We thus conclude that the sheriff has a general duty to enforce state law in both unincorporated and incorporated areas of the county.

Several other states have held likewise. State ex rel. Windham v. LaFever, 486 S.W.2d 740, 742 (Tenn. 1972); State ex rel. Danforth v. Orton, 465 S.W.2d 618, 626 (Mo. 1971); People v. Scott, 259 Cal. App. 2d 268, 66 Cal. Rptr. 257, 265 (1968); Commonwealth ex rel. Davis v. Malbon, 195 Va. 368, 78 S.E.2d 683, 686 (1953); see also 80 C.J.S. Sheriffs and Constables § 36a (1953). In Scott, the California court noted that "the jurisdiction of the sheriff in law enforcement matters normally extends throughout his county including the incorporated areas thereof." 66 Cal. Rptr. at 265. In Orton, the Missouri court expounded further:

[The sheriffs] authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance[s] the [[Orig. Op. Page 4]] cities and towns have their police departments or their town marshals. Even the state has its highway patrol. Still the authority of the sheriff with his correlative duty remains.

465 S.W.2d at 626.

We recognize that the Legislature, in addition to delineating the sheriff's powers and duties, has provided for the establishment of city and town police departments. See RCW 35.22.570 (omnibus grant of power under which first class cities may establish police departments); RCW 35.23.130 (chief of police and police force for second class cities); RCW 35.24.160 (chief of police and police



department for third class cities); RCW 35.27.240 (town marshal and police department for towns). But as pointed out above, the existence of a municipal police department does not in itself diminish the general duty of the county sheriff to enforce state law within a city or town.

Indeed, this office has twice previously concluded that where the statutory powers and duties granted to municipal police departments coincides with those granted to county sheriffs, the municipality's jurisdiction is concurrent, not exclusive, within the municipality's boundaries.<sup>2/</sup>

AGO 61-62 No. 25 at 6 [[Orig. Op. Page 5]] (county sheriff and municipal police department have concurrent authority to investigate felony cases occurring within a city or town); AGLO 1974 No. 96 at 3 (county sheriff and municipal police department have concurrent authority over state traffic law violations occurring within a city or town).

Thus, the statutory duties of the sheriff apply equally within and without municipal boundaries. That being said, however, it is equally important to stress the nature of those duties. As noted at the outset, the sheriff's duties are set forth in RCW 36.28.010-[36.28].011. In State ex rel. Zempel v. Twitchell, 59 Wn.2d 419, 427, 367 P.2d 985 (1962), the state Supreme Court held that the sheriff is obligated to "devote unceasing effort toward performing and discharging those duties of the office which are imposed by law. . . ." That is, the sheriff may not simply refuse to perform his or her statutory duties altogether. Such a refusal has been held a wilful neglect of duty. State v. Twitchell, 61 Wn.2d 403, 378 P.2d 444 (1963). Other courts have similarly ruled that the sheriff must "exercise [a] reasonable degree of activity and diligence" to carry out his or her duties. State ex rel. Windham v. LeFever, 486 S.W.2d at 744; State ex rel. Thompson v. Reichman, 135 Tenn. 653, 188 S.W. 225, 228 (1916); Brownstown Township v. County of Wayne, 68 Mich. App. 244, 242 N.W.2d 538, 540 (1976); see also Orton, 465 S.W.2d at 627 (the sheriff has an "official duty to make reasonable efforts to enforce [the] laws both within and without the cities").

There may be instances in which a sheriff would be found to have "wilfully neglected" his or her duties. But one should note, in this regard, that the statutes do not obligate the sheriff to provide cities (or the unincorporated areas of the county) with a specific number of police officers, or with a specific level of police services. Whether the sheriff has in fact carried out his or her statutory duties will therefore depend on the facts and circumstances of the particular case. We conclude here, in answer to your first question, simply that the sheriff's statutory duties apply to both the incorporated and unincorporated areas of the county.

## Question 2

Your second question, repeated for ease of reference, asks:

Does the answer to question 1 differ depending upon the existence of a functioning city or town police department?

At the outset, we note that the materials submitted with your opinion request indicate that for budgetary or other reasons, certain cities or towns have had difficulty in providing [[Orig. Op. Page 6]] their own full-time police departments. We understand that you are referring to this phenomenon when speaking of the lack of "functioning" municipal police departments. Your question is whether this factor affects the sheriff's duty to enforce state law within cities.

To a certain extent it does. While we have located no Washington cases on this issue, other state courts have considered the question, though in a slightly different context. In Orton, a municipal police department, while apparently able to act, nevertheless did little or nothing to stop gambling and liquor law violations occurring within the city. The sheriff likewise did not act, contending that responsibility rested solely with the city officials. In rejecting this contention, the court stated, in part:

It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law. . . . A sheriff may assume that a city police department will do its duty in enforcing the law and hence will not be guilty of any serious neglect of duty if he gives little attention to police matters in such city. But this rule has a proper qualification. If the sheriff has reason to believe that the police force is neglecting its duty it is his duty to inform himself. And if he knows that the police are ignoring or permitting offenses his duty to prevent and suppress such offenses is the same as it would be if there were no municipality and no police force.

465 S.W.2d at 626-27. Accord Commonwealth v. Malbon, 78 S.E.2d 683, 686; State v. Reichman, 188 S.W. 225, 228.



We believe the same principle applies to those cities which are unable, rather than simply unwilling, to provide adequate police protection for themselves. That is, the sheriff must take this factor into account in allocating his office's resources between the cities and the unincorporated areas of the county. To the extent that certain areas are not adequately policed by local authorities, the sheriff's duty to provide police protection increases. See Brownstown Township, 242 N.W.2d 538, 541.

It is, however, equally important to repeat what the statutes do not require. They do not obligate the sheriff to provide cities with a specific number of police officers, nor do they obligate the sheriff to provide cities with a specific level of police services. Furthermore, the sheriff's resources may be limited; and the unincorporated areas of the county, lacking statutory authority to create their own police force, must rely [[Orig. Op. Page 7]] heavily on the sheriff's office for their own police protection. The county resources remaining for police protection in the cities may thus be problematical. Therefore, while the sheriff's duty to enforce state law remains clear, that duty is not neatly quantified in the sheriff's statutes.

Should a city find it desirable or necessary to obtain the services of a specific number of county police officers, or a specific level of police services, it may contract with the sheriff's office for such services. Such contracts, in our view, are the only means by which a city may assure itself of quantified police protection beyond that contained in the sheriff's general charge to enforce state laws. The authority to contract in this manner is contained in the Interlocal Cooperation Act, chapter 39.34 RCW, and is implicitly recognized in several other statutes.

We are aware of a previous opinion, AGO 65-66 No. 28, in which this office found that cities and counties did not have the authority to enter into such contracts. That opinion, however, was issued prior to the enactment of RCW 39.34.080 which provides:

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; Provided That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties.

This statute, part of the Interlocal Cooperation Act, permits public agencies (including cities and counties) to mutually contract for the provision of services. The entity providing the services in question must have the authority to perform such services independent of the authority granted by RCW 39.34.080. See AGO 1969 No. 8 at 5 (the Interlocal Cooperation Act does not authorize the exercise of any new substantive powers by public agencies).

That requirement poses no obstacle here, however, because as noted previously, the sheriff has not only the authority but the duty to perform his or her statutory law enforcement duties in both the incorporated and unincorporated areas of the [[Orig. Op. Page 8]] county.3/

The city may therefore contract with the county for specific law enforcement services. To the extent that AGO 65-66 No. 28 concludes otherwise, it is overruled.

To summarize, we conclude that the sheriff has a duty to enforce state law in both incorporated and unincorporated areas of the county. To the extent that a particular city's police department is unable to provide adequate police protection, the sheriff's office has a duty to allocate its resources accordingly. However, the sheriff is not obligated by statute to provide cities with a specific number of officers, or a specific level of services. Should a city wish to obtain such specific protection, it may do so by contract.

We trust that the foregoing will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY  
Attorney General

GREGORY J. TRAUTMAN  
Assistant Attorney General

\*\*\* FOOTNOTES \*\*\*

1/We note that your opinion request refers specifically to the enforcement of state law within cities or towns. We thus limit our response to that issue, and do not address the question of enforcement of city or town ordinances.

2/This principle is expressly set forth in the statutes governing the police departments of third class cities and towns. RCW 35.24.160 provides in part:

The department of police in a city of the third class shall be under the direction and control of the chief of police subject to the direction of the mayor.

...

He shall have the same authority as that conferred upon sheriffs for the suppression of any riot, public tumult, disturbance of the peace, or resistance against the laws or the public authorities in the lawful exercise of their functions and shall be entitled to the same protection.

(Emphasis added). RCW 35.27.240, governing towns, contains identical language. We conclude that the principle of concurrent jurisdiction likewise applies to all city police departments, as we have found no language in the various statutes that would limit the sheriff's powers and duties within first class, second class, or code cities.

3/The Legislature has also implicitly recognized the authority of cities and counties to enter into such contracts. RCW 41.14.250-[41.14].280, for example, sets forth a detailed scheme governing the rights and duties of city police department employees whenever "a city or town shall contract with the county sheriff's office for law enforcement services." See also RCW 35.02.220-[35.02].225, which recognizes the authority of newly incorporated cities to contract for law enforcement and other essential services after the date of incorporation.

### **36.28.010. General duties.**

The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

- (1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;
- (2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;
- (3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;
- (4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;
- (5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;
- (6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

[2009 c 549 § 4050; 1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

**Effect of Amendments.** 2009 c 549 § 4050, effective July 26, 2009, made gender neutral changes.

### **36.28.011. Duty to make complaint.**

In addition to the duties contained in RCW 36.28.010, it shall be the duty of all sheriffs to make complaint of all violations of the criminal law, which shall come to their knowledge, within their respective jurisdictions.

[1963 c 4 § 36.28.011. Prior: 1955 c 10 § 1. Cf. Code 1881 § 2801, part; 1869 p 264 § 311, part; RRS § 4173, part.]

### **36.28.020. Powers of deputies, regular and special.**

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct.

[2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

**Effect of Amendments.** 2009 c 549 § 4051, effective July 26, 2009, made gender neutral changes.

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[2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

**Effect of Amendments.** 2009 c 549 § 4051, effective July 26, 2009, made gender neutral changes.

## STAFF REPORT

To: Mayor Dent  
From: Todd Baun, Director of Public Works  
Date: March 5, 2015  
Re: Current Non-Agenda Activity

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### **City Accident Prevention Program**

At the next City council meeting I will have the City of McCleary Accident Prevention Program in front of you for adoption.

### **3<sup>rd</sup> Street Design**

The city has received 60% plans for our 3<sup>rd</sup> street design. The department heads will be reviewing the plans over the next few weeks. The council will have to answer some questions at the 2<sup>nd</sup> March meeting.

### **STP Funding Grant**

I have applied for grant funding for our 3<sup>rd</sup> Street project. This grant is administered through the Grays Harbor Council of Governments. We are hoping to get some construction funding and then apply for other grants to get the rest of the funding.

### **Storm Pond Maintenance**

We have several storm ponds in the city that are currently not maintained. We have sent residents of the developments that have storm ponds a letter asking how they want their ponds maintained. We have outlined the following options for those residents. They have until March 20<sup>th</sup> to let us know their preferred option.

**Option #1-** Consists of Homeowners bringing their storm pond up to standards at homeowners cost. Homeowners can then deed their storm pond to the City for continued maintenance. If deeded to the City, this option would add an additional \$0.81 to your base storm water charge.

**Option #2-** The City will come in and bring your storm pond up to standard. This will add an additional \$6.55 to your base storm water charge for 1 year. Homeowners can then deed their storm pond to the City for continued maintenance. After the first year, this option would drop to add an additional \$0.81 to your base storm water charge.

**Option #3-** The Homeowners can bring their storm pond up to standard and maintain on their own. This adds no additional cost to the base storm water charge. In the event that the homeowner's storm pond is not brought up to standard and maintained, the City will then come in and charge homeowners the equipment and labor fees to bring the storm pond up to standard and maintenance costs.

# STAFF REPORT

To: Mayor Dent  
From: Colin Mercer  
Date: March 4, 2015  
Re: February Building Department

## Activities

- Submit copies of permits issued to Grays Harbor County Assessor's Office.
- High Definition Homes 1493 N Summit Road is in the finishing stage.
- The Beehive is in the painting stage.
- 116 S 4<sup>th</sup> Street waiting for owner to complete the project.
- 108 Summit Place Dr. Garage conversion to Day Care is in the finishing stage.
- 103 W Hemlock accessory structure in progress.

## Nuisance Issues in Progress

- 525 W Maple, tenants do not have active utility services, working with bank and City Attorney to restore services or evict occupants, bank has escalated our request for cleanup and board up of property.
- 335 S 2<sup>nd</sup> St. was notified to preform vegetation maintenance on the lot to the South, and remove the junk boat, boat has been loaded onto the trailer.
- 413 S 3<sup>rd</sup> St. property owner was notified to remove from view the junk vehicle in the rear yard visible from Main St.
- 107 W Hemlock property owner was notified to remove junk on the porch and viewable from the street and to install address numbers.
- 221 S. Main St conditions have not improved and the incident has been forward to the Police for citation.
- 343 S 1<sup>st</sup> St. letter has been sent to occupant and property owner regarding excessive amount of junk vehicles.
- Notify Sing Log Homes to provide appropriate clearances around their on-site fire hydrants.

## Nuisances Resolved

- 137 S 3<sup>rd</sup> St, shop operator has removed the junk van.
- 727 W Ash St, metal items being stored in the City Right of Way have been removed.
- 107 W Hemlock address numbers have been installed and some of the junk has been removed or straightened up.
- 413 S 3<sup>rd</sup> St, owner has cleaned up junk, moved the vehicle and covered it with a tarp.

## Conservation Program

Month	Applications Received	Conservation Permits Issued	Rebates Paid This Month	Total Rebates Paid To Date
January	0	0	\$0.00	\$22,320.80
February	0	0	\$0.00	\$22,320.80

## Conservation Update:

BPA has notified us that they will be making available additional Unassigned Funds. After discussing this with Todd Baun, it was decide to apply for our portion of these funds with the intention of performing a lighting retrofit profit project at City Hall, similar to the project we did a few years ago in the City Shop and Light and Power building.

**Building Department Activity**

ACTIVITY	MONTHLY TOTALS	YEAR TO DATE TOTALS	ACTIVITY EXPLANATION
Customer Service	22	44	Answer building department related questions in person or by phone, meeting with potential applicants.
Building Permits Issued	0	1	Remodels, new construction & additions, both residential and commercial.
Plan Reviews Performed	0	0	Reviewing plans for building code and municipal code compliance.
Inspections Performed	3	11	Field inspections, writing of corrections or approving work.
Finals or Certificates of Occupancies	0	0	Performing of the final inspection & issuing of certificate of occupancy allowing use of the structure.
Complaints Received	1	1	Investigate and address citizen or staff reported issues, obtain resolution or acceptable compromise.
Nuisance Letters Sent	3	10	Formal notice from the City informing citizens of violations and providing expectation of the City for compliance.
Lemay's Garbage Letters Sent	3	3	Formal notice from City after notification from Lemay that service has been stopped.
Building Department Revenue	\$89.00	\$89.00	Funds generated by the Building Department from permits, inspections, reviews etc.

**Comments:**



## STAFF REPORT

To: Mayor Dent  
From: Paul Nott, Light & Power  
Date: March 6, 2015  
Re: February Report



	Monthly Statistics;	YTD Totals;
New Services;	0	0
System Outages;	0	0
Pole Replacements;	6	6
Maintenance Work Orders;	6	8
Billable Work Orders;	0	0

The month of February consisted of; continued work assisting WWTP crew with their lift station issue, numerous pole and transformer replacements on Simpson, work on the L&I consultation and the Simpson metering project.

We have been in contact with the electrical contractor and L&I on a re-design on the lift station pump electrical. The existing design makes it difficult and expensive to maintain the pumps at the lift station. We now have an approved design that will correct this issue. The plan is to possibly start the re-design work next week.

We have been working on the cutover project on West Simpson which has involved numerous pool and transformer change outs in that area. We apologize for the traffic inconvenience.

We have completed most of the physical repairs that have needed to be made to be compliant with the L&I consultation. One issue that needs to be addressed yet is the fence in the substation.

The Simpson metering project is getting closer to being active. We are currently in the process of receiving a quote and installing the radio equipment necessary to transmit the data back to our server here at City hall, so that ITRON can collect the data and process it to the web for load profiling for Simpson and remote data collection for the City as well.

As always if you have any questions feel free to contact us...

In case of a power outage, please contact:

Light and Power Department 360-495-4533  
City Hall 360-495-3667  
Dispatch Non-Emergency 360-533-8765

**Staff Report for McCleary Police Department**

**To: Mayor Dent**  
**From: George M. Crumb, Chief of Police**  
**Date: Thursday, March 5, 2015**  
**RE: For March 11, 2015 Council Meeting**

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**SUMMARY OF POLICE INCIDENTS / ACTIVITIES:**

The below listed information are calls or contacts received by McCleary Police Officers either generated by Grays Harbor County dispatch 911 service, citizen reports, call in reports, citizen contacts, US mail, or other officer generated incidents.

0363 Incident histories reported this year as of time of this report. .

00-Assault(s)	00-Noise Complaints
22-Agency Assist(s)	00-No Valid Operator's License (NVOL)
00-Alcohol Offense	05-Police Information-, Protection Order Scv-
00-Audible Alarm	00-Public Works Assist
01-Abandon Vehicle	03-Parking Complaint
13-Animal Complaint	06-Police Referral
04-Burglary	00-Speeding Stops
00-Curfew Violation	00-Speed in School Zone
01-Citizen Dispute	09-Suspicious Person-/Vehicle-/Circumst-
02-Civil	05-Subject Stop
00-Court Order Violation	00-Sex Offense-0/Sex Offen Add Confirmation-
04-Citizen Assist	00-Suicide-0/Suicide Attempt-0
00-DWLS	01-Traffic Offense-/Reckless-01/Hazard-
00-DUI	00-Theft Reports/Vehicle-(Shop lifter-)
06-Disorderly Conduct/Verbal Argument-1	02-Traffic Accident
00-Drug Incidents (VUCSA)	20-Traffic Stop
00-Death Report(s)	00-Trespass
00-Domestic Violence/Verbal/Mal Mis.	00-Vehicle Prowl-0/Prowler-0
00-Extra Patrol Request	00-Vehicle Lockout Assist-/Disabled-
25-Fire Responses	02-Warrant Service/Confirmation
01-Found/Lost Property Report(s)	00-Warrant Search
01-Fraud/0-Firearm Compl-	02-Warrant Arrest
03-Harassment-	03-Welfare Check
00-Insurance Violation(s)	00-Weapons Offense
01-Juvenile Problem/Run-a-way	01-911 Open Line or Hang Up
01-Motorist Assist	01-No classification-, or Unknown Problem-
00-Malicious Mischief	01-Threats by Phone/In Person-1
00-Missing Person	

Discussion: Open.

Council Members Present: ALL.... Mr. Catterlin-Position 1, Mr. Reed-Position 2,  
Mr. Peterson-Position 3, Mr. Schiller-Position 4,  
Mr. Ator-Position 5.

Mayor Dent: Present / Not Present \_\_\_\_\_

Officer Reporting: Chief Crumb \_\_\_\_\_

## STAFF REPORT

To: Mayor Dent  
From: Kevin Trehwella, Water & Wastewater manager  
Date: March, 6, 2015

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At the Cedar Heights Lift Station we have a seal leak on one of the pumps, we are looking at cost of repair vs. replacement. While looking into the pump we found very poor workmanship when the electrical hookups were installed. Within the next 2 weeks the newly redesigned junction box will be installed making any future repairs less costly and less time consuming.

At the Wastewater Treatment Plant we still struggle with rocks coming into the sewer lines. Recently we had to use a chisel to dislodge a rock that had become jammed in the impellers of one of the pumps.

Public works reported to us that they had helped clear a sewer line, which was plugged with grease, at The Beehive, we went over to The Beehive to look into their grease trap. We found no grease in their grease trap but we found plenty of grease in the lines going into the sewer system. We spoke with The Beehive manager, whom later reported to Todd Baun that upon further investigation, the kitchen had been routed around the grease trap. He will be having the plumbing corrected.

## STAFF REPORT

To: Mayor Dent  
From: Colin Mercer Webmaster  
Date: March 4, 2015  
Re: February Website

### Re-Occurring Website Activities

- Council Agenda/Packet posted online.
- Council Minutes posted online.

### New Website Activity

- Post council meeting cancellation notice for 2-25-15 meeting.
- Posted correct minutes for 11-19-14.

### Additional Tasks

### Website Comments:

- None this month

### Website Traffic      February 1, 2015 through February 28, 2015 (Top visited pages shown only)

Section	Page Views	Percent of Total
<a href="#">Default Home Page</a>	3668	32.25%
<a href="#">Events Calendar</a>	886	7.79%
<a href="#">Mayor and Council</a>	643	5.65%
<a href="#">Home Page</a>	642	5.65%
<a href="#">City Jobs</a>	345	3.03%
<a href="#">Agendas and Minutes</a>	343	3.02%
<a href="#">Utilities</a>	304	2.67%
<a href="#">Conservation Program</a>	281	2.47%
<a href="#">City Departments</a>	234	2.06%
<a href="#">Municipal Code</a>	169	1.49%
<a href="#">Administration</a>	143	1.26%
<a href="#">Bear Festival</a>	139	1.22%
<a href="#">City Forms &amp; Documents</a>	136	1.2%
<a href="#">Police</a>	130	1.14%
<a href="#">Public Facilities</a>	130	1.14%
<a href="#">Staff Page</a>	117	1.03%
<a href="#">Cemetery Data Page</a>	109	0.96%
<a href="#">Water / Wastewater</a>	100	0.88%



## City of McCleary

*Home of the Bear Festival*

100 S. 3rd Street  
McCleary, WA 98557

Phone: 360-495-3667



Bear Festival



City Hall Closed



City Council Meeting



Dates for Discussion

# 2015

### January

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

### February

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### March

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### April

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### May

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### June

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### July

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### August

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### September

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### October

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### November

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29	30					

### December

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13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**LAW ENFORCEMENT SERVICES CONTRACT BETWEEN  
GRAYS HARBOR COUNTY AND THE CITY OF McCLEARY**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between GRAYS HARBOR COUNTY, a political subdivision of the State of Washington (hereinafter referred to as the COUNTY), and the CITY OF McCLEARY, a municipal corporation of Grays Harbor County, State of Washington (hereinafter referred to as the CITY),

**WITNESSETH:**

The CITY OF McCLEARY is a municipal corporation situate within Grays Harbor County and has need of police protection both with respect to its municipal ordinances and all state laws. The COUNTY has a police force organized and operating under the office of the Sheriff of Grays Harbor County and presently has concurrent jurisdiction over all state laws together with the CITY OF McCLEARY within the limits of the CITY OF McCLEARY. Parties to this contract have met and determined that certain budgetary shortfalls of the CITY can be addressed and obtained with respect to police services by contracting to have the COUNTY provide all first response and limited other police services of the CITY and such contract is authorized by the laws of the State of Washington, to wit: Chapter 39.34 RCW. Pursuant to such need, the mutual desire of the parties to preserve public safety and welfare of CITY residents and visitors, and the specific statutory authority above referred to, the COUNTY and the CITY, for and in consideration of the promises herein made, and the mutual benefits to be derived here from do hereby agree as follows:

**1.0 BASE LEVEL SERVICES.** The COUNTY through its Sheriff agrees to provide within CITY limits the following law enforcement services, rendering such services in the same manner, and with the same equipment, as is customarily provided by the COUNTY in unincorporated Grays Harbor County unless otherwise set forth herein:

**1.1 PATROL SERVICES.** The COUNTY will provide first response for the enforcement of state law and limited response to city adopted municipal, criminal and traffic codes. The parties agree and understand that the COUNTY'S enforcement of applicable CITY Ordinances includes but is not limited to applicable provisions of Title 6 and Chapter 8.12 of the McCleary Municipal Code. Patrol services shall include reactive patrol to respond to calls for service, limited proactive patrol to prevent and deter criminal activity, and limited traffic patrol to enforce applicable traffic codes and investigate collisions. Any and all patrol services provided under this Agreement, including but not limited to deputy time assigned to patrol, are at the discretion of the Sheriff.

**1.2 INVESTIGATIVE SERVICES.** The COUNTY will provide Investigative Services consisting of follow-up investigations by detectives investigating crimes such as burglary or auto theft, and by detectives assigned to the Investigations Section

investigating crimes such as homicide, drug offenses, special assaults, fraud, missing persons, vice, child abuse, major collisions, and other cases as assigned.

1.3 SPECIAL SERVICES. The COUNTY will provide Special Services that may include, but are not limited to, K-9 patrol, hostage negotiations, Emergency Response Team, and sex offender registration, at the discretion of the Sheriff.

1.4 RECORDS. The COUNTY will perform required data entry into the ACCESS system in accordance with this Contract, and shall maintain records in its sheriff's department.

1.5 EVIDENCE. The COUNTY will process and maintain Evidence and Property collected as a result of investigations occurring within the CITY in the same manner used for Sheriff's investigations occurring in the unincorporated portions of the COUNTY.

1.6 JAIL AND E9-1-1 SERVICES. With the exception of transporting inmates between the jail and District Court, any jail or E9-1-1 services for which the CITY may wish to contract are not included in this Agreement.

**2.0 ORGANIZATION.** The COUNTY will provide the services identified in Section 1.0 through the following organization:

2.1 ASSIGNED DEPUTY SHERIFF PERSONNEL. The COUNTY will designate fully commissioned sheriff deputies to patrol the CITY as part of its regular law enforcement services customarily provided to unincorporated areas of the County. These deputies will perform patrol, investigative or special services under the supervision of the Sheriff and/or his command staff. In addition, the Sheriff or his designee will attend City Council meetings on a monthly basis, and will provide a report to the CITY as to the number and nature of criminal and traffic activity within the city limits.

### **3.0 REPORTING.**

3.1 REPORTING DISTRICTS. The COUNTY will maintain reporting districts that are coterminous with the city boundaries to enable accurate data collection on criminal and traffic activity and on dispatched calls for service.

3.2 ACTIVITY REPORTS. Each month, the COUNTY will provide reports to the CITY, through the Sheriff or his designee, on criminal and traffic activity within the city limits.

### **4.0 PERSONNEL AND EQUIPMENT.**

4.1 INDEPENDENT CONTRACTOR. The COUNTY is acting hereunder as an independent contractor so that:



4.1.1 SERVICE PROVIDED BY COUNTY EMPLOYEES. All County Employees rendering services hereunder shall be considered employees of the COUNTY for all purposes.

4.1.2 CONTROL OF PERSONNEL. The COUNTY through its Sheriff shall control the conduct of personnel, including standards of performance, discipline and all other aspects of performance.

4.1.3 WORK SCHEDULES. The COUNTY through its Sheriff shall establish the work schedule, enforcement issues and priorities of the sheriff deputies assigned to patrol the city pursuant to paragraphs 1.1 and 2.1.

4.2 EQUIPMENT. Equipment purchased by the COUNTY for purposes of providing services to the CITY under this Agreement shall remain the property of the COUNTY.

**5.0 REVIEW SCHEDULE.** The Sheriff or the Sheriff's designee shall attend monthly city council meetings in order to provide reports on criminal and traffic activity within the city limits.

## **6.0 COMPENSATION.**

6.1 CONTRACT AMOUNT. For 2015, the CITY shall pay to the COUNTY the sum of two hundred twenty-five thousand dollars (\$225,000.00) per year for these police services provided by the COUNTY as set forth herein, which shall be pro-rated for the first year based upon the date this Agreement commences and a termination date of December 31, 2015. Payments shall be made by the CITY to the COUNTY on a monthly basis for the duration of this Contract as set forth in Section 8.0 below. Each payment shall be that pro-rated portion of the total sum due for police services in 2015, divided by the total number of months of this Agreement. The monthly compensation for services hereunder is due and payable in monthly installments billed as provided in Section 6.2 below. Notwithstanding the foregoing however, the CITY may, at its option, pay the yearly amount due in one lump sum for police services provided herein.

6.1.1 2016. For 2016, the CITY shall pay to the COUNTY the sum of two hundred twenty-five thousand dollars (\$225,000.00) per year for the police services provided by the COUNTY as set forth herein. Payments shall be made by the CITY to the COUNTY on a monthly basis for the duration of this Contract as set forth in Section 8.0 below. Each payment shall be one-twelfth (1/12) of the total sum due for police services in 2016. The monthly compensation for services hereunder is due and payable in monthly installments billed as provided in Section 6.2 below. Notwithstanding the foregoing however, the CITY may, at its option, pay the yearly amount due in one lump sum for police services provided herein.

6.1.2 2017. For 2017, the CITY shall pay to the COUNTY the sum of two hundred thirty-four thousand dollars (\$234,000.00) per year for the police services



provided by the COUNTY as set forth herein. Payments shall be made by the CITY to the COUNTY on a monthly basis for the duration of this Contract as set forth in Section 8.0 below. Each payment shall be one-twelfth (1/12) of the total sum due for police services in 2017. The monthly compensation for services hereunder is due and payable in monthly installments billed as provided in Section 6.2 below. Notwithstanding the foregoing however, the CITY may, at its option, pay the yearly amount due in one lump sum for police services provided herein.

6.1.3 2018. For 2018, the CITY shall pay to the COUNTY the sum of two hundred forty-three thousand three hundred sixty dollars (\$243,360.00) per year for the police services provided by the COUNTY as set forth herein. Payments shall be made by the CITY to the COUNTY on a monthly basis for the duration of this Contract as set forth in Section 8.0 below. Each payment shall be one-twelfth (1/12) of the total sum due for police services in 2018. The monthly compensation for services hereunder is due and payable in monthly installments billed as provided in Section 6.2 below. Notwithstanding the foregoing however, the CITY may, at its option, pay the yearly amount due in one lump sum for police services provided herein.

6.1.4 2019. For 2019, the CITY shall pay to the COUNTY the sum of two hundred fifty-three thousand ninety-four dollars (\$253,094.00) per year for the police services provided by the COUNTY as set forth herein. Payments shall be made by the CITY to the COUNTY on a monthly basis for the duration of this Contract as set forth in Section 8.0 below. Each payment shall be one-twelfth (1/12) of the total sum due for police services in 2019. The monthly compensation for services hereunder is due and payable in monthly installments billed as provided in Section 6.2 below. Notwithstanding the foregoing however, the CITY may, at its option, pay the yearly amount due in one lump sum for police services provided herein.

6.2 BILLING. The CITY will be billed in monthly amounts for services rendered. Payments are due within 30 days after invoicing by the COUNTY. Payment shall be made to:

Grays Harbor County Sheriff's Office  
100 West Broadway, Suite 3  
P.O. Box 630  
Montesano, WA 98563

## **7.0 CITY RESPONSIBILITIES.**

In support of the COUNTY providing the services described in Section 1 and 2 above, the CITY promises:

7.1 MUNICIPAL AUTHORITY. To hereby confer municipal police authority on such COUNTY deputies as might be engaged hereunder in enforcing city ordinances within city boundaries, for the purposes of carrying out this Contract;

7.2 CRIMINAL JUSTICE SYSTEM SERVICES (JAIL, PROSECUTION, ASSIGNED COUNSEL AND MUNICIPAL COURT). To provide for criminal justice system services necessary to support this Contract that are directly attributable to enforcement of state and municipal laws within CITY limits;

7.3 CITY PROVIDES SPECIAL SUPPLIES. To supply at its own cost and expense any special supplies, stationery, notices, forms, equipment and the like where such is required by the CITY or must be issued in the name of the CITY, including but not limited to Citation and Infraction books, and any other charging documents as identified by the COUNTY;

7.4 CITY PROVIDES SECURE OFFICE AND INTERNET CONNECTION. To supply at its own cost and expense a secure and exclusive office space with a secure Internet connection for the exclusive use of the COUNTY to provide for preparation and storage of sensitive/confidential materials;

7.5 EQUIPMENT. To the extent that the CITY has vehicles and equipment available, it shall allow the COUNTY to convert said equipment to the COUNTY's use in the performance of this Contract, with all such equipment being returned to the CITY upon termination of this Contract;

7.6 E9-1-1 COMMUNICATIONS CONTRACT. To maintain its contract with E9-1-1 COMMUNICATIONS for radio communication, dispatch services and CAD/RMS terminal assessments;

7.7 JAIL CONTRACT. To maintain a contract with the COUNTY Jail for housing of inmates and other jail services;

7.8 COURT SERVICES. The parties acknowledge that there is a separate contract between the CITY and the COUNTY with regard to court services, and this Agreement shall have no impact upon said contract.

7.9 ANIMAL CONTROL EXPENSE. To assume all responsibility for and hold the COUNTY harmless from all animal control impoundment costs arising from enforcement of Chapter 6.08 of the McCleary Municipal Code.

## **8.0 DURATION.**

This Contract will become effective as soon as it has been duly authorized, executed by both parties, and filed with the Grays Harbor County Auditor as required by RCW 39.34.040. This Contract shall remain in effect through December 31, 2019, unless either party initiates termination procedures as outlined in Section 9 or termination is necessary due to a lack of sufficient legislative appropriation by either or both parties. This Contract may be extended on an annual basis upon the mutual written agreement of the parties. In the event of lack of legislative appropriation by the COUNTY Board of

Commissioners, the CITY shall have the option of paying for services set forth in this contract in advance.

**9.0 TERMINATION PROCESS.** The party desiring to terminate this Contract shall provide a minimum of ninety (90) days advance written notice to the other party.

**10.0 NOTICES.** Any notice provided for or concerning this Contract shall be in writing and shall be deemed given when delivered personally or when sent by certified or registered mail to the following:

Any notice to GRAYS HARBOR COUNTY shall be sent or delivered to:

Grays Harbor County Sheriff  
100 West Broadway, Suite 3  
P.O. Box 630  
Montesano, WA 98563

Any notice to the CITY OF McCLEARY shall be sent or delivered to:

Mayor  
City of McCleary  
100 South 3<sup>rd</sup> Street  
McCleary, WA 98557

**11.0 INDEMNIFICATION.**

11.1 COUNTY RESPONSIBILITY. The COUNTY shall protect, save harmless, indemnify and defend the CITY, its elected and appointed officials, officers, employees and agents, from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or COUNTY employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the COUNTY, its elected or appointed officials, officers, employees or agents, in performance of this Contract, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the CITY, its elected or appointed officials, officers, employees or agents.

11.2 CITY RESPONSIBILITY. The CITY shall protect, save harmless, indemnify and defend the COUNTY, its elected and appointed officials, officers, employees and agents from and against any loss or claim for damages of any nature whatsoever, including claims by third parties or CITY employees against which it would otherwise be immune under Title 51 RCW or other law, arising out of any act or omission of the CITY, its elected or appointed officials, officers, employees or agents, in performance of this Contract, except to the extent the loss or claim is attributable to the negligence or willful misconduct of the COUNTY, its elected or appointed officials, officers, employees or agents.

11.3 CITY ORDINANCES. In executing this Contract, the COUNTY does not assume liability or responsibility for or in any way release the CITY from any liability or responsibility that arises in whole or in part from the existence or effect of CITY ordinances, rules or regulations. In any cause, claim, suit, action or administrative proceeding in which the enforceability and/or validity of any such CITY ordinance, rule or regulation is at issue, the CITY shall defend on that issue at its sole expense, and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, on that issue, the CITY shall satisfy the same, including all chargeable costs and attorney's fees, attributable to the existence or effect of a CITY ordinance, rule, or regulation. In any such cause, claim, suit, or action, each party shall otherwise remain responsible for its own acts or omissions, as well as those of its elected and appointed officials, officers, employees and agents, as provided in paragraphs 11.1 and 11.2 to this Contract.

**12.0 AUDITS AND INSPECTIONS.** The records and documents with respect to all matters covered by this Contract shall be subject to inspection, review or audit by the COUNTY or the CITY during the term of this Contract and for a period of three years after termination.

**13.0 AMENDMENTS.** This Contract may be amended at any time by mutual written agreement of the parties that is executed and filed with the COUNTY Auditor as required by RCW 39.34.040.

**14.0 NO THIRD PARTY BENEFICIARY.** The COUNTY and the CITY agree that this Contract shall not confer third party beneficiary status on any non-party, including the citizens of either the COUNTY or the CITY.

**15.0 LEGAL REQUIREMENTS.** Both parties shall comply with all applicable federal, state and local laws in performing this Contract.

**16.0 VENUE.** The laws of the State of Washington shall apply to the construction and enforcement of this Contract. Any action at law, suit in equity, or judicial proceedings for the enforcement of this Contract or any provision hereto shall be in the Superior Court of Grays Harbor County, Montesano, Washington.

**17.0 WAIVER OF DEFAULT.** Waiver of any default shall not be deemed as a waiver of any subsequent default. Waiver or breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Contract unless stated to be such through written approval by the COUNTY, which shall be attached to the original Contract and filed with the COUNTY Auditor.

**18.0 DISPUTE RESOLUTION.**

18.1 In the event differences between the CITY and the COUNTY should arise over the terms and conditions of this Contract, the Sheriff and the CITY, or their respective designees, shall attempt to resolve any problems on an informal basis.

18.2 If the problem cannot be resolved informally, the matter shall be referred to the Grays Harbor Dispute Resolution Center for mediation. All costs of mediation shall be shared equally by the parties.

18.3 If mediation is not successful, either party may institute legal action to enforce the terms and conditions of this Contract. The prevailing party in any legal action shall be entitled to reasonable attorney's fees and court costs.

**19.0 ENTIRE AGREEMENT.** The parties agree that this Contract is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Both parties recognize that time is of the essence in the performance and the provisions of this Contract. The parties further agree and recognize that this Contract replaces and supersedes the emergency agreement presently in effect for police services to the CITY.

**20.0 SEVERABILITY CLAUSE.** Should any clause, phrase, sentence or paragraph of this Contract be declared invalid or void, the remaining provisions of this Contract shall remain in full force and effect.

In witness whereof, the parties have executed this Agreement.

**GRAYS HARBOR COUNTY**

**CITY of McCLEARY**

\_\_\_\_\_  
Wes Cormier, Chairman  
Board of Commissioners

\_\_\_\_\_  
Gary Dent, Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Norma J. Tillotson, Deputy Prosecutor

\_\_\_\_\_  
Daniel Glenn, City Attorney

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVAL RECOMMENDED:

\_\_\_\_\_  
Richard R. Scott, Sheriff

**STAFF REPORT**

To: Mayor Dent  
From: Todd Baun- Director of Public Works  
Date: March 3, 2015  
Re: John Deere Mower Purchase

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We budgeted \$12,377 for a new riding mower this year. I have gotten a quote for the mower we want from the Washington State Contract # 10212. The quote we received included tax for a total of \$9630.53. With that price we will save \$2746.47 for our original budgeted amount.

**Action Requested:**

Please consider approving purchase of a new riding mower for \$9630.53 with tax included.



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE RELATING TO MOTOR VEHICLES,  
AUTHORIZING THE UTILIZATION OF CERTAIN  
WHEELED ALL-TERRAIN VEHICLES UPON CERTAIN  
STREETS OF THE CITY UNDER CERTAIN TERMS AND  
CONDITIONS, ADDING NEW SECTIONS TO CHAPTER  
10 OF THE MUNICIPAL CODE AND IMPOSING  
PENALTIES FOR VIOLATION.

R E C I T A L S:

1. The Legislature, through the adoption of ESHB 1632 in 2013, authorized the operation of certain wheeled all-terrain vehicles upon public rights of way so long as the vehicles and their operators meet certain requirements.

2. Since that adoption, the provisions of that Act which were applicable to such activities have been incorporated into the Model Traffic Ordinance (MTO) by rule issued by the state agency having jurisdiction.

3. The City has adopted the MTO by reference, as well as any modifications therein. However, the provisions of the Bill specifically provided that, before the provisions allowing the use of such vehicles upon streets within the City, the Council and Mayor had to adopt an ordinance specifically authorizing such activity.

4. At its January 28<sup>th</sup> meeting, the Council discussed whether such utilization should be allowed. Chief Crumb has made available material which he has gathered upon this matter. After

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review of written material provided by Chief Crumb and having considered the matter, including the potential implications, both positive and negative, of taking such an action, and having received limited public comment, the Council has determined it to be appropriate to allow such utilization upon streets within the City.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION II: Incorporation of Provisions Into MTO: The incorporation into the City Code of the provisions of ESHB 1632, as now codified in Title RCW 46, relating to the definitions, equipment, and licensing requirements, operator requirements, and other provisions applicable to this matter is specifically ratified.

SECTION II: A. Operators meeting the requirements set forth in the applicable provisions of the MTO and licensing requirement established in sub-paragraph B of this Section may operate a wheeled all-terrain vehicle meeting the equipment and licensing requirements set forth in the Model Traffic Ordinance upon all public streets within the City other than any street having a speed limit greater than thirty-five miles per hour.

B. No person shall operate a wheeled all-terrain vehicle upon a public street pursuant to the provisions of this ordinance unless that person has been issued and is in possession of a valid driver's license.

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SECTION III: Penalties:

A. Unless stated otherwise in any other applicable provision of the Municipal code, violation of any provisions of this ordinance is a traffic infraction, punishable as provided by the provisions of the Municipal Code; PROVIDED THAT, if the vehicle is operated in a negligent or reckless manner by the operator or the operator is in such a condition as to be subject to citation under the provisions of RCW 46.61.502 through RCW 46.61.540, inclusive, such citation may be issued and, upon conviction, the penalties provided therein shall be applied.

B. The parent or legal guardian of a minor who knowingly allows a minor who [1] is less than the age of 18 years and [2] does not possess the licensing required by the applicable provisions of this ordinance, including Section II, to operate a vehicle the use of which is authorized by this ordinance shall be deemed to have committed a traffic infraction and, upon a finding of committed, shall be subject to imposition of the fiscal penalty in the same amount to which the operator is subject.

SECTION IV: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections,

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subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION V: Sections I, II, and III shall be codified as new sections in Chapter 10.04 of the Municipal Code, being the chapter providing for the adoption of the Model Traffic Ordinance.

SECTION VI: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION VII: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2015, by the City Council of the City of McCleary, and signed in approval therewith this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF McCLEARY:

\_\_\_\_\_  
D. GARY DENT, Mayor

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CITY OF McCLEARY  
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ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON     )  
                                      : ss.  
GRAYS HARBOR COUNTY    )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number \_\_\_\_\_ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number \_\_\_\_\_, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF  
WASHINGTON, Residing at:  
My appointment expires:

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02/02/2015  
dg/le

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING A REQUESTED FRANCHISE TO ASTOUND BROADBAND, LLC UPON CERTAIN TERMS AND CONDITIONS, ESTABLISHING AN EFFECTIVE DATE AS PROVIDED BY RCW 35A.47.040, AND PROVIDING FOR SEVERABILITY.

R E C I T A L S:

1. Astound Broadband, LLC, a limited liability company licensed to do business in the State of Washington, has submitted a request to be granted a non-exclusive franchise to utilize rights of way within the corporate limits for the installation, utilization, and maintenance of fiberoptic tele-communication lines and associated facilities.

2. As authorized by RCW 35A.21.020 and RCW 35A.47.040, the Council has considered the request after having the opportunity to receive citizen input.

3. After consideration of the potential benefits to the citizens of the City and the County, the Council finds such a grant to be in the best interests of the City subject to compliance with certain terms and conditions.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: A Franchise is hereby granted to ASTOUND BROADBAND, LLC, a limited liability company in the State of

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Washington, its successors and assigns; hereinafter referred to as the GRANTEE, for a period of fifteen (15) years from and after the date of adoption of this ordinance to construct, operate, and maintain fiber optic telecommunication lines and system facilities in, over, along, and under public rights of way within the corporate limits of the City, as they now exist and may hereafter be expanded.

This franchise is granted upon the terms and conditions set forth in the following sections.

SECTION II: Scope of Authority: Subject to compliance with any requirements for prior notice, permitting, and authorization, ASTOUND BROADBAND, LLC, its successors and assigns, (hereinafter the GRANTEE) shall have the right and authority to enter upon the public roads and rights-of-way within the corporate limits for the purpose of constructing its fiber optic telecommunication lines and system and all necessary facilities connected therewith (hereinafter referred to collectively as the DISTRIBUTION SYSTEM) and for repairing, operating, and maintaining said distribution system.

SECTION III: Construction Conditions:

3.1. Construction to be Approved by the Director of Public Works. All construction and installation work where crossing roads, streets, alleys, or rights-of-way within the corporate limits shall be subject to the prior approval of and pass the inspection of the Building Official, after consultation

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with the Director of Public Works (the Director) or their respective designees.

3.2. Permit Application, Review & Approval.

A. Prior to commencement of construction or modification of any portion or element of the distribution system and associated elements which will result in or require utilization or modification of City property or restriction upon utilization or public access, Grantee shall first file with the Building Official its application for a permit to do such work, together with duplicate plans and specifications showing the position, depth, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, which shows their relative position to existing streets, roads, alleys, or rights-of-way upon plans drawn to scale, hereinafter collectively referred to as the "Map of Definite Location." It shall concurrently provide a copy of the documents to the Director.

B. The plans and specifications shall designate the class and type of material and equipment to be used, manner of excavation, construction, installation, back fill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, road obstructions, etc. No such construction shall begin without the Grantee first securing a written permit from the Building Official, including approval endorsed on one set of plans and specifications which will be

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returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Building Official, in consultation with the Director.

C. In addition to any permit fee required, in recognition of the potentiality of the requirement of specialized inspection services, the Grantee shall pay those reasonable costs and expenses incurred in the examination, inspection, and approval of such work on account of granting of the permit pursuant to RCW 35.21.860, as now existing or hereafter amended or succeeded.

D. The improvements installed pursuant to the authorization of a permit issued pursuant to this grant, including the initial distribution system, shall be laid in substantial conformity with said Map of Definite Location, except in instances where deviation may be allowed thereafter in writing by the Building Official pursuant to application by Grantee.

E. A set of as-built maps of Grantee's lines or facilities shall be furnished to the Director within sixty (60) days after completion of the work.

3.3. Roads to be Replaced & Restoration Guaranteed by Bond.

A. In any work which requires breaking of surface of a public road, street, alley, or right-of-way subject to this franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said distribution system, and

making connections between the same to structures and buildings of consumers, or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the standards and specifications set forth by the Director.

B. The Grantee at its own expense and within a reasonable time period shall complete the work for which the surface has been broken and promptly replace the work and make good the street, road, alley or right-of-way, restoring the same to as good condition as before the work was commenced; PROVIDED, however, that no such breaking of the surface of the streets, alleys, roads, or rights-of-way shall be done prior to the obtaining of the permit issued by the Building Official; PROVIDED, however, that in cases of emergency arising outside of normal office hours when an immediate excavation may be necessary for protection of public or private property, the necessary excavation may be made and shall be reported to the Director in the manner herein provided as soon as practical, but in no case later than the next following business day.

C. Application for the permit required as a condition precedent of the work covered by this section shall be accompanied by specifications for the restoration of the street, alley road, or rights-of-way to the same condition as it was in prior to such breaking, and such specifications must be approved by the Director before such breaking of the surface is commenced.

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The Grantee shall pay those costs and expenses incurred in the examination, inspection, and approval of such restoration pursuant to RCW 35.21.860, as now existing or hereafter amended or succeeded.

D. In the event the Grantee, after receiving notice from the Director or designee, fails to correct a condition in a timely manner, the Director may undertake, order, or have done any and all work that is reasonably considered necessary to restore to a safe condition any such street, alley road, or right-of-way left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee, upon demand, shall pay to the City all costs associated with or arising from such corrective action.

#### 3.4. General Conditions & Reservation of Rights.

A. Minimum Interference with Public Travel, Grantee Liable for Damage. All work done under this franchise shall be done in a thorough and workmanlike manner. The Grantee shall leave trenches, ditches, and tunnels necessary in the laying of fiber optic or other telecommunications system distribution lines, the openings of trenches and the construction of other facilities in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or other injury shall not arise or occur by reason of such work; where any such trenches, ditches, or tunnels are left open at night, the Grantee

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shall place warning lights and barricades at such a position as to give adequate warning of such work. The Grantee shall be liable for any injury to person or persons, or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

B. All City Road Rights Reserved. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, rights-of-way, or other City property, and this franchise shall not be construed to deprive the City of any powers, rights, or privileges which it now has or may hereafter acquire to regulate the use of and to control the City roads, rights-of-way, and other City property covered by this franchise.

C. City may Change and Improve Roads Without Liability.

1. If at any time the City determines it appropriate to improve or change any City road, right-of-way, or other City property subject to this franchise, whether by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same, by construction of drainage facilities, or in any other manner, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at its own expense, move and change any items,

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attachments, or appurtenances it has installed pursuant to the rights granted by this ordinance to conform to such public improvement. The City will avoid the need for such moving or changing whenever reasonably possible.

2. In the event Federal, State, or other funds are specifically available for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained for utility relocating purposes.

3. The City shall in no way be held liable for any damage to said Grantee that may occur by reason of any of the City's improvements, changes, or works above enumerated, except for damage caused solely by negligence of the City's employees or agents.

4. All work performed by the Grantee under this section shall be under the direction and approval of the Director and shall be subject to the Director's approval. The Grantee shall pay those costs and expenses incurred in the examination, inspection and approval of such work.

D. Notice of Activities by the City. The laying, construction, operation, and maintenance of the Grantee's distribution system authorized by this franchise shall not preclude the said City, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the said lines and facilities of the Grantee

providing the Grantee shall be given five (5) business days' notice of said work: PROVIDED THAT, the necessity of such notice shall be deemed waived if the work in question is required to be commenced immediately due to the threat to public safety.

E. Reference, Monuments and Markers. Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Director. The cost of monuments or other markers lost, destroyed or disturbed and the expense of replacement by approved monuments shall be borne by the Grantee.

F. Vacation of City Streets, Roads, Alleys, or Rights of Way. If at any time the City determines it appropriate to vacate any City road, street, alley, or right-of-way which is subject to rights granted by this franchise and said vacation, then the City shall give ninety (90) days written notice to the Grantee, and may at their option, after granting a reasonable alternate route, terminate this franchise with reference to such



vacated City street, alley, road, right-of-way: PROVIDED THAT, the vacation shall be subject to the grant to the Franchisee of a reasonable time to relocate at its sole expense the facilities it had installed in the vacated property. The City shall not be liable for any damages or loss to the Grantee by reason of such termination.

SECTION IV: Taxes, Fees, and Financial Controls.

4.1. Washington law, RCW 35.21.860, currently limits the tax City may impose on Grantee's activities under this Ordinance to six percent (6%) of revenue derived from the provision of network telephone service and otherwise prohibits City from imposing a franchise fee or other fee or charge for Grantee's use of the right-of-way. In addition, the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived from Grantee's provision of internet access services. If federal or Washington law is changed such that City may impose a franchise fee, tax, or other charge on Grantee's services, or if City elects to impose on providers within the City a tax on network telephone service under RCW 35.21.860, other than that currently imposed pursuant to Chapter 3.22 of the Municipal Code, as now existing or hereafter amended or succeeded, the City shall provide Grantee with at least 6 months' written notice of its intent to revise this Ordinance or otherwise impose such a fee, tax, or charge. In recognition of the federal limitation, at this time the City will not require

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the payment of a franchise fee, but specifically reserves the right to require the commencement of such a payment under the following terms and conditions:

A. Commencement: The City shall give the Grantee written notice no less than six months before the date upon which the fee will begin to be assessed. The fee shall be in an amount no greater than the maximum allowed by applicable law from the gross revenue upon which the fee may be imposed derived from the operation of Grantee's system to service in the Franchise Area; PROVIDED THAT, the fee may be initially set at a lesser figure, but may be adjusted by action of the City Council on an annual basis.

B. For purposes of determination of the amount to be paid in the event a franchise fee is established, such definitions as may be set forth in the applicable federal law shall apply; PROVIDED THAT, in the absence of any such definitions, the following definitions shall apply:

1. "Gross Subscriber Revenues" is defined to mean all amounts derived by Grantee in whatever form and from all sources, from the operation of Grantee's telecommunications system to provide telecommunications service within the Franchise Area. "Gross Subscriber Revenues" shall include all amounts for all telecommunications services including internet services to the extent permitted by applicable law.

2. "Gross Subscriber Revenues" shall not include bad debt, sales taxes, or other taxes and fees that are collected by Grantee on behalf of, and for payment to, the local, state, or federal government. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state or local law.

This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

3. Grantee's Franchise fee payments to City shall be computed semiannually on June 30 and December 31. Each semiannual payment shall be due and payable no later than thirty (30) days after the last day of the preceding semiannual calendar period.

4.2 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.3. Semiannual Franchise Fee Reports. Each payment shall be accompanied by a report to the City, containing an accurate statement in summarized form.

4.4. Audits. Upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited.

4.5. Additional Commitments Not Franchise Fees. The Grantee may, in lieu of all or a portion of tax or fee payment required pursuant to the provisions of this ordinance, provide telecommunications or other services to the City or its affiliated entities. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation, and the offset value of any such services provided to the City or its affiliated entities will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

4.6. Costs of Publication. Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by City or applicable law.

4.7. Tax Liability. Payment of any Franchise fees which may be imposed upon Grantee under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by City.

4.8. Payment on Termination. If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Subscriber Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in security provided by the Grantee.

SECTION V: Grantee to Indemnify City: Liability Insurance.

5.1. The Grantee does hereby agree to protect and save harmless said City from all third party claims, actions, or damages of every kind and description which may be asserted against such City by reason of the Grantee's negligent or intentional acts in connection with the construction, operation, and maintenance of said distribution system.

A. In case that a suit or action is brought against the City for damages arising out of or by reason of the above-

mentioned causes, the Grantee will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense.

B. In case a final judgment shall be rendered against the City in such suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined by a trial court, appellate court or courts, if appeal be taken, if determined adversely to said City.

C. Upon Grantee's failure to satisfy any such final judgment within the ninety (90) day period, the City, by action of the City Council, may upon due notice terminate this franchise and the City shall have a lien upon the distribution system which may be enforced against the property for the full amount of any such final judgment so taken against said City: PROVIDED THAT, such lien shall not restrict the City from taking any lawful action to collect any balance of such judgment, as well as the reasonable costs and fees incurred by the City in taking the collection action.

5.2. For the purpose of securing to the City full and complete performance of the covenants contained in this paragraph, the Grantee shall, at its own expense, procure and keep in force during the life of this franchise, liability insurance in a company or companies to be approved by the City, the minimum limits of such insurance to be not less than

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\$2,000,000 and such additional proof thereof shall be furnished to the City from time to time as it shall require. The policy shall be of an occurrence nature. Upon request of the City, the minimum limits of insurance shall be changed to reflect inflationary (cost of living) costs increases.

5.3. Acceptance by the City of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

SECTION VI: Franchise Not Exclusive. This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit said City from granting other franchises of like nature or franchises for other public or private utilities under, along, across, over, and upon any of the City streets, alleys, roads, or rights-of-way subject to this franchise.

SECTION VII: Provisions Bind Successor. All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

SECTION VIII: Revocation for Non-Compliance. If the Grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect after the giving of written notice of such violation or

failure to comply or fail to heed or comply with any other notice given the Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the City, by action of the City Council, PROVIDED, however, that the City shall give thirty (30) days written notice of its intention to revoke or annul the franchise during which period the Grantee shall have the opportunity to remedy the situation.

SECTION IX: Grantee to File Acceptance. The full acceptance of this franchise and all its terms and conditions by Astound Broadband, LLC, in writing within thirty (30) days from the date of execution of this Ordinance by the Mayor, is to be filed with the Clerk-treasurer of the City, and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

SECTION X: Notifications, Venue & Associated Matters.

10.1. Any notice provided for or concerning this franchise to be sent to the Grantee shall be in writing and be deemed sufficiently given when either [a] personally served upon the authorized representative of the other party or [b] sent by certified or registered mail, return receipt requested, and first class mail to the address of the other set forth in the following paragraphs.

A. The address of the Grantee is Astound Broadband, LLC, 401 Kirkland Parkplace, Kirkland, WA 98033 Attention: Steve Weed, CEO, and Jim Penney, EVP.

B. The address of the City is 100 S. 3<sup>rd</sup> Street, McCleary, Washington 98557 Attention: Wendy Collins, Clerk-treasurer.

In recognition that the individuals named may leave those positions or the parties relocate, a notice shall be deemed properly addressed if it is sent to the indicated address to the attention of the position designate unless a successor address has been provided pursuant to the following paragraph. A notice shall be deemed to have been given upon the date of service, if personally served, or upon the fifth business day following its mailing, properly addressed and postage prepaid.

Either party may from time to time notify the other party in writing of a change of address to which notifications are to be sent. In the absence of such notification, the addresses set forth above shall be deemed applicable,

10.2. In the event of any litigation arising out of the performance of this Contract, it is agreed the Courts of the County of Grays Harbor, State of Washington, shall be Courts of proper venue. Further, in addition to any other relief which may be granted to the prevailing party, the Court may award the prevailing party reasonable attorneys' fees and costs.

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SECTION XI: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION XII: In recognition of the provisions of state law, including but not limited to RCW 35A.47.040, this Ordinance shall take effect upon the fifth day following date of publication.

SECTION XIII: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_,  
2015, by the City Council of the City of McCleary, and signed in  
approval therewith this \_\_\_\_\_ day of \_\_\_\_\_,  
2015.

CITY OF McCLEARY:

\_\_\_\_\_  
D. GARY DENT, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON     )  
                                      : ss.  
GRAYS HARBOR COUNTY    )

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number \_\_\_\_\_ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number \_\_\_\_\_, as it was published, is on file in the appropriate records of the City of McCleary.

\_\_\_\_\_  
WENDY COLLINS

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SIGNED AND SWORN to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF  
WASHINGTON, Residing at:  
My appointment expires:

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