

CONTRACT NO. \_\_\_\_\_

DEPARTMENT: Public Works-Sewer

FEDERAL TAXPAYER I.D. 91-0890718

CONSULTANT: Gray & Osborne, Inc.

SERVICES PROVIDED: Engineering Services for Renovation of Sewer Pump Station #4

AMOUNT: \$32,980.00

FUND SOURCE: Sewer Capital Reserve

DURATION: FROM: January 24, 2019

TO: December 31, 2019

## **AGREEMENT**

THIS AGREEMENT made and entered into on this 24<sup>th</sup> day of January, 2019, by and between the *CITY OF BURLINGTON*, (hereafter referred to as the "City"), and **Gray & Osborne, Inc.**, (hereafter referred to as "Provider").

### **WITNESSETH:**

WHEREAS, the City desires to contract with the Provider for providing of services; and

WHEREAS, the Provider is licensed and/or duly qualified to provide such services; and

WHEREAS, the City has an interest in promoting the health, safety and welfare of the citizens of the City of Burlington; and

WHEREAS, the Scope of Work included in this Agreement is consistent with promoting the interests of the City; and

WHEREAS, the City and the Provider are desirous of entering into an agreement to formalize their relationship.

**NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the City and Provider do mutually agree as follows:**

### **1. WORK AND/OR SERVICES TO BE PROVIDED BY THE PARTIES:**

- a. The Provider shall complete in a satisfactory and proper manner, engineering oversight and management of renovation of Pump Station #4, as determined by the City, and as further described in "**Exhibit A, & B**", Scope of Work and/or Services of Provider, which is attached hereto and incorporated herein by reference.

- b. The City will provide such assistance and guidance to the Provider as may be required to support the objectives of this Agreement and additional duties as outlined in "**Exhibit A**," Scope of Work and/or Services of City, which is attached hereto and incorporated herein by reference.

2. TIME OF PERFORMANCE:

All services described under Scope of Work and/or Services shall be conducted on or before December 31, 2019.

3. CONSIDERATION:

The City shall pay to the Provider for work and/or services as follows: The sums billed to the City shall not exceed the total sum of **\$32,980.00**. Provider shall bill the City of Burlington monthly by way of itemized invoices for the services rendered under this Agreement. Any deposits paid by the City in advance shall be offset against amounts billed, and shall be reflected in the Provider's invoice.

4. RELATIONSHIP:

The City and Provider intend that an independent contractual relationship be created by this Agreement. Provider is not considered to be an employee of the City for any purpose, and neither the Provider nor any employee of the Provider shall be entitled to any of the benefits the City provides for the City's employees, including but not limited to health insurance, sick or annual leave, or worker's compensation. Provider specifically represents and stipulates that the Provider is engaged in the business of providing the services set forth in this Agreement, whether or not for profit, and that provider is fully registered and legally authorized to conduct such business, and pays all necessary taxes and assessments levied against such business.

5. SUSPENSION, TERMINATION, AND CLOSE OUT:

If the Provider fails to comply with the terms and conditions of this Agreement, the City may pursue such remedies as are legally available, including but not limited to, the suspension or termination of this Agreement.

Further, in the event the Provider has failed to perform any substantial obligation to be performed by the Provider under this Agreement, then the City may, upon written notice to the Provider, withhold all monies due and payable to Provider, without penalty, until such failure to perform is cured or otherwise adjudicated.

6. CHANGES, AMENDMENTS, MODIFICATIONS:

Either party may request changes to the Agreement. Any and all agreed modifications shall be in writing and signed by each of the parties.

7. REPORTS AND INFORMATION:

The Provider, in such form as the City may require, shall provide reports as to the status of the work or services undertaken pursuant to this Agreement, including the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.

8. AUDITS AND INSPECTIONS:

The City or its delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as a part of the Agreement by whatever legal and reasonable means are deemed by the City.

9. DEFENSE & INDEMNITY AGREEMENT:

Provider agrees to defend, indemnify and save harmless the City, their appointed and elective officers, subcontractors, agents and/or employees, from and against all loss or expense, including but not limited to judgments, settlements, attorney's fees and costs by reason of any and all claims and demands upon the City, their appointed or elected officials, subcontractors, agents and/or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Provider, its subcontractors, agents and/or employees, except only such injury or damage as shall have been occasioned by the sole negligence of the City, or their appointed or elected officials, subcontractors, agents and/or employees. It is further provided that no liability shall attach to the City by reason of entering into this Agreement, except as expressly provided herein.

10. NO THIRD-PARTY BENEFICIARIES:

Except as specifically provided herein, this Agreement is for the parties hereto only, and is not intended to benefit any other person or entity, and no person or entity not a party to this Agreement shall have any third-party beneficiary or other rights whatsoever hereunder.

11. PROOF OF INSURANCE:

The Provider shall provide proof of insurance for general comprehensive liability in the amount of \$1,000,000 per occurrence to cover activities during the term of this Agreement. Proof of insurance shall be in a form acceptable and approved by the City. A certificate of insurance naming the City of Burlington at 833 S. Spruce Street, Burlington, WA 98233, its elected and/or appointed officials and/or officers, subcontractors, agents and/or employees as additional insureds shall accompany this Agreement for signing.

12. EQUAL OPPORTUNITY EMPLOYER:

The Provider shall comply with Federal, State and local laws as to the requirements of an Equal Opportunity Employer.

13. GOVERNING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, including any regulation, ordinance or other requirement of any governmental agency having or asserting jurisdiction over the services provided hereunder.

14. VENUE AND JURISDICTION:

All parties shall submit and not object to jurisdiction and venue being that of Skagit County, Washington, in connection with any claims arising out of this Agreement.

15. SEVERABILITY:

If any term or condition of this Agreement is held invalid, such invalidity shall not affect other terms, conditions or application which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this Agreement are declared severable.

16. WAIVER:

Waiver of any breach or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No terms or conditions of this Agreement shall be held to be waived, modified or deleted except by an instrument in writing, signed by the parties hereto.

17. ENTIRE AGREEMENT:

This written Agreement represents the entire agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

18. COUNTERPARTS:

This Agreement may be executed in any number of identical counterparts, notwithstanding that all parties have not signed the same counterpart, with the same effect as if all parties had signed the same document. All counterparts shall be construed as and shall constitute one and the same agreement.

19. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior consent of the other party, which consent shall not be unreasonably delayed or withheld.

20. HEADINGS:

The headings to the paragraphs of this Agreement are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.

21. NOTICES:

Any notices to be sent to the City shall be sent to the City at the following address: City of Burlington  
ATTN: City Clerk  
833 S. Spruce Street  
Burlington, WA 98233

With additional copies to:  
Burlington Public Works Department and Burlington City Attorney

Any notices to be sent to Provider shall be sent to the following address:  
Gray & Osborne, Inc.  
1130 Rainier Ave. S. Suite 300  
Seattle, WA 98144

AUTHORITY

Each individual executing this Agreement on behalf of the City and the Provider represents and warrants that such individual(s) are duly authorized to execute and deliver this Agreement on behalf of the City or the Providers.

IN WITNESS WHEREOF, the City and the Provider have executed this Agreement as of the date and year last written below.

**CITY OF BURLINGTON**

**PROVIDER:**

\_\_\_\_\_  
Steve Sexton  
Mayor

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

Gray & Osborne, Inc  
Tax ID Number: 91-0890718

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Marv Pulst, P.E.  
Public Works Director

\_\_\_\_\_  
Dr. Renée C. Sinclair, CPFO  
Director of Budget & Accounting

Approved As To Form

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City Attorney

**EXHIBIT "A"**

**SCOPE OF WORK**

**CITY OF BURLINGTON  
WASTEWATER PUMP STATION 4 UPGRADE  
ENGINEERING SERVICES DURING CONSTRUCTION  
January 9, 2019**

**G&O # 18481.00**

The scope of work consists of engineering services during construction of the upgrade to Wastewater Pump Station 4.

The specific tasks in the scope of work for this project are described below.

1. Conduct a preconstruction conference
2. Review of submittals.
3. Respond to Contractor's Requests for Information (RFIs).
4. Prepare Change Orders (if any).
5. Process Progress Payment Requests.
6. Attend periodic construction progress meeting
7. Attend final inspection.
8. Prepare recommendation of final acceptance to the City of Burlington.
9. Prepare Record Drawings.

**TASKS BY OTHERS**

It is assumed that the City of Burlington will conduct on-site inspection.

**EXHIBIT "B"**

**ENGINEERING SERVICES  
SCOPE AND ESTIMATED COST**

**CITY OF BURLINGTON WASTEWATER PUMP STATION 4 -SERVICES DURING CONSTRUCTION**

Tasks	Principal Hours	Project Manager Hours	Sr. Structural Eng. Hours	Electrical Engineer	AutoCAD Hours
Pre-construction Conference		6			
Submittal Review		32	6	8	
Respond to RFIs		12	4	4	4
Prepare Change Orders		12	2	2	6
Progress Payments		12			
Construction Progress Meetings		16	6	6	
Final Inspection		6	6	6	
Recommendation of final acceptance		4			
Record Drawings		12	4	4	12
QA/QC	4				
Hour Estimate:	4	112	28	30	22
Fully Burdened Billing Rate Range:*	\$112 to \$182	\$115 to \$178	\$114 to \$158	\$102 to \$160	\$92 to \$115
Estimated Fully Burdened Billing Rate:*	\$175	\$175	\$150	\$160	\$90
Fully Burdened Labor Cost:	\$700	\$19,600	\$4,200	\$4,800	\$1,980

Total Fully Burdened Labor Cost: \$ 31,280

Direct Non-Salary Cost:

Mileage & Expenses (Mileage @ \$0.58/mile) \$ 700

Printing \$ 1,000

**TOTAL ESTIMATED COST: \$ 32,980**

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