



**SHEA, CARR & JEWELL, INC.
AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement for Professional Services (or this “Agreement”) is dated xxxxxx₂ and is made and entered into by and between:

Firm: Shea, Carr & Jewell, Inc. (dba SCJ Alliance) (“SCJ”)
Address: 8730 Tallon Lane NE, Suite 200, Lacey, WA 98516
Telephone: 360-352-1465
Fax: 360-352-1509

and

Client: City of McCleary, Attn: Todd Baun Public Works Director (“Client”)
Address: 100 South 3rd Street McCleary, WA 98557
Telephone: 360-495-3667 ext. 103
Fax: N/A
Email: toddb@cityofmcclary.com

Section 1 – The Project. SCJ shall perform all services, as described in Section 2 below, for the following project:

- a. **Project Name:** McCleary Comprehensive Plan Update (the “Project”)
- b. **Project Number:** SCJ# Client# N/A
- c. **Project Location:** McCleary, WA

d. Project Timeline: SCJ shall perform its services as expeditiously as is consistent with the professional skill and care and the orderly progress of the Project. If SCJ is delayed in meeting this projected timeline due to causes beyond its control (including, but not limited to, war, riot, civil disorder, fire, labor trouble, strikes, accidents, energy failure, equipment breakdown, delays of suppliers, printers, or carriers, action of government or civil authority, or acts of God), then the projected timeline shall be extended accordingly.

Section 2 – Scope of Work. SCJ shall perform the services (the “Work”) described in Attachment A:

Section 3 – Compensation to SCJ. SCJ shall perform the Work for Client for the following compensation:

Budget Summary	Fee Amount	Fee Basis
Phase 01 -		T&M
Phase 02 -		T&M
Phase 03 -		T&M
Phase 04 -		T&M
Phase 05 -		T&M
Phase 99- Expenses		T&M
TOTAL ESTIMATED FEE:	\$ 89,500	



Time and Materials. When the basis of SCJ's compensation is time and materials, Client will pay SCJ for the time SCJ spends and all the expenses SCJ incurs (see expenses addressed below) in performing the Work, pursuant to the Billing Rate Schedule shown in Attachment B. SCJ may change its billing rates and/or the reimbursement rate for the expenses it incurs from time to time due to market conditions with prior notice to Client. If SCJ changes any of its billing rates and/or reimbursement rates for its expenses, SCJ shall promptly provide a copy of its revised Billing Rate Schedule to Client.

Changes in billing rates and/or reimbursement rates for expenses is not a basis for increasing the Total Estimated Fee shown above.

Lump Sum. When the basis of SCJ's compensation is a lump sum, Client will pay SCJ on a percent-complete basis of the Total Maximum Fee for the Work described in Section 2 of this Agreement. SCJ will be compensated in full upon completion of the Work. Any out-of-scope or extra services requested by the Client will be paid to SCJ on a time and materials basis in accordance with the provisions described above under Time and Materials.

Retainers. Client will pay a retainer to SCJ for the services in the amount of \$ N/A. This fee shall be payable in advance upon contract signing. The retainer will not be applied to invoices until a history of timely invoice payment has been established and will not be completely released until the final project invoice. The specific retainer application schedule will be project specific and will be established by mutual agreement between the Client and SCJ.

Expenses. Expenses will include, but not be limited to, the following: transportation costs, including mileage; meals and lodging; laboratory tests and analyses; computer services; word processing services; telephone, printing, binding, and reproduction charges; all costs associated with outside consultants and other outside services and facilities; and other similar costs. Expenses which SCJ incurs on Client's behalf for outside consultants and other outside services or facilities shall include a 10% markup to compensate SCJ for its activities related to these expenses, such as: excise tax, liability insurance, profit, and additional administrative overhead.

Section 4 – Billing and Payment. SCJ will provide Client with an invoice once per month for Work on the Project during the prior month. Client agrees to pay SCJ within 30 days of receiving SCJ's invoice, after which date, if the invoice has not been paid in full, Client's account will become delinquent. Client is deemed to have received an invoice three days after SCJ mailed it to Client at its address provided in this Agreement, postage prepaid. If Client's account becomes delinquent at any time, the following shall apply:

- SCJ may, in its sole discretion, cease all Work on the Project and retain all records and work product in its possession related to the Project until such time as Client's account is brought current; and/or
- SCJ will assess interest at the rate of 1.5 percent per month against any delinquent invoice balance, unless such rate of interest exceeds the legal limit, in which case interest will be assessed against the delinquent invoice balance at the highest legal rate.

Section 5 – Standard of Care; No Warranties. SCJ will perform the Work consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances at the time the Work is performed. SCJ does not make or intend to make any warranty, expressed or implied, by performing any of the Work.

Section 6 – No Third-Party Beneficiaries. The parties do not intend, and no such intent shall be inferred, that SCJ assumes a direct obligation to any third party by entering into this Agreement.

Section 7 – Notice to Cure a Default. If SCJ materially breaches a provision of this Agreement, SCJ may be deemed in default. If SCJ fails within five (5) business days after written notification to commence and continue satisfactory



correction of such default with diligence and promptness, then Client shall give SCJ a second written notice of termination within three (3) business days following the end of the five (5) day period.

Section 8 – Termination by Client.

- 8.1 Client may terminate this Agreement as provided in Section 7 in addition to any other remedy provided by this Agreement. If Client's costs arising out of SCJ's failure to cure the default, including the cost of completing the Work, exceed the unpaid Compensation to SCJ, SCJ shall be liable to the Client for such excess costs as limited by Section 10 below. If Client's costs are less than the unpaid Compensation to SCJ, Client shall pay the difference to SCJ. In the event Client exercises its rights under this Section 8, Client shall furnish to SCJ a detailed accounting of the costs incurred by Client.
- 8.2 Client may terminate this Agreement for its own convenience upon fourteen (14) days written notice to SCJ. Upon any termination for convenience, Client shall pay SCJ for all sums due through the effective date of the termination including, but not limited to, the amounts provided in Section 3 above and any expected profits.
- 8.3 If Client terminates this Agreement, with or without cause, before SCJ completes all of the Work, SCJ shall have the right to complete such services, analysis, and records, within its sole discretion, as are necessary to place SCJ's files in order and to complete a report on the services performed pursuant to this Agreement ("Project Closeout"). The time expended and expenses incurred by SCJ in carrying out the Project Closeout shall be billed to Client in addition to all time expended and expenses incurred by SCJ up to the date of termination.

Section 9 – Termination by SCJ.

- 9.1 SCJ may terminate this Agreement upon five (5) days written notice of the following:
 - a. Client fails to pay SCJ in accordance with this Agreement.
 - b. Client otherwise materially breaches this Agreement.
- 9.2 Upon termination by SCJ pursuant to this Agreement, SCJ shall be entitled to recover from Client payment for all sums due through the date of termination and for any proven loss, cost, or expense including, but not limited to, the amounts owing from Section 3 above, expected profits, and Project Closeout.

Section 10 – Limitation of Liability. The parties agree that the liability of SCJ (which includes SCJ's shareholders, directors, officers, employees, and agents) to Client for any loss or damage (whether damage or destruction of property or personal injury or death) related in any way to SCJ's performance or nonperformance under this Agreement shall be limited to the total Compensation in Section 3 above or one hundred thousand dollars (\$100,000), whichever is greater. IN NO EVENT SHALL SCJ BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIFE EXPECTANCY DAMAGES ARISING OUT OF THIS AGREEMENT.

Section 11 – Indemnification.

- 11.1 SCJ shall indemnify and hold Client harmless from all claims, demands or lawsuits at law or equity for personal injury or property damage ("Claim") arising in whole or in part from the negligence of SCJ or SCJ's agents, employees, or subconsultants; provided that nothing herein shall require SCJ to indemnify and hold harmless Client from Claims based solely upon the negligence of Client, its agents, officers or employees.
- 11.2 Client shall indemnify and hold harmless SCJ, its officers, directors, shareholders, and employees, from all claims, demands, or lawsuits at law or equity for personal injury or property damage ("Claim") arising in



whole or in part from the negligence of Client or Client’s agents, employees, contractors, or subcontractors; providing that nothing herein shall require Client to indemnify and hold harmless SCJ from Claims based solely upon the negligence of SCJ, its agents, officers, or employees.

11.3 The indemnifications contained in Sections 11.1 and 11.2 are valid and enforceable only to the extent of the indemnitor’s negligence where the damages are caused by or result from the concurrent negligence of (i) SCJ or its officers, employees, and agents, and (ii) Client or its officers, employees, and agents.

11.4 Both SCJ and Client expressly waive any immunity, from claims against each other, provided by the Washington State Industrial Insurance Act (RCW 51) or similar act of any other state. The provisions of this section shall not be limited in any way by any limitation on benefits payable to or for any third party under any State’s Workers’ Compensation Act. This waiver is not intended to waive and does not waive SCJ’s design professional immunity from claims by an injured worker or beneficiary provided by RCW 51.24.035.

11.5 Both SCJ and Client acknowledge that they have mutually negotiated this waiver of immunity under the Washington State Industrial Insurance Act (RCW 51).

<u>Initial here for Voluntary Waiver</u>
SCJ _____
Client _____

Initial here

Section 12 – Concurrent Work. This Agreement shall not limit, in any way, other work SCJ may undertake for any other client.

Section 13 – Insurance. SCJ shall obtain and keep in force during the terms of this Agreement insurance coverage as follows: (a) Workers’ Compensation, as required by applicable statute; (b) Comprehensive General Liability, \$2 million per occurrence and \$4 million in the aggregate; (c) Automobile, \$1 million combined single limit; and (d) Professional Liability, \$1 million per claim and \$2 million in the aggregate.

SCJ will provide Client with thirty (30) day notice prior to cancelling any of the aforementioned policies.

Section 14 – Dispute Resolution, Jurisdiction, Venue, Attorney Fees, and Applicable Law.

14.1 Mediation. In the event that any dispute arises between the parties related to this Agreement, the parties agree to submit the dispute to non-binding mediation upon either party providing the other with written notice describing the dispute in detail. The parties shall cooperate in selecting the mediator, and the mediation shall occur within 30 days of a party providing written notice to the other party of the dispute. The mediation shall take place in Tacoma, Washington.

14.2 Arbitration. Except as provided below in Section 14.3., if such mediation does not resolve the dispute, such dispute shall be submitted to final and binding arbitration pursuant to the Washington’s Uniform Arbitration Act (RCW 7.04A). The arbitration shall be conducted in Tacoma, Washington. The prevailing party in any such arbitration shall be entitled to recover its reasonable costs and attorney fees.

14.3 Fee Disputes. Following mediation pursuant to Section 14.1, any dispute involving only Client’s failure to pay SCJ pursuant to this Agreement for SCJ’s performance of the Work, may be resolved by commencing a lawsuit in court. Venue for the lawsuit shall be Pierce County, Washington. The prevailing party in any such lawsuit shall be entitled to recover its reasonable costs and attorney fees.

14.4 Applicable Law. This Agreement shall be governed by the laws of the State of Washington.



Section 15 – Ownership of Work Product and Confidentiality. All reports, plans, specifications, field data, notes and other documents, including all documents on electronic media, which SCJ prepares in connection with the Project (which information is collectively referred to herein as “SCJ’s Work Product”) are instruments of SCJ’s service and shall remain the sole property of SCJ, unless agreed otherwise in writing. Client shall not reuse or modify SCJ’s Work Product, without SCJ’s prior written authorization, which authorization SCJ may not unreasonably withhold. Any unauthorized use of the SCJ’s Work Product shall be at the Client’s sole risk and without liability to SCJ and the Client agrees to defend, indemnify and hold harmless SCJ for all claims and liability resulting from such unauthorized use.

Client shall maintain the confidentiality of information specifically designated as confidential by SCJ, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Client from establishing a claim or defense in an adjudicatory proceeding. Only information designated as confidential by SCJ shall be deemed confidential as provided by this paragraph.

Section 16 – Electronic Files and Data. Subject to Section 15 above, if requested, SCJ will provide electronic files to Client for its use and reference in connection with the Project. Client acknowledges and agrees that it shall be solely responsible for inspecting and testing any such electronic files before accessing or using them to verify they are free from bugs, viruses, or other destructive or harmful programs (referred to collectively herein as “Viruses”). Further, SCJ does not make or intend to make any warranty, expressed or implied, that any electronic file it provides to Client will be free from Viruses. Therefore, Client waives any claim it may have against SCJ which waiver includes all measures of damages, including, but not limited to, general, special, direct, indirect, consequential (including loss of profits and/or business), exemplary, statutory, and punitive damages) because any electronic files SCJ provides to client contain any Viruses.

All deliverables provided to Client for the Work shall be hard copies unless otherwise stated in Attachment B. If requested, SCJ may provide electronic files to Client; however, Client acknowledges and agrees that it shall be solely responsible for verifying consistency between electronic files and hard copy deliverables. In the event of any inconsistency between hard copy deliverables and electronic files, the hard copy deliverable shall govern.

Section 17 – Notices. Any written notice provided by one of the parties to the other in connection with this Agreement shall be received when personally delivered, when received by facsimile, or on the third day following mailing by USPS, postage prepaid, to:

SCJ:	SCJ Alliance	Client:	City of McCleary
	Attn: Dan Penrose, AICP		Attn: Todd Baun, Public Works Director
	8730 Tallon Lane NE		100 South 3rd Street McCleary, WA 98557
	Suite 200		McCleary, WA 98557
	Lacey, WA 98516		360-495-3667 ext. 103
	Fax: 360-352-1509		Fax: N/A
	Email: dan.penrose@scjalliance.com		Email: toddb@cityofmcclary.com

Section 18 – Survival and Severability. The terms and conditions of this Agreement shall survive the completion of the Work and the termination of this Agreement, whether for cause or for convenience. If any term or condition of this Agreement is ever held to be unenforceable, all remaining terms and conditions shall continue in full force and effect.

Section 19 – Modifications. This Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. Except as provided in Section 3 above regarding the periodic adjustment of SCJ’s billing rates and/or reimbursement rate of expense, this Agreement may only be amended, modified, or added to by written instrument properly signed by both parties. The parties acknowledge the general contract rule that a clause in a contract, such as this one, prohibiting oral modifications is itself generally subject to oral modification. However, in order to ensure certainty as to the terms and conditions of this Agreement, the parties waive this general contract rule.



Section 20 – Assignment. Neither party may assign all or a portion of its rights under this Agreement or delegate all or a portion of its obligations under this Agreement without the express written consent of the other party.

Section 21 – Independent Review. The parties acknowledge that they have read this Agreement and fully understand its terms. The parties further acknowledge that the terms of this Agreement have been mutually negotiated at arms-length. The parties waive the general rule of construction, therefore, that an agreement shall be construed against its drafter.

Section 22 – Acceptance and Authorization to Proceed. By signing this Agreement, Client agrees that the terms and conditions of this Agreement are acceptable and approved. If Client is a legal entity (e.g., a corporation, partnership, or limited liability company), then the person who signs on behalf of Client certifies that he or she has the authority to bind Client to the terms and conditions of this Agreement. If Client is a legal entity and it claims at any time that the person who signed this Agreement lacked the authority to do so, SCJ may name such person, in addition to Client, in any lawsuit or arbitration which arises relating to this Agreement and seek to hold such person liable, along with Client, in such proceeding. Upon SCJ’s receipt of this fully executed Agreement, SCJ shall have authority to commence the Work.

Section 23 – Attachments. The following attachments are hereby made a part of this Agreement.

- Attachment A – Scope of Work
- Attachment B – Billing Rate Schedule

SCJ:

CLIENT:

SCJ Alliance

City of McCleary

By: _____

By: _____

Sign here

Dan Penrose, AICP _____ (Print name)

_____ (Print name)

Principal _____ (Title)

_____ (Title)

_____ (Date)

_____ (Date)