

INTERLOCAL COOPERATION AGREEMENT
2003-C09

This AGREEMENT made and entered into, pursuant to the laws of the State of Washington authorizing agreements relating to cooperation, between the CITY OF McCLEARY, hereinafter referred to as "McCLEARY"; and the GRAYS HARBOR PUBLIC DEVELOPMENT AUTHORITY, hereinafter referred to as the "AUTHORITY".

RECITALS

1. The AUTHORITY and McCLEARY are both municipal corporations situated in the County of Grays Harbor, State of Washington, McCLEARY being organized under RCW 35A and the AUTHORITY being organized pursuant to RCW 35.21.730. Each has the authority to enter into Agreements under the provisions of RCW 39.34. They further have the authority to transfer property pursuant to the provisions of RCW 39.33.
2. Within the scope of McCLEARY's operation, it has certain equipment and accredited personnel for maintenance and operation of the city infrastructure, such as the water and wastewater systems or the streets.
3. Within the scope of its operation, the AUTHORITY has certain equipment and accredited personnel for maintenance and operation of the Satsop Development Park infrastructure. Further, upon its site, the AUTHORITY has certain equipment and materials that may be of use to McCLEARY.
4. While at this time the anticipated cooperation is limited to the need of the AUTHORITY for a Wastewater Treatment Plant Operator Level 2 or 3 oversight of the AUTHORITY's Wastewater Plant, the parties wish to reserve the ability to continue this cooperative relationship in such other manners as may be approved by their respective governing bodies without the necessity of execution and filing of another agreement.

NOW, THEREFORE, the parties agree as follows:

SECTION I: At such time as may be mutually agreed upon, the AUTHORITY shall request of McCLEARY the services of their senior Wastewater Treatment Plant Operator to act as the Person-In-Charge of the AUTHORITY's Wastewater Treatment Plant until such time as the AUTHORITY's designated staff members obtain the necessary Certifications to operate the Treatment Plant independently.

SECTION II: The entity requesting the services shall defend, indemnify, and hold the providing entity, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and

damages caused by the intentionally wrongful acts of the providing entity, its officers, agents, or employees.

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

SECTION III:

A. In carrying forth the activities anticipated by Section I, McCLEARY's staff shall at all times be under the control and direction of the McCLEARY City Administrator or designee.

B. To the extent that future activities are carried out pursuant to the provisions of this Agreement, the staff of each party shall be under the control and direction of the respective employer.

SECTION IV: As to this and future activities, it is further agreed that the following provisions shall apply:

A. The scope of activity shall be such as may be authorized by the governing bodies of the two entities, subject to any limitation imposed by the respective entity's authorized powers and the limits imposed under any applicable law.

B. In the event the activity is not one in which there is an equivalent transfer of benefit, the entity requesting the service shall reimburse the other entity for utilization of its staff, equipment and supplies at such prices as may be agreed upon. A billing shall be submitted by the providing entity that shall be timely paid by the recipient entity.

C. Any request made of McCLEARY shall be directed in writing to the City Administrator. Any request made of the AUTHORITY shall be directed in writing to the AUTHORITY's Chief Executive Officer. It is recognized that the decision as to the actual performance of the request is to be made by the entity's governing body or to such individual or position to which the authority may be delegated.

SECTION V: This Agreement shall continue in full force and effect until one party gives the other party written notice of its desire and intention to terminate the

Agreement. The termination shall occur no sooner than thirty days after the receipt of the notice by the non-terminating entity. Any such termination shall not affect any responsibility arising under this Agreement in relation to activities previously performed.

SECTION VI: Any notice given under this agreement, other than requests for service under Section VI, shall be given in writing and shall be deemed received by the other entity three business days after the notice is mailed with the proper address and postage by certified mail, return receipt requested, or if personally delivered, upon the date of delivery.

Any notice given to McCLEARY shall be provided to the City Administrator of McCLEARY 100 S. 3rd Street, McCleary, Washington 98557 or by personal delivery at the City Hall. Any notice to be given to the AUTHORITY shall be provided to its Chief Executive Officer at 50 Enterprise Lane, Suite 101, Elma, Washington 98541, or by personal delivery to 50 Enterprise Lane, Elma Washington 98541, at the Satsop Development Park.

SECTION VII: The parties specifically agree as follows:

- A. That if litigation is commenced in relation to this Agreement, then the Court of appropriate venue shall be the Superior Court of the State of Washington in and for the County of Grays Harbor.
- B. That each has had the opportunity to have this document reviewed by counsel of their choice and the rules of interpretation against the drafter shall not apply.
- C. That this Agreement represents an incorporation of all negotiations and agreements between the parties.
- D. That in the event of litigation arising out of this Agreement between the parties as a result of alleged breach of the Agreement by either of the parties, then in addition to whatever other relief may be granted, the prevailing party shall be entitled to such sum for attorneys' fees and costs as may be determined to be appropriate by the Court hearing the matter.

SECTION VIII: If any section, provision, or part hereof shall be adjudged to be invalid by a Court of competent jurisdiction, such adjudication shall not affect the validity of this Agreement as a whole or any section, provision, or part thereof not adjudged invalid.

SECTION IX: Upon execution by the entities, this Agreement shall be filed as required under the provisions of RCW 39.34.040.

SECTION X: Public Corporation. AUTHORITY is organized pursuant to Ordinance 245 of the County of Grays Harbor and the laws of the State of Washington which provides as follows: All liabilities incurred by such public corporation, commission or authority shall be satisfied exclusively from the assets and credit of such public corporation, commission or authority and no creditor or other person shall have any right of action against the city, town or county creating such corporation, commission or authority on account of any debts, obligations or liabilities of such public corporation, commission or authority.

EXECUTED IN MULTIPLE COPIES upon the dates stated below.

GRAYS HARBOR
PUBLIC DEVELOPMENT AUTHORITY:



TAMI GARROW
CEO/PRESIDENT



Date

CITY OF McCLEARY:



WALLACE BENTLEY
MAYOR



Date

Attest:


