

## INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT entered into by and between the CITY OF ELMA, hereinafter "ELMA"; ELMA DISTRICT SCHOOL DISTRICT NUMBER 68, hereinafter "DISTRICT"; and the CITY OF McCLEARY, hereinafter "McCLEARY".

### R E C I T A L S:

1. The undersigned are municipal corporations organized under the laws of the State of Washington. As such, they are authorized to enter into interlocal agreements pursuant to the provisions of law including RCW 39.34.

2. McCLEARY and ELMA have negotiated agreements in relation to the granting of a franchise to the telecable provisioner commonly referred to as "COMCAST".

3. As part of that franchise, they have negotiated the right to require the provision of one or more channels dedicated to educational and governmental use.

4. The DISTRICT, through the operation of its educational program, maintains staff and equipment which, with the assistance of students, is capable of producing programs for distribution utilizing the referenced channel.

5. The parties wish to memorialize the terms of an agreement under which they will cooperatively utilize a channel for educational and governmental purposes.

NOW, THEREFORE, the parties agree as follows:

SECTION I: ELMA and McCLEARY shall reaffirm, to the extent such reaffirmation is necessary, their request to COMCAST for provision of a channel to be used for governmental and educational purposes. That request shall include the request and direction that COMCAST install the necessary connective facilities to a point outside such facility of the DISTRICT as may be designated by the DISTRICT.

SECTION II: During the term of this agreement, the DISTRICT shall provide and maintain the necessary equipment and staff to produce and/or broadcast programs upon the channel.

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Under this provision, the DISTRICT shall not be required to, but is not prohibited from, acquiring equipment of greater capability than it currently maintains and utilizes in the operation of its internal broadcasting program. In recognition of the underlying concept that the operation will be primarily operated by students of the DISTRICT at the direction of the DISTRICT'S staff member, there is no requirement that additional staffing be provided by the DISTRICT in order to fulfill this responsibility.

SECTION III: Each party shall have the right to an equal amount of time upon the channel. As referenced, it is recognized that within the course of educational options the DISTRICT maintains a class which produces programs specifically for distribution among its students. To the extent either McCLEARY or ELMA does not provide and/or request programming that would fully consume the time allocation, the DISTRICT may utilize that unutilized allocation for broadcasting programs chosen by it.

SECTION IV: Programming: It is recognized each party has specific interests in its program content and the characteristics thereof. In recognition of that, the parties agree that the party upon whose behalf or at whose direction a

particular program is broadcast over the channel shall be solely responsible for the content thereof. Further, as provided by Section V, it shall hold the other parties harmless from any and all claims whether based in contract, tort, or otherwise, that may be made as a result of such broadcast.

SECTION V: The Initiating Party at whose direction a program was broadcast shall defend, indemnify, and hold the other parties, their 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 broadcast of that program, except for injuries and damages caused by the sole negligence of the one of the other parties.

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 one or both of the other parties, their officers, officials, employees, and volunteers, the Initiating Party's liability hereunder shall be only to the extent of the Initiating Party's negligence or intentionally wrongful acts.

To the extent, if any, that the Act may be liable, it is further specifically and expressly understood that the indemnification provided herein constitutes each party'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 VI: GENERAL MATTERS:

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 VII: Governing Board: The operation of this channel shall be managed by a Board composed of three members. Each entity shall appoint one individual to serve as a member of that Board. The method utilized to choose a Member's representative shall be in the sole discretion of the Member.

The Board shall have the authority to prepare and adopt rules and regulations governing the operation of the channel, including access to the channel, the content of material to be broadcast thereon, and all other necessary and appropriate areas.

This regulatory authority shall be subject to such limitations as may be imposed by federal or state law.

The decision of the Board as to any particular matter within its authority shall be conclusive.

SECTION VIII: Term:

A. This contract shall have a term an initial term of two (2) years, unless earlier terminated by the Parties. It shall thereafter be renewed for additional one year periods

subject to the same terms and conditions, until such time as one of the Parties gives notice of intent to terminate.

B. It is agreed that this contract may be terminated by any party giving written notice to the other parties no later than June 15 of each calendar year.

SECTION IX: Nature of Channel: The parties specifically agree that the channel contemplated under this agreement is for a channel for utilization only by the DISTRICT (education) or the CITIES (governmental) and is not intended nor shall it be a public access channel.

SECTION X: Partial Invalidity:

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 XI: Authority:

Each party executing this Agreement represents that they have been authorized to execute the Agreement upon behalf of the party for whom they are signing.

SECTION XII: Any notice required to be given under this agreement shall be given in the following manner:

A. As to ELMA, by delivering or mailing to the Office of the Clerk-treasurer at P. O. Box E, City Hall, Elma, Washington 98541.

B. As to McCLEARY, by delivering or mailing to the Office of the Clerk-treasurer at P. O. Box 360, City Hall, McCleary, Washington 98557.

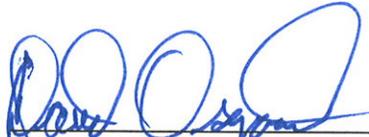
C. As to the DISTRICT, by delivering or mailing to the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any notice given by mail shall be deposited properly addressed with postage prepaid, certified mail, return receipt requested. It shall be deemed received upon the earlier of the third business day following mailing or the date of acceptance by the recipient shown upon the receipt. If personally delivered, it shall be deemed received upon delivery.

DATED: 8/2/04

CITY OF ELMA:



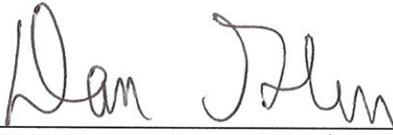
DAVID OSGOOD, Mayor

ATTEST:



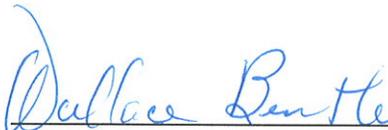
DIANA EASTON, Clerk-Treasurer

APPROVED AS TO FORM:



DANIEL O. GLENN, City Attorney

CITY OF McCLEARY:



WALLACE BENTLEY, Mayor

ATTEST:



DONNIE ROSTEDT, Clerk-Treasurer

APPROVED AS TO FORM:

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DANIEL O. GLENN, City Attorney

ELMA SCHOOL DISTRICT NUMBER 68

By   
\_\_\_\_\_  
CHAIR

By   
\_\_\_\_\_  
SECRETARY TO THE BOARD