

INTERLOCAL TRANSFER AGREEMENT

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 the "McCLEARY"; and the CITY OF ELMA, hereinafter referred to as "ELMA.

R E C I T A L S:

1. McCLEARY and ELMA are both municipal corporations situate in the County of Grays Harbor, State of Washington, each being organized under R.C.W. 35A. Each has the authority to enter into Agreements under the provisions of RCW 39.34 AND to transfer property pursuant to the provisions of RCW 39.33.

2. Within the scope of McCLEARY's operation, it maintains certain equipment for operation of its Fire Department. This has included the acquisition and use certain self-contained breathing apparatus, commonly referred to as Life Packs. Certain of these units have been declared surplus to its needs by the City Council.

3. ELMA has use for the surplus Life Packs owned by McCLEARY.

NOW, THEREFORE, the parties agree as follows:

SECTION I: At such time as may be mutually agreed upon, McCLEARY shall release to ELMA those certain units surplus by action of its Council, all as more fully set out on Exhibit #1. ELMA shall be responsible for transporting the items from the current site to such location as it deems appropriate.

SECTION II: A. It is specifically recognized that McCLEARY makes no warranty as to the quality of the units or their ability to perform. Thus, it specifically disclaims any warranty as to their condition or fitness for use. It shall be ELMA's sole responsibility to determine the respective unit's condition and its fitness for use by members of the ELMA Department.

B. Each party agrees to hold the other party harmless from any liability arising out of the performance of this Agreement to the extent or percentage which may be attributed by any trier of fact as being the responsibility of the respective parties. As to ELMA, that specifically includes the responsibility to hold McCLEARY harmless from any claim, whether based on tort, contract, or other theory, arising out of the use of the items transferred pursuant to this Agreement.

SECTION III: 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 Party recognizes the attorney drafting this document represents both cities and thus, the rule 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 IV: 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.

EXECUTED IN MULTIPLE COPIES upon the dates stated below.

CITY OF McCLEARY:

Dated: 1/26/05

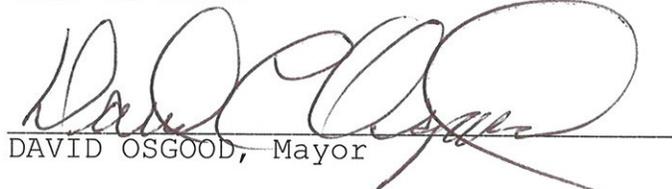

WALLACE BENTLEY, MAYOR

ATTEST:


DONNIE ROSTEDT, Clerk-treasurer

CITY OF ELMA:

Dated: 1/28/05


DAVID OSGOOD, Mayor

ATTEST:


DIANA EASTON, Clerk-Treasurer

APPROVED AS TO FORM:


DANIEL O. GLENN, City Attorney