

District Draft 2

MUTUAL AID AGREEMENT

THIS MUTUAL AID AGREEMENT ("Agreement") is entered into by and between PUBLIC UTILITY DISTRICT NUMBER 1 OF GRAYS HARBOR COUNTY, hereinafter "District"; and the CITY OF McCLEARY, hereinafter "City".

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

A. The District and the City, within the performance of their respective activities, maintain professional staff qualified to undertake repair, maintenance and replacement of electrical distribution systems.

B. At various times in the past, the District and the City have utilized the resources of the other to assist the receiving entity in the performance of its duty of service to its customers. An example is a purchasing interlocal agreement entered into between the parties in 2001.

C. The parties deem it appropriate to develop a written agreement to govern situations in which one party (the "Requesting Utility") may once again need the assistance of the other by setting forth the terms and conditions under which the Requesting Utility may request and utilize such services from the other (the "Responding Utility").

D. The intent and purpose of this Agreement is to exercise the authority of each of the parties signing this Agreement to create and implement an Interlocal Governmental Agreement pursuant to the provisions of RCW Chapters 39.34 and 54.16.

E. The general purpose of this Agreement is to allow the parties to cooperate in the provision and exchange of emergency services to the maximum extent authorized by law, i.e., in the event of a major problem with their distribution systems, natural disaster, or to coordinate requests for assistance and to provide an efficient and reliable procedure for determining when supplemental services are available.

F. Each of the parties may have the necessary equipment and personnel to enable it to provide such services to the other party to this Agreement in the event of such an emergency.

G. The geographical boundaries of the parties are located in such a manner as to enable each party to render mutual assistance to another.

NOW, THEREFORE, pursuant to the applicable provisions of law, including RCW Chapter 39.34, and subject to the terms of this Agreement, the parties executing this document agree as follows:

**ARTICLE I UNDERLYING PREMISES**

1.1. Voluntary Participation: Participation in this Agreement is purely voluntary and requests for and responses to

requests for assistance are at the sole discretion of the Responding Utility. The Responding Utility shall have the primary interest of protecting its own constituency. Neither party shall be liable to the other party for, or be considered to be in breach of or default under this Agreement on account of any delay in or failure to perform any obligation under the Agreement, except to make payment as specified in this Agreement.

1.2. Response Discretionary: Emergency Assistance will be in the form of resources, such as equipment, supplies, and personnel, or the direct provision of services. The execution of this Agreement shall not create any duty to respond on the part of either party. Neither party shall be held liable for failing to provide Emergency Assistance in response to a request from the other party. Each party has the absolute discretion to decline to provide any requested Emergency Assistance and to withdraw resources it has provided at any time without incurring any liability. The parties recognize that time is critical during an emergency and diligent effort will be made to respond to a request for resources as rapidly as possible, including notification(s) that requested resources are not available or that resources are being withdrawn.

## ARTICLE II OPERATIONAL PROVISIONS

2.1 Request for Assistance: The employee who is in charge of an emergency within the boundaries of the Requesting Utility's jurisdiction is authorized to request assistance from the Responding Utility if confronted with an emergency situation in which the Requesting Utility has need for equipment or personnel in excess of that available to the Requesting Utility and which may be available from the Responding Utility to which the request is directed.

2.2 Mobilization: Requests for Emergency Assistance shall be directed to the designated contact person(s) on the contact list provided by the respective parties. The extent to which the Responding Utility provides any Emergency Assistance shall be at the Responding Utility's sole discretion. In the event the emergency impacts a large geographical area that activates either federal or state emergency laws, this Agreement shall remain in effect until or unless this Agreement conflicts with such federal and state laws. Each signatory party may develop and maintain a current plan for mobilization of its personnel and other resources which, in its sole discretion and opinion, is adequate to effectively respond to a request to provide mutual aid to the other party.

2.3 Response to Request: Upon receipt of such request, the responsible employee of the party receiving the request shall, with reasonable promptness, take the following action:

2.3.1. Determine if the Responding Utility has equipment and personnel available to respond to the Requesting Utility and determine the type of equipment and number of personnel available.

2.3.2 Taking into consideration the primary duty of protecting the Responding Utility's constituency, determine what equipment and personnel are available to be dispatched in accordance with the plans and procedures established by the parties.

2.3.3 Upon making the determination of available resources, with reasonable promptness, advise the Requesting Utility of the determination reached as to available resources, confirm the continuing need of the Requesting Utility for the available resources, and dispatch the available resources to the scene.

2.3.4 In the event the determination is there is no ability to respond to the request, advise the Requesting Utility of that determination with reasonable promptness.

2.4 Command Responsibility at Response Site: The employee of the Requesting Utility in charge at the site to which the response is made shall be in the individual in charge of the

operations and thus the individual under which the equipment and personnel sent by the Responding Utility shall serve: PROVIDED THAT, the responding equipment and personnel shall be under the immediate supervision of the employee of the Responding Utility in charge of the responding apparatus. If the Requesting Utility's employee specifically requests an employee of the Responding Utility to assume operational control, neither the employee who makes such a request nor his or her Utility shall, by relinquishing operational control, be relieved of responsibility for the operation.

2.5 Liability: Each party to this Agreement agrees to be responsible for and assume liability for its own wrongful and negligent acts or omissions, including the negligence attributed to that party's management and operational decisions, or those of its officers, agents, or employees to the fullest extent allowed by law, and agrees to indemnify, defend and hold the other party to this Agreement and its officers, agents, and employees, harmless from such liability.

In any lawsuit brought against either party to this Agreement or as against their officers, agents, or employees by persons or entities not signatory to this Agreement, then neither party shall be limited in its legal rights to request apportionment of any judgment rendered against it, and neither party shall be limited in its rights as provided under the laws

of the State of Washington to seek contribution for any judgment it is required to pay in excess of its proportionate share of any liability judgment or award.

2.6 Return of Equipment & Supplies: Upon completion of work on the emergency, such assistance and help as is necessary will be rendered by each party to locate and return any items of equipment to the party owning said equipment. All equipment and personnel used under the terms of this Agreement shall be returned to the Responding Utility upon being released by the Requesting Utility, or upon request being made by the Responding Utility for return of said equipment and personnel.

2.7 Fiscal Provisions:

2.7.1 Each party shall at all times be responsible to its own employees for the payment of wages and other compensation and for carrying workmen's compensation upon its employees, and each shall be responsible for its own equipment and shall bear the risk of loss therefore, subject to the right to reimbursement set out below.

2.7.2 The Requesting Utility agrees to reimburse the Responding Utility for the following:

2.7.2(1) The time utilized by the Responding Utility's staff for the benefit of the Requesting Utility at a rate which shall be equal to the compensation rate, including

all benefits, paid to its responding employees by the Responding Utility.

2.7.2(2) For the reasonable costs of any supplies utilized by the Responding Utility in undertaking aid and assistance for the Requesting Utility and, to the extent that a vehicle has been utilized, for the standard reimbursement rate, including but not limited to mileage, which may from time-to-time be established by that Utility for vehicle use reimbursement.

2.7.2(3) As to equipment of the Responding Utility utilized at the site, the agreed upon utilization cost thereof, as such cost may be established by the agreed upon schedule developed by the Utilities.

2.8 Insurance: Each party agrees to maintain insurance coverage for its own equipment and personnel, whether through third-party insurance or membership in an appropriate insurance pool providing equivalent coverage.

### **ARTICLE III GENERAL PROVISIONS**

3.1 Termination: This Agreement shall remain in full force and effect unless and until terminated as follows:

3.1.1 Written notice shall be served by a party upon the other party of its intention to terminate the Agreement. Such notice shall be served not less than thirty (30) days prior to the termination date set forth therein. The Agreement shall

automatically terminate on the date set out in the notice unless the notice is rescinded prior to that date in writing.

3.1.2 Termination of the relationship encompassed by this Agreement shall not preclude future agreements for mutual aid between the parties.

3.1.3 Termination shall not:

(i) Affect the responsibility of any party to pay any moneys which are owing to the other party under the terms of this Agreement; or

(ii) Relieve a party of a responsibility imposed pursuant to this Agreement.

3.2 Agreement Not Exclusive: This Agreement is not intended to be exclusive as between the parties hereto. Either party may, as it deems necessary or expedient, enter into separate interlocal assistance agreements with any other utility or entity. Entry into such separate agreements shall not, unless specifically stated therein, affect any relationship or covenant herein contained.

3.3 Dispute Resolution:

3.3.1 Written notification setting forth the specific nature of the dispute arising under this Agreement shall be given by one party to the other party involved in the disputed matter.

3.3.2 Upon the giving of the notice referenced above, the parties agree that they shall attempt to resolve the dispute by informal discussions. Each party commits to participate in these efforts in a timely manner and in good faith.

3.3.3 If such informal efforts are not successful, the parties may submit the dispute to non-binding mediation. Any costs for the mediator shall be shared equally between the parties.

3.3.4 In the event of any litigation arising out of the performance of this Agreement, it is agreed that the Courts of the County of Grays Harbor, State of Washington, shall be courts of proper venue. Further, in addition to any other relief, the Court may award the substantially prevailing party reasonable attorneys' fees and costs.

EXECUTED IN MULTIPLE COPIES UPON THE DATES SET FORTH BELOW.

Signed upon behalf of the City of McCleary this 23<sup>rd</sup> day of May, 2007.

CITY OF McCLEARY:

  
\_\_\_\_\_  
WALLACE BENTLEY, Mayor

ATTEST:



\_\_\_\_\_  
DONNIE ROSTEDT, Clerk-Treasurer

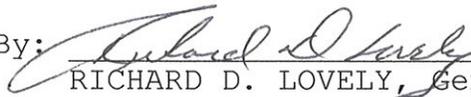
APPROVED AS TO FORM:



\_\_\_\_\_  
DANIEL O. GLENN, City Attorney

Signed upon behalf of Public Utility District No. 1 of  
Grays Harbor County, Washington this 22<sup>nd</sup> day of June,  
2007.

PUBLIC UTILITY DISTRICT NO. 1  
OF GRAYS HARBOR COUNTY, WASHINGTON

By:   
\_\_\_\_\_  
RICHARD D. LOVELY, General Manager

APPROVED AS TO FORM:



\_\_\_\_\_  
RICHARD A. PITT, General Counsel