



# McCleary City Council

## AGENDA

**September 23, 2015**

- **Flag Salute**
- **Roll Call**
- **Public Comment**
- **Public Hearing**
- **Executive Session**
- **Minutes:** - Approval (Tab A)
- **Mayor's Comments:** - Discussion
- **Staff Reports:** - Dan Glenn, City Attorney (Tab B)  
- Todd Baun Staff Report
- **Old Business:** - Building Official (Tab C)
- **New Business:** - IBEW Contract (Tab D)  
- CCAP Vendor Agreement (Tab E)  
- TIB LED Lighting Award (Tab F)
- **Ordinances:** -
- **Resolutions:** - Sole Source Water Meters (Tab G)
- **Approval of Vouchers**
- **Mayor/Council Comments**
- **Public Comment**
- **Executive Session**
- **Adjournment**

Americans with Disabilities Act (ADA)  
Accommodation is Provided Upon Request

Please Turn Off Cell Phones – Thank You

The City of McCleary is an equal opportunity provider and employer.  
La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador.

**CITY OF MCCLEARY**  
**Regular City Council Meeting**  
**Wednesday, September 9, 2015**

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Ator, Schiller and Peterson were in attendance.
ABSENT	Councilmember Catterlin was absent and asked to be excused. <b>It was moved by Councilmember Schiller, seconded by Councilmember Peterson to excuse Councilmember Catterlin. Motion Carried 4-0.</b>
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, Paul Nott, and Jon Ehresmann.
PUBLIC HEARING	None.
PUBLIC COMMENT	None.
EXECUTIVE SESSION	At 7.02 an executive session was called by Mayor Dent for 25 minutes to discuss labor negotiations per RCW 42.30.140(4)A, which ended at 7:27 pm. No action was taken.
MINUTES APPROVED	<b>It was moved by Councilmember Peterson, seconded by Councilmember Reed to approve the minutes from the August 26, 2015 meeting after correcting the word "sing" to "sign" under the Ecivis motion. Motion Carried 4-0.</b>
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available, if they have any questions.
MAYOR'S COMMENTS	None.
DIRECTOR OF PUBLIC WORKS REPORT	Todd Baun provided a written report for the Council and is available, if they have any questions.
IBEW DISCUSSION	Tabled.
NOVEMBER MEETING DATES	It was brought to the Council's attention the meeting dates for November both fall on, or near, a holiday. Councilmember Schiller suggested moving the meetings up one week and having them on the first and third Wednesdays instead of second and fourth. The Council agreed to November 4th and the 18th as the November Council meeting dates.
FIRE DISTRICT #5 INTERLOCAL EQUIPMENT SHARING AGREEMENT	<b>It was moved by Councilmember Ator, seconded by Councilmember Schiller to sign the interlocal equipment sharing agreement with Fire District #5. Motion Carried 4-0.</b>
BUILDING OFFICIAL	Todd Baun stated Colin Mercer left in July and we have been advertising since then for a replacement for half-time building official and half-time PW Planning Assistant. We have not received any response to fill the position of part time Building Official. The City has been using the City of Elma's Building Official to handle our necessary duties until we find a replacement. Due to the lack of applicants for part-time work, Scott Snyder talked to IBEW about contracting out the building department services until the City finds a successful new hire. Todd has contacted several companies that will perform building official duties and he will bring proposals to the Council at the next meeting.
CONTRACT WITH EVERGREEN CONSULTING GROUP	The City has been working with BPA for several years on our conservation program, which offers residents and businesses options to receive rebates and to keep utility costs from increasing. The PW Planning Assistant ran this program, and in his absence, Todd cannot fully process the applications with his limited knowledge of the program until a new replacement is hired. Todd is asking the Council to approve a contract with Evergreen Consulting Group to provide the City complete conservation program processing. This will not cost the City any money out of pocket because the City receives performance payments from BPA to cover internal customer administrative costs incurred in support of energy savings activities. <b>It was moved by Councilmember Ator, seconded by Councilmember Schiller to authorize the Mayor to sign the contract with Evergreen Consulting Group. Motion Carried 4-0.</b>

ORDINANCE 812 WATER USE  
RESTRICTION

**It was moved by Councilmember Ator, seconded by Councilmember Peterson to adopt Ordinance 812, relating to public utilities, adding a new chapter to the Title 13 of the Municipal Code, providing for penalties, enforcement, and severability. Roll Call taken in the affirmative. Ordinance Adopted 4-0.**

RESOLUTION 679 HONORING  
RICHARD "DICK" VATNE

The City is deeply saddened by the recent passing of Richard "Dick" Vatne. Dick not only served as Mayor but also served as a Councilmember and was a member of the Finance Committee. He will be deeply missed. **It was moved by Councilmember Peterson, seconded by Councilmember Reed to adopt Resolution 679 recognizing the passing of Richard "Dick" Vatne. Motion Carried 4-0.**

PUBLIC COMMENT

Councilmember Ator asked the Council to participate in a workshop. This is a time for the Council to come together and get some scenarios on paper and discuss things as a whole. She is asking Mayor Dent to not attend so the Council can work together and figure things out as a group. She said it will have to be open to the public but the public will not be allowed to comment. She asked for Wendy Collins and Todd Baun to be present to address questions but not to participate. The Council was agreeable to the workshop.

APPROVAL OF VOUCHERS

Accounts Payable vouchers/checks approved were 39981 - 40020 including EFT's in the amount of \$57,229.78.

**It was moved by Councilmember Ator, seconded by Councilmember Reed to approve the vouchers. Motion Carried 4-0.**

EXECUTIVE SESSION

At 7:55 pm, Mayor Dent called for a 10 minute executive session to discuss litigation per RCW 42.30.110 [i], which ended at 8:00 pm. No action was taken.

MEETING ADJOURNED

**It was moved by Councilmember Ator, seconded by Councilmember Peterson to adjourn the meeting at 8:01 pm. The next meeting will be Wednesday, September 23, 2015 at 7:00 pm. Motion Carried 4-0.**

Mayor Gary Dent:

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Clerk-Treasurer Wendy Collins:

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**MEMORANDUM**

TO: MAYOR AND CITY COUNCIL, City of McCleary  
FROM: DANIEL O. GLENN, City Attorney  
DATE: September 18, 2015  
RE: LEGAL ACTIVITIES as of SEPTEMBER 23, 2015

THIS DOCUMENT is prepared by the City Attorney for utilization by the City of McCleary and its elected officials and is subject to the attorney-client privileges to the extent not inconsistent with laws relating to public disclosure.

As you will note when the meeting is called to the order, I have imposed upon Mr. Coker to be present due to my absence. I am out of the area on a trip with my spouse, but will have my computer and internet access available while on the trip so if there are questions, feel free to ship them to me and I will respond in what will hopefully be a timely manner.

1. **COMMUNITY CENTER USAGE**: Ms. Collins was kind enough to provide me with a copy of the agreement under which usage of the Community Center is authorized. Based upon my review, I have provided an initial draft making limited suggestions in terms of changes to the language. Before moving too far, I would request that the Council provide us with specific direction on one somewhat sensitive area. That area is the extent to which the use and consumption of alcohol is allowed at events held in the Center.

Currently, under certain conditions, events at which alcohol is served are permitted. The conditions are basically the possession of any necessary state-required permit, not allowing excessive consumption, prohibiting consumption by minors, and, if I understand correctly, provision of insurance coverage. As guidance in this matter, I have recommended to Ms. Collins that she check with our insurer, WCIA, as to their recommendations on this subject.

I would ask that you take a look at the draft and provide any questions or suggestions it might generate. We will update you with additional information as received.

2. UNION MATTERS: I anticipate you will have a report from Mr. Snyder in relation to his discussions with the bargaining units, potentially including all three units. Under the provisions of the Open Public Meetings Act (RCW 42.30), if you desire to discuss his report and recommendations, you may do so in what is technically called a "closed session," but which is identical to an executive session. The applicable language is as follows:

42.30.140. Chapter controlling

If any provision of this chapter conflicts with the provisions of any other statute, the provisions of this chapter shall control: PROVIDED, That this chapter shall not apply to:

- (4) (a). Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or (b) that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress. (Emphasis added.)

While the discussion may occur in the closed session, any final action approving an agreement must be taken in the open session a/k/a the regular meeting.

3. TRAFFIC SAFETY COMMISSION INTERLOCAL: This is a matter I have raised to Chief Crumb. It basically involves the Commission's agreeing to provide funding to the Department for time spent, with very specific periods, on enhanced enforcement in certain areas of the traffic laws. It is an agreement which will require some additional record keeping by the Department, but is a beneficial program. It also will likely involve the use of the Officers in terms of enforcement outside of the corporate limits during periods other than their ordinary shift within the City. However, our officers are authorized to so act.

I have reviewed the agreement which was submitted to Elma and have no issues with it. The problem is that, if felt appropriate by Chief Crumb to participate, the agreement needs to be executed and returned to the TSC prior to the next meeting. Thus, if after review of the situation Chief Crumb feels it appropriate for the City to participate, I would recommend the Mayor be authorized to execute the agreement and the Chief to implement its provisions.

4. CCAP LOW INCOME HEATING ENERGY VENDOR AGREEMENT:

This is an agreement which is submitted annually. As usual, it lays out that the City, as the provisioner of the power which is used by most of the residences within the City for heat, will participate by accepting funds funneled through CCAP to pay the electrical bills for individuals found by CCAP to meet the standards. It provides the ability to either party to terminate with a 30 day notice, but any power provided prior to that termination date will still be subject to payment by CCAP. The one exception is, if the funding entity withdraws the money, CCAP can terminate the agreement immediately and it is ambiguous as to whether or not any bill for services accrued up to that date would still be subject to payment through CCAP.

In closing, the one oddity which has been present in past agreements remains. If a customer receiving this benefit terminates service and there is a credit balance because of the funds provided by the funding agency and paid to the City by CCAP, those funds do not go back to CCAP to aid others, but must be disbursed directly to the customer.

As always, this is not meant to be all inclusive. If you have any questions or comments, please direct them to me.

DG/le

**STAFF REPORT**

To: Mayor Dent  
From: Todd Baun- Director of Public Works  
Date: September 4, 2015  
Re: Building Official Discussion

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As you are aware, Colin left the City in early July. We have advertised his positions for several weeks without any response to fill the position of part time Building Official. We have been using City of Elma's Building Official, Joe Chrystal to handle our Building Official duties until we find a replacement.

The problem we have run into is the amount of permits that have come in since July. From January until June the building department had processed 14 permits. Since July, we have processed 42 permits, with more coming in. This has been putting an unfair stress on Joe along with our staff trying to help permit applicants and permit holders.

I have talked with Scott Snyder about the lack of applicants and he has talked to the IBEW about possibly of the City contracting out the building department services. Scott may have more detail on his discussions with the IBEW.

I have been in contact with several companies that will perform building official duties. I will be bringing proposals to you at the next council meeting.

**Action Requested:**

Please discuss and let me know if this is the route you would like to take with the Building Official at this time.

September 15<sup>th</sup>, 2015

Dear LIHEAP Vendor:

Enclosed please find the Vendor Agreement for the Low-Income Home Heating Assistance Program. Please sign and return in the self-addressed stamped envelope provided. Please make a copy for your records. If you have any questions, please call 360.500.4509.

Thank you for helping CCAP assist households in Grays Harbor and Pacific Counties.

Sincerely,



Debbie Gregg  
LIHEAP Case Manager  
Housing and Community Services

# **LOW-INCOME HOME HEATING ENERGY VENDOR AGREEMENT**

**OCTOBER 1, 2015 – SEPTEMBER 30, 2016 PROGRAM YEAR**

This agreement, dated as of September 15, 2015, is entered into by and between Coastal Community Action Program, (Agency), and City of McCleary, a supplier of home heating energy, (Vendor).

## **PURPOSE**

Funding for Low-Income Home Energy Assistance Program (LIHEAP) payments is governed by Federal Law 42 U.S.C. 8624: Low-Income Home Energy Assistance Act of 1981, and subsequent amendments. This act requires that certain assurances be satisfied before energy assistance payments are made, on behalf of eligible individuals, to suppliers of home heating energy. This agreement defines the conditions that the Energy Vendor must agree to so that the Agency can make energy assistance payments to the Energy Vendor on behalf of eligible households.

## **Agency Responsibilities**

The agency shall:

1. Accept and review client applications and determine eligibility of households for LIHEAP payments.
2. Follow procedures that minimize the time elapsing between the receipt of LIHEAP funds and their disbursement to vendor.
3. Make payments in a timely manner to the vendor on behalf of eligible households between October 1 and August 31 of the program year for the term of this agreement.
4. Follow sound fiscal management policies, including, but not limited to segregation of LIHEAP funds from other operating funds of the agency.
5. Notify customer and/or vendor of the customer's eligibility and total benefit amount.
6. Incorporate policies that assure the confidentiality of eligible household's energy usage, balance, and payments.
7. Upon request from vendor, provide a statement verifying income of an eligible household for the sole purpose of determining moratorium eligibility, within the statutory guidelines of confidentiality.

## **Energy Vendor Responsibilities**

The Energy Vendor shall:

1. Immediately apply the benefit payment to customer's current/ past due bill, deposit/ reconnect requirements, or delivery of fuel to eliminate the amount owed by the customer for a period determined by the amount of the benefit, or;
2. Apportion the LIHEAP over several billing periods to reduce the amount owed by the customer until the benefit is exhausted, or;
3. Establish a line of credit for the customer to be used at the discretion of the customer until the benefit is exhausted.
4. Notify the customer of the amount of benefit payment applied to the customer's billing.
5. Keep customer records confidential.
6. Maintain records for four years from the date of this agreement, or longer if the energy vendor is notified that a fiscal audit for a specific program year is unresolved.
7. Not treat adversely, or discriminate against any household that receives LIHEAP payments, either in the cost of the goods supplied or the services provided.
8. Upon request of the agency, provide eligible customer's energy consumption history for the sole purpose of determining customer benefit.
9. Comply with the provisions of the State law regarding winter disconnects and pertinent provisions of the Washington Administrative Code related to the winter moratorium, if governed by that ruling.
10. Make records available for review by authorized staff of the agency and Washington State Department of COMMERCE) and the U.S. Department of Health and Human Services.

### **Required records for audit purposes.**

The vendor will keep records showing the following:

1. name and address of households who received LIHEAP payments.
2. amount of assistance accrued to each household.
3. source of payment, (Energy Assistance, Project Help, Warm Heart, etc).
4. amount of the household's credit balance when the benefit payment establishes a line of credit. This credit balance also needs to show on all customer billing documents.

### **Credit Balances**

In the event that a customer has a credit balance and no longer needs service from the energy vendor, the vendor shall:

1. Forward a check in the amount of any remaining credit balance directly to the customer, or, if directed by the customer, forward a two-party check for this balance to the customer in the customer's name and the name of the new home heating energy vendor.
2. If the customer dies leaving a credit balance resulting from a LIHEAP payment, the remaining credit becomes part of the customer's estate.

3. The energy vendor shall dispose of all unclaimed credit balances according to customary procedures or applicable Washington State law.

**Other Provisions:**

**Term of Agreement**

This agreement is effective from the date of execution.

**Termination**

This agreement may be terminated by either party with a thirty (30) day written notice to the other party. Termination shall not extinguish authorized obligations incurred during the term of the agreement. If LIHEAP funding is withdrawn, reduced, or eliminated by COMMERCE, the agency has the right to terminate this agreement immediately.

**Assignment of Agreement**

Neither party may assign the agreement or any of the rights, benefits and remedies conferred upon it by this agreement to a third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

The vendor and the agency do hereby agree to the conditions set forth in this agreement.

 Agency

Signature

Nora LeBlanc

Printed Name

Manager

Title

Coastal Community Action Program  
Name of Company

09/15/2015

Date

Vendor

Signature

Printed Name

Title

Name of Company

Date



# Washington State Transportation Improvement Board

## TIB Members

Councilmember Bob Olson, Chair  
*City of Kennewick*

Commissioner Richard Stevens, Vice Chair  
*Grant County*

Jim Albert  
*Office of Financial Management*

Pasco Bakotich, P.E.  
*WSDOT*

Wendy Clark-Getzlin, P.E.  
*Clallam Transit*

Gary Ekstedt, P.E.  
*Yakima County*

Mayor James Irish  
*City of La Center*

John Klekotka, P.E.  
*Port of Everett*

Commissioner Robert Koch  
*Franklin County*

Colleen Kuhn  
*Human Services Council*

Mayor Patty Lent  
*City of Bremerton*

Mick Matheson, P.E.  
*City of Sultan*

E. Susan Meyer  
*Spokane Transit Authority*

Laura Philpot, P.E.  
*City of Sammamish*

David Ramsay  
*Feet First*

Amy Scarton  
*WSDOT*

Heidi Stamm  
*HS Public Affairs*

John Vodopich  
*City of Bonney Lake*

Jay Weber  
*County Road Administration Board*

Clay White  
*Snohomish County*

September 14, 2015

The Honorable Donald Dent  
Mayor  
City of McCleary  
100 S 3<sup>rd</sup> Street  
McCleary, WA 98557

Dear Mayor Dent:

Congratulations! We have received and reviewed your proposal. We are pleased to announce the selection of your city for the Relight Washington Program. The program aims to reduce your streetlight operating costs while saving energy and renewing dated infrastructure. The city will benefit from lower rates after installation. The project will convert existing street lights to energy efficient LED street lights.

### **In order to receive reimbursement for streetlight conversion, you must:**

Sign and return both copies of the Grant Distribution Agreement to TIB. TIB will return one executed agreement for your files.

### **How does city receive reimbursement?**

The city will send in the final invoices along with an accounting history form that will be provided by your TIB engineer. When the project is close to done, contact your TIB engineer.

If you have questions, please contact Chris Workman, TIB Project Engineer, at (360) 586-1153 or email [ChrisW@tib.wa.gov](mailto:ChrisW@tib.wa.gov).

Sincerely,

Stevan Gorcester  
Executive Director

Enclosure

Stevan E. Gorcester  
Executive Director

P.O. Box 40901  
Olympia, WA 98504-0901  
Phone: 360-586-1140  
Fax: 360-586-1165  
[www.tib.wa.gov](http://www.tib.wa.gov)



City of McCleary  
S-W-956(001)-1  
LED Streetlight Conversion Project

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
City of McCleary  
GRANT AGREEMENT

THIS GRANT AGREEMENT ( "Agreement") is made and entered into between the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD ( "TIB") and the City of McCleary, a Washington state municipal corporation ( "RECIPIENT").

WHEREAS, the TIB has developed a grant program, Relight Washington, to provide for the conversion of standard streetlights to LED lighting ("Project") for eligible cities and towns to reduce municipal electrical costs, and

WHEREAS, the above-identified city/town is eligible to receive a Project grant and attests that it has the legal authority to receive such grant and to perform the Project pursuant to the terms of this grant,

NOW, THEREFORE, pursuant to chapter 47.26 RCW and chapter 479 WAC, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits, if any, which are made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. GRANT

TIB agrees to grant funds in the amount of [Forty Four Thousand Two Hundred Sixty Five] AND NO/100 dollars (\$ 44,265) for the Project pursuant to terms contained herein, and the RECIPIENT agrees to accept such grant funds and agrees to perform and be subject to the terms and conditions of this Agreement.

2. USE OF TIB GRANT FUNDS

TIB grant funds may come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than for highway or street Project improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9.

3. PROJECT AND BUDGET

The Project shall provide for the conversion of identified streetlights within RECIPIENT's city limits. The RECIPIENT agrees to enter into an agreement with or otherwise provide for a service provider to perform the actual conversion work. The RECIPIENT further agrees that it shall be solely responsible for and shall pay its service provider's invoices for costs of the work. The Project and Budget may be amended by the Parties, pursuant to Section 6.



#### 4. PROJECT DOCUMENTATION

The RECIPIENT agrees to and shall make reasonable progress and submit timely Project documentation, as applicable, throughout the term of this Agreement and Project.

Required documents include, but are not limited to the following:

- a) Documentation to support all costs expended for the Project.
- b) Project Closeout Form.

#### 5. BILLING AND PAYMENT

The RECIPIENT may submit progress payment requests to the TIB as necessary. If billable amounts are greater than \$50,000, RECIPIENT shall submit requests for payments on a quarterly basis. If progress payments are not regularly requested, reimbursements may be delayed or scheduled in a to be determined payment plan.

#### 6. RECORDS MAINTENANCE

6.1 The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the Project work described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no cost to TIB, these records shall be provided when requested, including materials generated under the Agreement, and shall be subject at all reasonable times to inspection, review or audit by TIB personnel, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

6.2 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### 7. INCREASE OR DECREASE IN TIB GRANT FUNDS

RECIPIENT may request an increase in the TIB grant funds for the Project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. An increase in grant funds shall be by amendment pursuant to Section 14. If an increase is denied, the recipient shall be solely liable for costs incurred in excess of the Agreement grant amount.

#### 8. TERM OF AGREEMENT

This Agreement shall be effective upon execution by the Parties and shall continue through closeout of the grant amount, or modification thereof, or unless terminated as provided herein. In no event shall the Agreement term exceed two years, unless extended by Agreement amendment pursuant to Section 14.

#### 9. DEFAULT AND TERMINATION



### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) RECIPIENT shall provide a written response within ten (10) business days of receipt of TIB's notice of non-compliance, which shall include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details. An agreement to amend the Project must be pursuant to Section 14.
- c) RECIPIENT shall have thirty (30) days in which to make reasonable progress toward compliance pursuant to its plan to correct or implement an amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold reimbursement payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation, TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project progress payments until the requested corrections have been made or if the Agreement is terminated.

### 9.3 TERMINATION

- a) In the event of default as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which may be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such actions necessary as may be directed by TIB.
- b) In the event of default and/or termination, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION OR SUSPENSION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate or suspend this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for Project work performed or costs incurred prior to the effective date of termination.



## 10. DISPUTE RESOLUTION

- a) The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.
- b) Informal Resolution. The Parties shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The Parties shall share equally in the cost of the mediator.
- d) Each Party agrees to participate to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The Parties agree that they shall have no right to seek relief in a court of law in accordance with Section 11 until and unless the Dispute Resolution process has been exhausted.

## 11. GOVERNANCE, VENUE, AND ATTORNEYS FEES

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County. The Parties agree that each Party shall be responsible for its own attorneys' fees and costs.

## 12. INDEMNIFICATION, HOLD HARMLESS, AND WAIVER

12.1 Each Party, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, a Party's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence.

12.2 Each Party agrees that its obligations under this section extends to any claim, demand and/or cause of action brought by, or on behalf of, any of its officers, officials, employees or authorized agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW.

12.3 The obligations of this indemnification and waiver Section shall survive termination of this Agreement.

## 13. ASSIGNMENT



The RECIPIENT shall not assign or transfer its rights, benefits, or obligations under this Agreement without the prior written consent of TIB. The RECIPIENT is deemed to consent to assignment of this Agreement by TIB to a successor entity. Such consent shall not constitute a waiver of the RECIPIENT's other rights under this Agreement.

14. AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

15. INDEPENDENT CAPACITY

The RECIPIENT shall be deemed an independent contractor for all purposes and the employees of the RECIPIENT or any of its contractors, subcontractors, and employees thereof shall not in any manner be deemed employees of TIB.

16. ENTIRE AGREEMENT

This Agreement, together with the Exhibits, if any, the provisions of chapter 47.26 RCW, chapter 479 WAC, and TIB Policies, constitute the entire Agreement between the Parties and supersedes all previous written or oral agreements between the Parties.

RECIPIENT

Transportation Improvement Board

\_\_\_\_\_  
Chief Executive Officer                      Date

\_\_\_\_\_  
Executive Director                              Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Approved as to Form

By:           SIGNATURE ON FILE          

ANN E. SALAY

Senior Assistant Attorney General

NOTE: Any changes to the terms of this Agreement shall require further approval of the Office of the Attorney General

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION IN RELATION TO AWARDING  
OF A CONTRACT; CONFIRMING THE UTILIZING OF  
SOLE SOURCE METHODOLOGY FOR THE  
ACQUISITION OF CERTAIN EQUIPMENT, & MAKING  
FINDINGS.**

1. The City of McCleary maintains a water distribution utility within the course of its operation. This service is core to providing service to its citizens.

2. Within the course of its prior activities, the City has installed a particular type of water meter which is compatible with the software program for reading of the utilization.

3. The Director of Public Works has informed the Council and Mayor that based upon investigation, the sole source of these meters is Ferguson Industries. By the City acquiring the items in question from the referenced supplier, the following benefits are obtained:

(1) Potentiality of error is reduced by the consistency of training and operation.

(2) The City may utilize existing equipment due to the total compatibility.

4. It has been and continues to be the desire and intention of the Mayor and Council to utilize the public bidding process to enhance the value received by the citizens but, under the circumstances of this particular matter, it is recognized as being appropriate to make a specific designation.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY, THE MAYOR CONCURRING:

SECTION I: The elements contained within the recitals stated above, as more fully detailed in the information provided to the Mayor and entire Council by the Director, shall be and are hereby adopted as Findings and Conclusions by the Mayor and Council.

SECTION II: The actions of the City Administrator in soliciting and recommending those certain meters to be provided by Ferguson Industries, as more fully described upon Exhibit Number 1, attached hereto and incorporated by this reference, are hereby ratified.

PASSED THIS \_\_\_\_ DAY OF SEPTEMBER, 2015, by the City Council of the City of McCleary, and signed in authentication thereof this \_\_\_\_\_ day of September, 2015.

CITY OF McCLEARY:

\_\_\_\_\_  
D. GARY DENT, Mayor

ATTEST:

\_\_\_\_\_  
WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

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