



McCleary City Council

AGENDA

August 26, 2015

- **Flag Salute**
- **Roll Call**
- **Public Comment**
- **Public Hearing**
- **Council Action** - Council Appointment (Action)

- **Minutes:** - Approval (Tab A)

- **Mayor's Comments:** - Discussion

- **Staff Reports:** - Dan Glenn, City Attorney (Tab B)
- Todd Baun Staff Report (Tab C)
- Staff Reports (Tab D)

- **Old Business:** - Grays Harbor PUD Easement (Tab E)

- **New Business:** - General Pacific Purchase Order – Street Lighting (Tab F)
- Radwell Purchase Order (Tab G)
- ECIVIS Service Agreement (Tab H)

- **Ordinances:** - Water Use Restriction Ordinance (Tab I)
- Budget Amendment Ordinance (Tab J)

- **Resolutions:** -

- **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

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La ciudad de McCleary es un proveedor de igualdad de oportunidades y el empleador.

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, August 12, 2015

ROLL CALL AND FLAG SALUTE	Councilmember's Reed, Schiller Catterlin, and Peterson were in attendance.
ABSENT	None.
STAFF PRESENT	Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, and Paul Nott.
PUBLIC HEARING	None.
PUBLIC COMMENT	<p>Dustin Richey has major concerns with the drug house behind the transit station. Mayor Dent said an investigation is under way with the city and the county. He is aware of the problem and said it is being dealt with.</p> <p>Helen Hamilton did not know there were regulations in the cemetery regarding flowers, vases, etc. that are left on grave sites. She recently placed some items on a grave and noticed they were removed and she was upset because they were not there for very long. She would like to have the regulations posted and for there to be a way to notify people that there are rules that apply to the cemetery regarding items placed on graves. Mayor Dent will have Todd Baun address the issue.</p> <p>Larry Birindelli thanked the Council and Mayor for their cooperation during the demolition of the building across the street from city hall. He also asked to make comments in support of the police department. He strongly encourages the council to keep the police force in this town. He periodically needs to rely on the police for tenant issues. He wants to go on record that he is in support of keeping the police department. Mayor Dent said current expense has more revenue than expected. He has made the decision to transfer \$100,000 and move it into the police department from the REED fund after receiving permission from the REED Committee.</p> <p>Gary Atkins doesn't understand why the city allows new businesses in town without business licenses, criminal back ground checks, accurate permits or anything. He said the new business on 3rd Street is a garage sale business that sells junk, which is not allowed on a daily basis. He also asked that before the Council makes any decisions on the police department, he wants them to think about how a year ago the vote was to not pay for the police department, however, we are still here fighting about what to do with the police department. Mayor Dent said after the council voted to remove \$150,000 from the police expenditure line, he chose to not veto it because he didn't want to shut the government down. He added that if the council chooses to degrade or not fund the police department in the next budget. he will veto it and start shutting the government down.</p> <p>Gary Atkins asked the Mayor if the voters choose to not fund the police department and vote no, what are we going to do. Mayor Dent said we will have to see when that time arrives. Mr. Atkins said we spend \$34,000 a month for three officers, so how are we going to continue paying that. Mayor Dent said we are not going broke and the current expense fund has brought in more money this year than anticipated.</p> <p>Mr. Atkins said we would save money if we go to a black-out until January because the County is already collecting taxes from McCleary residents and will cover us until we know whether we can fund our police department next year. Mayor Dent said the sheriff's department will only have one person on duty and Gary Atkins said that is all we have on during a shift now.</p>
EXECUTIVE SESSION	None.
MINUTES APPROVED	It was moved by Councilmember's Schiller and Peterson, seconded by Councilmember Reed to approve the minutes from the June 24, 2015 meeting. Motion Carried 4-0.
CITY ATTORNEY REPORT	Dan Glenn provided a written report for the Council and is available, if they have any questions.
MAYOR'S COMMENTS	None.

MAYOR PRO TEM
APPOINTMENT

Mayor Dent does not think a vote on Mayor Pro Tem should happen until the next meeting when a new Councilmember is appointed to replace deceased Councilmember Ben Ator and added he could block it with a veto. Councilmember Schiller said they have 90 days to appoint someone and if Mayor Dent were to deace tomorrow, we don't have a Mayor Pro Tem and will have nobody to lead the City. **It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to appoint Councilmember Schiller as Mayor Pro Tem. Motion Carried 3-1, with Councilmember Reed voting in the negative.**

DIRECTOR OF PUBLIC WORKS
REPORT

Todd Baun has provided a written report for the Council.

GENERAL PACIFIC PURCHASE
ORDER APPROVAL

Resolution 622 requires the Light and Power department to purchase supplies to continue working on the cutover project. Paul Nott has received a quote for materials for a total of \$6,233.81. The money is in the 2015 budget and will come from the L&P Capital Outlay system line. **It was moved by Councilmember Schiller, seconded by Councilmember Reed to authorize the purchase order for General Pacific in the amount of \$6,233.81. Motion Carried 4-0.**

GHC MULTI HAZARD
MITIGATION PLAN
DEVELOPMENT

The county is moving forward on developing a plan to partner with a county-wide multi-hazard mitigation plan. Because the cost has not been determined at this time, the city wants to reserve the right to withdraw if they do not agree with the cost figures. Paul Nott stated this follows the national incident management system. Since 9-11, the feds are coordinating more of national emergencies together. He said it's really good when FEMA kicks in. This is something to make sure everyone is on the same page, if we have a national event. If the city is not involved, and grants become available, they will not be available for us.

ZONING AMENDMENT

The Council has received the Hearing Examiner's report from the public hearing conducted on July 1, 2015. A zoning ordinance amendment was requested by Larry Birindelli and after the hearing, it was recommended by Neil Aaland, the Hearing Examiner, to grant it. Dan Glenn suggests moving forward on adoption of the ordinance at the next council meeting. **It was moved by Councilmember Schiller, seconded by Councilmember Reed to move forward at the next council meeting on adoption of the ordinance regarding the recommended changes to the MMC 17.20.030 that add "medical clinics, medical offices and pharmacies" to the list of permitted uses in the C-1 zone. Motion Carried 4-0.**

CEDAR HEIGHTS STORM POND

The residents with ownership of the storm pond in Cedar Heights have decided they would like to deed the storm pond over to the city with the condition that they do not pay any extra and will pay only the same as everyone else in the city. The initial cost to bring it to its capacity is approximately \$2,000 and would be a minimal cost to maintain after that. Paul Nott would like to see the Council set up language in the development standards to address the storm pond maintenance issue so they won't have to deal with it again in the future. **It was moved by Councilmember Schiller, seconded by Councilmember Peterson to accept the deeded storm pond from Cedar Heights and maintain it and only charge the residents the base storm pond fee. Motion Carried 4-0.**

DYNAMIC COLLECTORS
AMENDMENT

In the current agreement, we only collect 50% of the fees associated with interest charges and collection fees. This new agreement would allow us to collect 100% of all fees associated with the city's collections. **It was moved by Councilmember Catterlin, seconded by Councilmember Schiller to authorize the Mayor to sign the contract amendment for Dynamic Collectors. Motion Carried 4-0.**

GRAYS HARBOR PUD
EASEMENT

Tabled.

POLICE BUDGET DISCUSSION

Dan Glenn said the Council has received a memo with information on the current state of the budget and the police expenditures will run out at the end of the month. Mayor Dent said the current expense fund is above in expected revenues. Dan Glenn said there are options recommended for the Council to consider. One option is to "go dark" for certain hours during the week to save money. If we put the police on a furlough or lay off, there is still a fiscal impact. All options require certain procedures to implement and all come with a fiscal impact, which will require an amendment to the budget.

Councilmember Catterlin said both he and Councilmember Schiller expressed interest in a written contingency plan stating in the event the levy fails, they will seek alternative measures in police protection, whether it be contracting with the County, another agency or some other option. He wants all Council and the Mayor to agree to this contingency plan and sign it. If not, he will not appropriate one more dime toward funding the police department. The Council was asked what other options they have considered and Councilmember Schiller said we are out of time. Councilmember Catterlin said for two years they have tried to get the police department to find a way to cut their budget but the police weren't interested. He said he is open to any idea but we are now out of time.

Mayor Dent said current expense is making more money than what was estimated. He wants to make it clear that any budget that proposes to dispose of the police department will be vetoed. He also stated that he has control of hiring and firing people. He said there is some real confusion over this. Councilmember Schiller said we are getting off track. He said we've talked about this for two years, we tried passing a levy last year, and we talked about other options for the police department such as grants and other things. Now it's down to budget time again and where are we going to be? If we spend the \$150,000 that was removed from the expenditures, we are still going to be in the same place next year. The money is going to be gone. We've talked about this for actually four years and we never come up with an actual solution. All of sudden tonight, miraculously, the Mayor says our current expense fund is flourishing. We've been straight up front with all of you and we've tried to come up with a contract and the next thing I know I'm looking at a lawsuit. We tried to look for options and now we are at that deadline

Mayor Dent said the majority of the council needs to accept that one, they cut \$150,000 from the police budget and said they want the police department gone, two, the sheriff's office is charging \$225,000 for the first two-years and then goes up each year, three, their coverage is not guaranteed and four, the sheriff makes it quite clear he will make all the decisions. That is where he is stopping for the time being.

Councilmember Peterson commented by saying there are three options given for the police budget and he doesn't know which one is even good. He wanted to get cooperation from everybody but they didn't get it. He and Councilmember Catterlin voted to go with the Sheriff's department and that got shot down so now they need some help because their backs are against the wall. They need some help from the police department with how to make some cuts and try to work together on this but they are not offering anything.

Councilmember Catterlin said the Mayor talked about the county contract going up 3% each year after the first two years, which is what the police department budget does when you look at it. It goes up each year. Mayor Dent said he is not going to comment on it.

Ray Boling said two members of the Council are dead against the police department and are set on getting rid of them. According to the Sheriff contract, we would only get 7 hours a day, 7 days a week. That is the best they can guarantee.

PUBLIC COMMENT

Chris Vessey asked Mayor Dent about a comment he said earlier. He asked if he meant it when he said he didn't like any PUD or Light & Power and asked if he was referring to the City's PUD and Mayor Dent said he'd contract out our group to the PUD any day.

Pam Ator wants the bickering and arguing and third grade rhetoric to stop because it's not getting us anywhere. We need to come together as a community and make this work. The Council and Mayor need to make this work like every other community. The community members don't need to sit here and yell and scream and neither does the council and mayor. I don't believe in my own heart that anybody went to the polls last November and said I don't want the police department. I believe they said, "I don't want to pay any more taxes so please figure out how to use the money your getting to make it work". All this bickering is trickling down and it's affecting our city. I didn't come to the meetings when Ben was on council but I'm here now to say I'm done with the druggies and I'm done with the fighting and it's time we come together as one united front.

Larry Birindelli said there are seven people at the table that he really appreciates for their diligent effort and he knows there are going to be disagreements and there are different personalities but you all stick with it. We need to do whatever we can do to keep the police force but we also need to keep the budget in the black. Mayor Dent said he has never brought a budget to the Council that was not in the black.

Helen Hamilton suggested an option for funding the police is to take out a loan on city-owned properties.

Joy Iverson asked what happens if the police department shuts down and we end up passing the levy. She wants to know what happens to that money. Dan Glenn said the police could be furloughed, which will take a significant amount of money and will require a supplemental budget. Scott Snyder is working with the FOP representatives to discuss options of furlough and lay off. A furlough would be used if we shut down the police department temporarily. Joy asked if the levy passed, would we still be paying that money in the tax with no department. Dan said if the budget is spent and we can't afford to keep the police and the levy passes, he would anticipate the council would reactivate the police department until the tax levy money comes in the spring. Mayor Dent said that would cost about a half a million dollars.

WATER USE RESTRICTION
ORDINANCE

Tabled.

BUDGET AMENDMENT
ORDINANCE

Dan Glenn introduced a budget amendment ordinance for the Council to consider and possibly take action at the next meeting.

RESOLUTION 677 VEHICLE &
EQUIPMENT SURPLUS

The city has four vehicles that need to be surplus. Todd Baun is asking for authorization from the Council to surplus the vehicles and equipment that we are not using and we are not able to get parts for any more. **It was moved Councilmember Catterlin, seconded by Councilmember Peterson to adopt Resolution 677 authorizing the surplus of the specified four vehicles. Motion Carried 4-0.**

APPROVAL OF VOUCHERS

Accounts Payable vouchers/checks approved were 39796 - 39854 including EFT's in the amount of \$143,224.25 and 39855 - 39905 including EFT's in the amount of \$72,005.58.

Payroll checks approved were 39765 - 39795 including EFT's in the amount of \$156,552.12.

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

MEETING ADJOURNED

It was moved by Councilmember Peterson, seconded by Councilmember Reed to adjourn the meeting at 8:20 pm. The next meeting will be Wednesday, August 26 2015 at 7:00 pm. Motion Carried 4-0.

Mayor Gary Dent:

Clerk-Treasurer Wendy Collins:

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: August 21, 2015
RE: LEGAL ACTIVITIES as of AUGUST 26, 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.

This will likely be one of the shorter Council Reports you will receive. However, that by no means suggests the meeting of this evening does not have heavy topics requiring action.

1. **PUD AGREEMENTS**: As has been mentioned in prior reports, there are many situations in which the PUD and the City's L&P can jointly deal with matters. What is before you tonight are three agreements which basically implement that approach. I would note that I am awaiting confirmation of the approval of minor clarifications, but they are of such a minor nature as to not require further delay in consideration.

A. **License Agreements for Common Utility Trench**: The title basically says it all. This would be a four party agreement under which the City would grant the PUD, Comcast, and Century Link the right to use the same trenches in which the City undergrounds its lines. I have spoken to Mr. Nott on this matter and it is mutually beneficial since it reduces the frequency of surface disruption since apparently conduits of a number greater than immediately required are installed for potential future use. Thus, if a need comes up, the City can allow the use of an unused conduit until and unless the City requires it.

B. **Easement Agreement**: Apparently the PUD desires to install fiber optic lines to the Water Tower site. The nature of the installation and the use of the phrase "communication facilities" suggests clearly that the primary purpose is not anticipated to be distribution of power. As is true with the

franchise granted to Astound Communications, it appears the next few years will be very interesting in terms of communication availability.

In any event, it is my recommendation that the Mayor be authorized to execute the documents upon approval of the minor changes I have requested.

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 for McCleary Police Department

To: Mayor Dent
From: George M. Crumb, Chief of Police
Date: Friday, August 7, 2015
RE: For August 12, 2015 Council Meeting

SUMMARY OF POLICE INCIDENTS / ACTIVITIES:

The below listed information are calls or contacts received by McCleary Police Officers either generated by Grays Harbor County dispatch 911 service, citizen reports, call in reports, citizen contacts, US mail, or other officer generated incidents.

1296 Incident histories reported this year as of time of this report, 080715/1338 (132 Histories since last report.

- Assault(s)
- Agency Assist(s)
- Alcohol Offense
- Audible Alarm
- Abandon Vehicle
- Animal Complaint ()
- Burglary
- Curfew Violation
- Citizen Dispute
- Civil
- Court Order Violation
- Citizen Assist
- DUI
- Disorderly Conduct/Verbal/Threats
- Drug Incidents (VUCSA)
- Death Report(s)
- Domestic Violence/Verbal/Mal Mis.
- Extra Patrol Request
- Fire Responses
- Found/Lost Property Report(s)
- Fraud--Firearm- Compl-
- Fight
- Harassment-
- Medical
- Juvenile Problem/Run-a-way
- Motorist Assist
- Malicious Mischief
- Missing Person-/Found-
- Noise Complaints
- No Valid Operator's License (NVOL)
- Police Information-, Protection Order Scv-
- Public Works Assist
- Parking Complaint
- Police Referral
- Speeding Stops
- Speed in School Zone
- Suspicious Person-/Vehicle-/Circumst-
- Subject Stop
- Sex Offense-0/Sex Offen Add Confirmation-
- Suicide-0/Suicide Attempt-
- Traffic Offense-/Reckless-/Hazard-
- Theft Reports/Vehicle-(Shop lifter-)
- Traffic Accident
- Traffic Stop
- Trespass
- Vehicle Prowl-0/Prowler-0
- Warrant Service/Confirmation
- Warrant Search
- X-Patrol request
- Warrant Arrest
- Welfare Check
- Weapons Offense
- 911 Open Line or Hang Up
- No classification-, or Unknown Problem-
- Wire Down

Discussion: Open.

Council Members Present: ALL.... Mr. Catterlin-Position 1, Mr. Reed-Position 2,
Mr. Peterson-Position 3, Mr. Schiller-Position 4,
Open-Position 5.

Mayor Dent: Present / Not Present _____

Officer Reporting: Chief Crumb _____

STAFF REPORT

To: Mayor Dent
From: Kevin Trehella, Water & Wastewater Manager
Date: August 19, 2015

Overall operations of both the water and waste water treatment plant is very good. Normally, in the summer to keep operations at the water plant operating smoothly, we have to throttle the flow down from 400gpm to 385gpm. This is done to prevent damage to the pumps. This summer, due to the low amount of rainfall during late spring, we have backed the flow from the pump down to 325gpm. The lowest we can back the pumps down is 280gpm.

As of this writing, the well has 61.3 feet of water in it when the pumps are not running, which is .4 feet lower than any time during the last year. If we look at traditional years, we will not begin recovery on the wells until mid-October.

I would suggest that we lower the amount of water consumption that we are currently using.

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: August 5, 2015
Re: Grays Harbor PUD easement

Grays Harbor PUD will be installing fiber cable to the cell tower by the City reservoirs. They will be going underground on Cedar Street and will need a utility easement from the City to complete their project.

Action Requested:

Please allow the Mayor to sign the utility easement provided.



PO Box 480 2720 Sumner Ave. Aberdeen, WA 98520-0109
360-532-4220 FAX 360-532-6085 1-800-562-7726

July 24, 2015

City of McCleary
C/O Paul Nott
100 S Third St
McCleary, WA 98557

Dear Mr. Nott,

Enclosed are two sets of "Grant of Easement" documents for your property: along Cedar St and at the water tower east of the city limits (McCleary); east of McCleary city limits (Green Diamond). This easement will allow Grays Harbor PUD to install underground fiber facilities to City of McCleary water tower facility.

Please review and if satisfactory, return one notarized set to Grays Harbor PUD. The other set is for your records.

If you have any questions, please contact me at 360-538-6283. Your timely attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink that reads "Amanda Ashby for Gary Malone". The signature is written in a cursive, flowing style.

Gary Malone
IT Communications Supervisor

GWM/ara
Enclosures

After recording return to:

GRAYS HARBOR PUD
PO BOX 480
ABERDEEN, WA 98520-0109

RE: PE-5697; WS-15-0016-Fiber

GRANT OF EASEMENT

Grantor: CITY OF MCCLEARY

Grantee: PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY

Legal Description (abbreviated): MC AC TAX 11; 18-05-13

Situate in Grays Harbor County, State of Washington

Additional legal on page 3

Assessor's Tax Parcel ID# 618051321004

City of McCleary, (collectively "Grantor"), as the owner of real property described in **Exhibit A** and depicted in **Exhibit B**, attached hereto (the "Real Property") does hereby grant and convey to PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, WASHINGTON, a municipal corporation ("the PUD") a perpetual, non-exclusive easement for utility lines, associated facilities and appurtenances (the "Easement") as follows:

1. Nature and Location of Easement. The Easement from Grantor shall be a permanent easement over, across, along, through, in, upon, and under the Real Property, for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, testing and operating the PUD's electric distribution, transmission, and communication facilities. The Easement shall be twenty (20) feet in width, ten (10) feet on each side of the centerline of the PUD's facilities which, without limiting the generality of the foregoing, shall include, but not be limited to: underground fiber optic and communication cables, vaults and any other necessary appurtenances located as constructed or to be constructed or relocated within the Real Property as depicted in **Exhibit B**.
2. Access, Right of Entry and Restoration. The PUD, its workmen, contractors, or both shall have the right at all times, without notice, of reasonable access upon and ingress to and egress from the Real Property for all purposes within the scope of this Easement. The PUD agrees, that if the Real Property is disturbed by the exercise of its rights under the Easement, it will restore the surface of the Real Property as reasonably practicable to the condition in which it existed at the commencement of the PUD's activities or, at its option, reasonably compensate Grantor for any material damage to the Real Property caused by the exercise of its Easement rights, including any damage to roads, crops, driveways or fences. The PUD shall have the right to trim, cut or remove trees, roots, and other vegetation that may endanger or interfere with the function of this Easement, the facilities or appurtenances at all reasonable times without compensation to Grantor and without any duty to replace them.

block wall, rockery, fence or similar obstructions or any excavation that might undermine or damage the facilities or appurtenances without the prior written consent of the PUD, which consent shall not be unreasonably withheld or delayed. If prohibited structures, obstructions, vegetation, or excavations are located within the Easement, the PUD may require Grantor to remove or remedy the same and, if Grantor fails to timely do so, the PUD may undertake all reasonable actions to protect its rights including removal and charge Grantor the reasonable costs of such actions. Grantor shall have the right to use the Easement for any legal purpose consistent with the limitations on encroachment and the easement rights granted to the PUD. Use of the Easement beyond the limits, however, shall be at Grantor's risk unless prior written approval is obtained from the PUD.

4. Binding Effect/Warranty of Title. The Easement and the terms, covenants and conditions contained herein are intended to and shall run with the Real Property and shall be binding on Grantor, the PUD, and their respective successor, heirs and assigns. Grantor warrants that Grantor is the legal owner of and holds marketable title to the Real Property.

Notarization Attached

EXHIBIT A

Property Description:

That portion of Section 13, Township 18 North, Range 5 West of the Willamette Meridian, described as follows:

Parcel 618051321004

The reservoir site described as: Beginning at the Northeast corner of the Northwest Quarter of the Northwest Quarter of section 13, Township 18 North, Range 5 West of the Willamette Meridian;

THENCE West along the North line of said Section 13 a distance of 117.4 feet;

THENCE South $61^{\circ} 42'$ East a distance of 889 feet to the West margin of the reservoir site and the initial point of this description;

THENCE North $3^{\circ} 16'$ East a distance of 47.4 feet to the northwest corner of reservoir site;

THENCE South $86^{\circ} 44'$ East a distance of 253 feet;

THENCE South $3^{\circ} 16'$ West a distance of 172 feet;

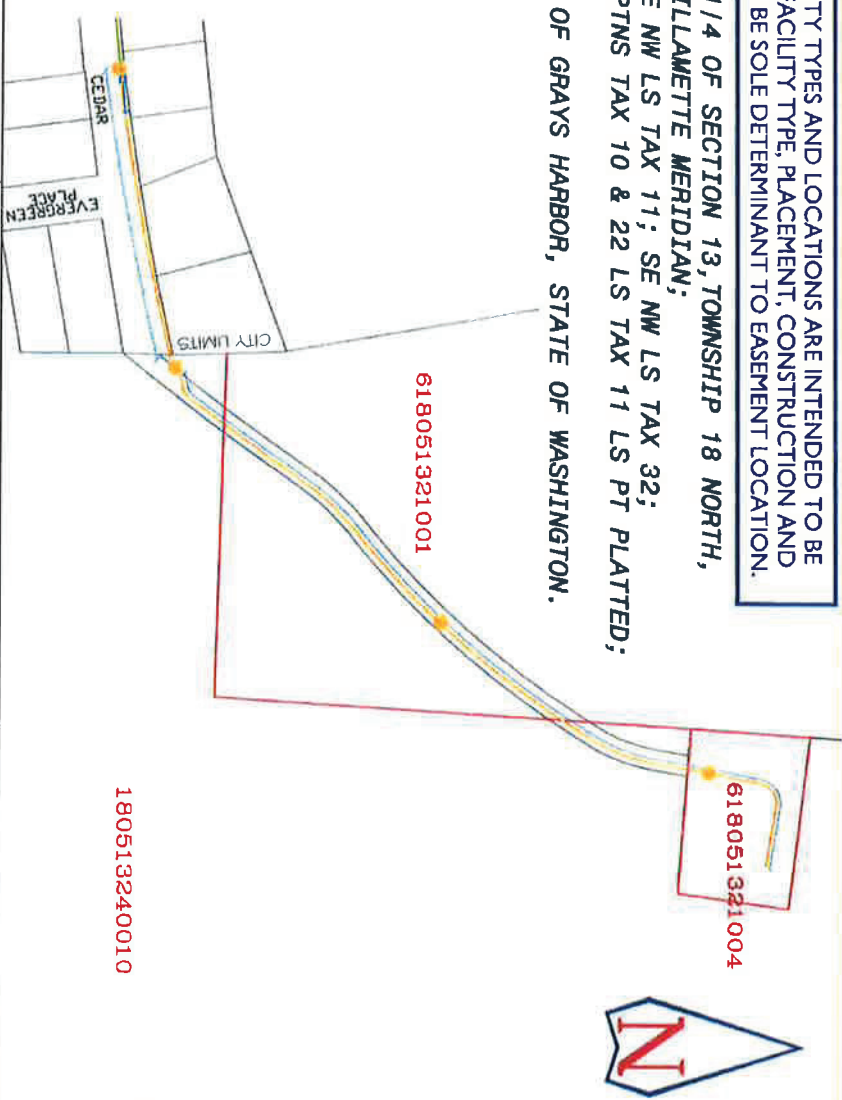
THENCE North $86^{\circ} 44'$ West a distance of 253 feet;

THENCE North $3^{\circ} 16'$ East a distance of 124.6 feet to initial point, containing approximately 1 acre;

Situate in the County of Grays Harbor, State of Washington.

NOTE: THIS DRAWING'S FACILITY TYPES AND LOCATIONS ARE INTENDED TO BE APPROXIMATE ONLY. ACTUAL FACILITY TYPE, PLACEMENT, CONSTRUCTION AND EXTENSIONS THEREFROM SHALL BE SOLE DETERMINANT TO EASEMENT LOCATION.

A PORTIONS OF THE NW 1/4 OF SECTION 13, TOWNSHIP 18 NORTH, RANGE 5 WEST OF THE WILLAMETTE MERIDIAN; INCLUDING THE E 1/2 NE NW LS TAX 11; SE NW LS TAX 32; MC AC W 1/2 NE NW LS PTNS TAX 10 & 22 LS TAX 11 LS PT PLATTED; MC AC TAX 11; SITUATE IN THE COUNTY OF GRAYS HARBOR, STATE OF WASHINGTON.



<p>LEGEND:</p> <ul style="list-style-type: none"> — PROPERTY LINE — UNDERGROUND FIBER FACILITIES — BURIED FIBER CONDUIT-1 1/4" HDPE — OVERHEAD FIBER FACILITIES — BURIED VAULT W/LID — POLE & ANCHOR W/DOWNGUYS 		<p>ENGINEERING DEPARTMENT PUBLIC UTILITY DISTRICT NO.1 GRAYS HARBOR COUNTY, WASHINGTON</p>		<p>EXHIBIT B</p>	
<p>EASEMENT SKETCH FOR GREEN DIAMOND RESOURCE COMPANY; CITY OF MCCLEARY, a municipal corporation</p>		<p>DATE: 6-15-2015 DR. BY: TLC</p>		<p>WS: 15-0016 ENGR: GM</p>	
<p>MAP: 180513B CK BY: SSB</p>		<p>VICIN: MCCLEARY APRVD: SSB</p>		<p>SCALE: 1"=250' NO. PE-5697</p>	

LICENSE AGREEMENT FOR A COMMON UTILITY TRENCH

THIS LICENSE AGREEMENT FOR A COMMON UTILITY TRENCH (referred to herein as "Agreement" or "License") is entered into by and between PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, a Washington municipal corporation (the "PUD") and the CITY OF McCLEARY, a Washington municipal corporation (the "City") (the City and the PUD may be referred to as a "Party" or collectively as the "Parties").

RECITALS

A. City is relocating the overhead electrical system to underground located in the vicinity of East Cedar extending to the City water supply system, as more particularly described in **Exhibit "A"**, (the "ROW") attached to this Agreement, and the PUD is installing new underground fiber optic communication facilities at the same time and location.

B. City and the PUD wish to share the cost of a common utility trench for the underground facilities pursuant to the terms of this Agreement;

NOW, THEREFORE, for and in consideration of the terms, conditions and mutual covenants contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City and PUD agree as follows:

1. PREMISES/ USE

1.1 License. For and in consideration of the observance of the terms and conditions set forth in this Agreement, City grants to the PUD the irrevocable right, privilege, and license (the "License") to use a common utility trench to be located in the vicinity of the ROW for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, and testing the Licensees' cables, conduit, and any related equipment for Licensees' communication facilities.

1.2 Trenching. City shall provide at its sole cost and expense a trench with approximate dimensions as follows:

Location: See **Exhibit "A"** attached

Length: Approximately 1345 feet

Width: Three (3) feet wide for the entire length

Depth: Three (3) feet deep. Added depth may be required for routing under existing infrastructure.

Additional Specifications: City to provide de-watering and shoring as required

As between the Parties, City shall be solely responsible for the trench including, but not limited to, all engineering and excavation work, shoring, and backfilling. City shall maintain proper and sufficient means of guarding the holes and excavations used in the performance of the work. City shall provide, erect and maintain all necessary barricades, suitable and sufficient flagging and lights, danger signals and signs and shall take all necessary precautions for the protection of the work and the safety of the public.

The trench shall be available for the PUD's installation work on or before October 1, 2015 and shall remain open and available until the PUD has notified the City in writing that it is ready for backfilling and compaction of the trench.

1.3 Cooperation. City and PUD shall cooperate in the installation of their respective conduit, facilities and equipment. Installation of the facilities shall take place in the following order: first the City and then the PUD. Upon completion of the installation of the City's facilities, oral and written notice shall be provided to the PUD that its work may commence. It is the intent of the Parties that all installation work shall be completed on or before November 1, 2015, s subject only to *force majeure* events beyond the Parties reasonable control.

1.4 Use. This License does not grant to the PUD any right, title, interest or authority to use any area other than or beyond the ROW except that the City shall provide a suitable site for the staging and lay down of the PUD's materials and equipment reasonably necessary to complete its installations in the vicinity of the ROW.

II. LICENSE FEE

Upon execution of this Agreement, the PUD shall pay the City the License Fees set forth in **Exhibit "B"**, attached. The License Fee shall be paid to the City promptly upon execution of this Agreement.

III. CONSTRUCTION, MAINTENANCE AND OPERATIONS

3.1 Costs. City shall be solely responsible for all costs of construction, relocation, and reconstruction of the trench and for the costs of installation of any property City places within the trench. The PUD shall be solely responsible for the installation cost of any property the PUD places within the trench.

3.2 No Liability. The PUD assumes no liability and no expense for construction of the trench by reason of this License.

3.3 Construction Standards. All trenching shall be constructed in accordance with all applicable laws, safety standards and regulations and shall include appropriate shoring and de-watering as necessary to allow the Licensees to install their cables and conduit without additional trenching work. All installation of pipe, conduit, cable and any other equipment within the trench shall be in accordance with all applicable laws, rules and regulations including, but not limited to, the National Electrical Code.

3.4 Not Binding. City covenants that City shall not bind, nor shall City's contractors or subcontractors bind, or attempt to bind, Licensees for payment of any money in connection with any of City's work in, on or about the ROW, whether authorized or unauthorized hereunder.

3.5 Contractors and Subcontractors. City agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all work on the trench and to keep the same free and clear of all liens, encumbrances, claims or suits.

3.6 Indemnity.

3.6.1 Without waiving any governmental immunity or defense available to the City under Washington law, City covenants and agrees that it will indemnify and hold harmless the PUD, its officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the PUD or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of the City's engineers, contractors, subcontractors or any of City's, officers, agents, or employees. City's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the City of all such suits, claims or other proceedings.

3.6.2 Without waiving any governmental immunity or defense available to the PUD under Washington law, the PUD covenants and agrees that it will indemnify and hold harmless City, its officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the City or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of the PUD's engineers, contractors, subcontractors or any of PUD's, officers, agents, or employees. The PUD's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the PUD of all such suits, claims or other proceedings.

3.6.3 No party shall be obligated to indemnify any other party in any manner whatsoever for the other party's own negligence, gross negligence or willful misconduct.

The provisions of this indemnification are solely for the benefit of the Parties to this Agreement and are not intended to create or grant any rights, contractual or otherwise, in any other person or entity.

IV. TERMINATION

Upon completion of the installation of the PUD's conduit, cable, facilities, and any related equipment, this License shall terminate and all rights and privileges herein granted shall immediately cease and terminate. Notwithstanding the termination of this License, the PUD

shall retain all rights for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, testing and operating its cables, conduit, and any related equipment for its distribution, transmission, and communication facilities consistent with the terms of any franchise agreement or otherwise it may have with the City.

V. MISCELLANEOUS

5.1 Amendments. No amendment, modification or alteration of the terms of this Agreement shall be binding unless it be in writing, dated subsequent to the date hereof, agreed to and duly executed by the parties.

5.2 Notices. Notices to the Parties required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the respective Party as follows:

Grays Harbor PUD
Attn: Gary Malone
2720 Sumner Avenue
P. O. Box 480
Aberdeen, WA 98520-0109
Telephone: 360.538.6283

City of McCleary
Attn: Todd Baun
100 S. 3rd Street
McCleary, WA 98557-9652
Telephone: 360.495.3667

or to such other address as may hereafter be designated in writing by any Party. All notices shall be deemed received three (3) calendar days following the date of mailing.

5.3 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, joint venturers, partners or any other similar such relationship. It is understood and agreed that no provision contained herein nor any acts of the Parties to this Agreement create a relationship other than that of licensor and licensee.

5.4 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Washington and all obligations of the Parties created hereunder are performable in Grays Harbor County, Washington. Further, the privileges granted under this Agreement shall be construed to be only those authorized by pertinent Washington statutes and not to include anything inconsistent with the rights of the public.

5.5 Dispute Resolution. The Parties shall first attempt to resolve any disputes regarding the trenching or the location and placement of utility lines in the trench by mutual agreement, but in the absence of or failure to reach mutual agreement, the City shall exercise its reasonable judgment to resolve all such disputes.

5.6 Captions. The captions contained in this Agreement are for convenience only and in no way

limit or enlarge the terms and conditions of this Agreement.

5.7 Nondiscrimination. City covenants that City, its agents, employees and anyone under its control, will not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices in connection with this Agreement and construction of the trench.

5.8 Attorney's Fees and Court Costs. In the event any Party brings any action to enforce or interpret this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorney's fees and all court costs, including all such fees and costs of an appeal.

5.9 Severability. The Parties agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal, state, or local law, ordinances effective during the License term, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby.

5.10 Integration/Construction. This Agreement, together with its exhibits, constitutes the entire Agreement between the Parties, as it relates to the License and supersedes any and all other written or oral agreements. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

5.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

5.12 Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Washington, without regard to the choice of law provisions thereof.

5.13 Authority. The signers of this Agreement hereby represent and warrant that he or she has full authority to execute this Agreement on behalf of their respective principals and that he or she has had full opportunity to read the contents hereof and to seek review by legal counsel.

DATED this _____ day of July 2015

PUBLIC UTILITY DISTRICT NO. 1
OF GRAYS HARBOR COUNTY

CITY OF McCLEARY

By: _____

By: _____
David A. Ward, PE, General Manager

_____, Mayor

LICENSE AGREEMENT FOR A COMMON UTILITY TRENCH

THIS LICENSE AGREEMENT FOR A COMMON UTILITY TRENCH (referred to herein as "Agreement" or "License") is entered into by and between PUBLIC UTILITY DISTRICT NO. 1 OF GRAYS HARBOR COUNTY, a Washington municipal corporation (the "PUD"), COMCAST OF WASHINGTON IV, INC, a Washington corporation ("Comcast"), and CENTURYLINK COMMUNICATIONS, LLC, a Delaware limited liability company ("CenturyLink") (PUD, Comcast, and CenturyLink are collectively referred to as "Licensees") and the CITY OF McCLEARY, a Washington municipal corporation (the "City") (the City and each of the Licensees may be referred to as a "Party" or collectively as the "Parties").

RECITALS

A. City is upgrading the underground electrical system located in the vicinity of Maple Street, Main Street, S.3rd Street and E. Mommsen Street (the "ROW"), as more particularly described in **Exhibit "A"**, attached to this Agreement, and Licensees are relocating their respective fiber optic and communication facilities underground at the same time and location.

B. City and the Licensees wish to share the cost of a common utility trench for the underground facilities pursuant to the terms of this Agreement;

NOW, THEREFORE, for and in consideration of the terms, conditions and mutual covenants contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City, PUD, Comcast, and CenturyLink agree as follows:

1. PREMISES/ USE

1.1 License. For and in consideration of the observance of the terms and conditions set forth in this Agreement, City grants to the PUD, Comcast and CenturyLink the irrevocable right, privilege, and license (the "License") to use a common utility trench to be located in the vicinity of the ROW for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, and testing the Licensees' cables, conduit, and any related equipment for Licensees' communication facilities.

1.2 Trenching. City shall provide at its sole cost and expense a trench with approximate dimensions as follows:

Location: See **Exhibit "A"** attached

Length: Approximately 135 feet

Width: Three (3) feet wide for the entire length

Depth: Three (3) feet deep. Added depth may be required for routing under existing infrastructure.

Additional Specifications: City to provide de-watering and shoring as required

As between the Parties, City shall be solely responsible for the trench including, but not limited to, all engineering and excavation work, shoring, and backfilling. City shall maintain proper and sufficient means of guarding the holes and excavations used in the performance of the work. City shall provide, erect and maintain all necessary barricades, suitable and sufficient flagging and lights, danger signals and signs and shall take all necessary precautions for the protection of the work and the safety of the public.

The trench shall be available for the Licensees' installation work on or before September 1, 2015 and shall remain open and available until each of the Licensees has notified the City in writing that it is ready for backfilling and compaction of the trench.

1.3 Cooperation. City and Licensees shall cooperate in the installation of their respective conduit, facilities and equipment. Installation of the Licensees' facilities shall take place in the following order: City, PUD, CenturyLink, and Comcast. Upon completion of the installation of each of the Parties' facilities, oral and written notice shall be provided to the Licensee next scheduled to install its facilities that its work may commence. The Licensees represent and warrant that absent All installation work shall be completed on or before October 1, 2015. Licensees agree that their individual installations will not take longer than ten (10) days subject only to force majeure events beyond their reasonable control.

1.4 Use. This License does not grant to the PUD, Comcast or CenturyLink any right, title, interest or authority to use any area other than or beyond the ROW except that the City shall provide a suitable site for the staging and lay down of the Licensees' materials and equipment reasonably necessary to complete their respective installations in the vicinity of the ROW.

II. LICENSE FEE

Upon execution of this Agreement, each Licensee shall pay the City the License Fees set forth in **Exhibit "B"**, attached. The License Fee shall be paid to the City promptly upon execution of this Agreement.

III. CONSTRUCTION, MAINTENANCE AND OPERATIONS

3.1 Costs. City shall be solely responsible for all costs of construction, relocation, and reconstruction of the trench and for the costs of installation of any property City places within the trench. Each Licensee shall be solely responsible for the installation cost of any property such Licensee places within the trench.

3.2 No Liability. Licensees assume no liability and no expense for construction of the trench by reason of this License.

3.3 Construction Standards. All trenching shall be constructed in accordance with all applicable laws, safety standards and regulations and shall include appropriate shoring and de-watering as necessary to allow the Licensees to install their cables and conduit without additional trenching work. All installation of pipe, conduit, cable and any other equipment within the trench shall be in accordance with all applicable laws, rules and regulations including, but not limited to, the National Electrical Code.

3.4 Not Binding. City covenants that City shall not bind, nor shall City's contractors or subcontractors bind, or attempt to bind, Licensees for payment of any money in connection with any of City's work in, on or about the ROW, whether authorized or unauthorized hereunder.

3.5 Contractors and Subcontractors. City agrees to promptly pay all persons supplying labor, services and materials in the performance of any and all work on the trench and to keep the same free and clear of all liens, encumbrances, claims or suits.

3.6 Indemnity.

3.6.1 Without waiving any governmental immunity or defense available to the City under Washington law, City covenants and agrees that it will indemnify and hold harmless each of the Licensees and any and all of their respective officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the Licensees or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of the City's engineers, contractors, subcontractors or any of City's, officers, agents, or employees. City's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the City of all such suits, claims or other proceedings.

3.6.2 Without waiving any governmental immunity or defense available to the PUD under Washington law, the PUD covenants and agrees that it will indemnify and hold harmless City, Comcast, and CenturyLink, or any one of them, and any and all of their respective officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the City and Licensees or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of the PUD's engineers, contractors, subcontractors or any of PUD's, officers, agents, or employees. The PUD's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the PUD of all such suits, claims or other proceedings.

3.6.3 Comcast covenants and agrees that it will indemnify and hold harmless City, the PUD, and CenturyLink, or any one of them, and any and all of their respective officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense,

whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the City or the PUD, or CenturyLink, or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of Comcast's engineers, contractors, subcontractors or any of Comcast's, officers, agents, or employees. Comcast's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the indemnitee of all such suits, claims or other proceedings.

3.6.4 CenturyLink covenants and agrees that it will indemnify and hold harmless City, the PUD, and Comcast, or any one of them, and any and all of their respective officers, principals, agents and employees, from any liability, loss, damage, cost, charge or expense, whether direct or indirect, arising in any way out of the performance of this Agreement (including, but not limited to contractual claims, lien claims, bodily injury and property damage) to which the City or the PUD, or Comcast, or the other indemnities may be put or subject by reason of any act, action, neglect, omission or default under this Agreement on the part of any of CenturyLink's engineers, contractors, subcontractors or any of CenturyLink's, officers, agents, or employees. CenturyLink's indemnity obligations shall survive the completion and final acceptance of the work under this Agreement, and shall only terminate upon final satisfaction by the indemnitee of all such suits, claims or other proceedings

3.6.5 No party shall be obligated to indemnify any other party in any manner whatsoever for the other party's own negligence, gross negligence or willful misconduct.

The provisions of this indemnification are solely for the benefit of the Parties to this Agreement and are not intended to create or grant any rights, contractual or otherwise, in any other person or entity.

IV. TERMINATION

Upon completion of the installation of the Licensees' conduit, cable, facilities, and any related equipment, this License shall terminate and all rights and privileges herein granted shall immediately cease and terminate. Notwithstanding the termination of this License, Licensees shall retain all rights for the purpose of installing, laying, constructing, maintaining, inspecting, repairing, removing, expanding, extending, replacing, using, testing and operating their respective cables, conduit, and any related equipment for Licensees' distribution, transmission, and communication facilities consistent with the terms of any franchise agreement or otherwise they may have with the City.

V. MISCELLANEOUS

5.1 Amendments. No amendment, modification or alteration of the terms of this Agreement shall be binding unless it be in writing, dated subsequent to the date hereof, agreed to and duly executed by the parties.

5.2 Notices. Notices to the Parties required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to the respective Party as follows:

Grays Harbor PUD
Attn: Gary Malone
2720 Sumner Avenue
P. O. Box 480
Aberdeen, WA 98520-0109
(360) 538-6283

Comcast
Attn: _____

City of McCleary
Attn: Todd Baun
100 S. 3rd Street
McCleary, WA 98557-9652
360-495-3667

Century Tel
Attn: _____

or to such other address as may hereafter be designated in writing by any Party. All notices shall be deemed received three (3) calendar days following the date of mailing.

5.3 Relationship of the Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, joint venturers, partners or any other similar such relationship. It is understood and agreed that no provision contained herein nor any acts of the Parties to this Agreement create a relationship other than that of licensor and licensee.

5.4 Applicable Law. This Agreement shall be construed under and in accordance with the laws of the State of Washington and all obligations of the Parties created hereunder are performable in Grays Harbor County, Washington. Further, the privileges granted under this Agreement shall be construed to be only those authorized by pertinent Washington statutes and not to include anything inconsistent with the rights of the public.

5.5 Dispute Resolution. The Parties shall first attempt to resolve any disputes regarding the trenching or the location and placement of utility lines in the trench by mutual agreement, but in the absence of or failure to reach mutual agreement, the City shall exercise its reasonable judgment to resolve all such disputes.

5.6 Captions. The captions contained in this Agreement are for convenience only and in no way limit or enlarge the terms and conditions of this Agreement.

5.7 Nondiscrimination. City covenants that City, its agents, employees and anyone under its control, will not discriminate against any individual or group on account of race, color, gender, age, religion, national origin, or handicap, in employment practices in connection with this Agreement and construction of the trench.

5.8 Attorney's Fees and Court Costs. In the event any Party brings any action to enforce or interpret this Agreement, the substantially prevailing Party shall be entitled to recover its reasonable attorney's fees and all court costs, including all such fees and costs of an appeal.

5.9 Severability. The Parties agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal, state, or local law, ordinances effective during the License term, then and in that event, it is the intention of the Parties that the remainder of this Agreement shall not be affected thereby.

5.10 Integration/Construction. This Agreement, together with its exhibits, constitutes the entire Agreement between the Parties, as it relates to the License and supersedes any and all other written or oral agreements. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

5.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and counterparts of this Agreement may also be exchanged via electronic facsimile machines and any electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.

5.12 Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Washington, without regard to the choice of law provisions thereof.

5.13 Authority. The signers of this Agreement hereby represent and warrant that he or she has full authority to execute this Agreement on behalf of their respective principals and that he or she has had full opportunity to read the contents hereof and to seek review by legal counsel.

DATED this _____ day of July 2015

PUBLIC UTILITY DISTRICT NO. 1
OF GRAYS HARBOR COUNTY

By: _____
David A. Ward, PE, General Manager

CITY OF McCLEARY

By: _____
_____, Mayor

COMCAST OF WASHINGTON IV, INC.

By: _____

Its: _____

UBI #

CENTURYTEL COMMUNICATIONS, LLC

By: _____

Its: _____

UBI#

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: August 24, 2015
Re: General Pacific LED Street Light purchase order

I have received 3 bids to purchase LED street lights. This purchase is replace all of our street lighting (234 lights) in the City. We received a \$32,000 grant from WA Dept. of Commerce and we budgeted another \$32,000 to purchase these lights. The additional funds for this purchase will come out of Light and Power Cap. Improvement System which we have only spent 10% of the \$150,000 that was budgeted so far this year.

We received bids from CED, General Pacific and Ecotone Products LLC. Of the 3 bidders, General Pacific is the lowest bidder with \$76578.22 including WA sales Tax. I recommend that we purchase the lights which will take several weeks to get here.

Action Requested:

Please allow the Mayor to sign the General Pacific PO provided.

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: August 24, 2015
Re: Radwell Purchase Order

The Waste Water Treatment Plant has had several driver failures over the past year. Driver are used in the plant to control and automate many of the function in the Treatment Plant. While some of the failures can be minor, we have had one that nearly shut down half of the plant recently. Luckily, we have support staff that we contacted and we were able to get the problem fixed. We are now worried that we have another driver that is on the verge of failure and that failure could be catastrophic to the Treatment Plant.

The current drives and drivers we are using were new in 2006, but are now obsolete technology. They are also getting more expensive and harder to find.

This PO is to purchase an updated driver system to replace one of the obsolete drivers we are currently using. This would allow us to get through the rest of the year and we will be budgeting for additional drivers that can be used with this system in 2016.

The money will be coming out of the Sewer Cap. Improvement equipment fund, which has plenty of budget left for 2015.

Action Requested:

Please allow the Mayor to sign the Radwell PO provided.

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: August 24, 2015
Re: eCivis Agreement

I have been in contact with a company called eCivis. This company provides a grant management system that we can utilize to find grant funding, improving collaboration, and even write grants.

I have demoed their product and I believe this product would be very helpful for me to find, apply and possibly manage successful grants.

The cost of this service is \$690 annual fee with a 3 year agreement.

Action Requested:

Please allow the Mayor to sign the 3 year agreement with eCivis.



ECIVIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT

Date 8/10/2015

Contract No. 9477

This Agreement is made by and between:

eCivis, Inc., a Delaware corporation ("eCivis")
 418 N. Fair Oaks Ave. #301
 Pasadena, CA 91103
 Fax: (626) 628-3232
 Sales Contact:
 Jase Leonard

and

City of McCleary, WA ("Customer")
 100 3rd Street
 McCleary, WA 98557
 Phone: 360-495-3667
 Principal Contact and Master Access Holder:
 Todd Baun, Public Works Director

This Agreement, and the Exhibits attached hereto, set forth the business relationship between the parties and the terms and conditions under which the following products are licensed and Services are provided to Customer, and supersedes all previous agreements between eCivis and Customer.

GN: Recurring Annual Subscription Fee	Description	Units	Avg Unit Price	Total Price
Grants Network: Basic License	Pre-Award AND Post-Award Grants Management System	1	\$690.00	\$690.00
GN: Recurring Annual Subscription Fee Sub-Total				\$690.00
TOTAL PRICE				\$690.00

Subscription Period(s) and Payment Terms

The Subscription Period of this Agreement will conclude 8/16/2018. Payment is due net 30 days from invoice date.

- Cycle 1: 8/17/2015 through 8/16/2016 for a price of \$ 690
- Cycle 2: 8/17/2016 through 8/16/2017 for a price of \$ 690
- Cycle 3: 8/17/2017 through 8/16/2018 for a price of \$ 690

PRICE IS ONLY VALID IF AGREEMENT IS SIGNED ON OR BEFORE: August 14, 2015.

IN WITNESS WHEREOF, the parties hereto have caused to be executed or executed this Agreement as of the day and year first above written.

Accepted By:
 City of McCleary, WA

Accepted By:
 eCivis, Inc.

By: _____
 (Authorized Signature)

By: _____
 (Authorized Signature)

Name: _____
 (type or print)

Name: Stephanie Rodriguez-Barnett
 (type or print)

Title: _____

Title: Director of Account Operations

Date: _____

Date: _____

Send invoice to (if different than address above): _____

eCivis Master Subscription and Service Agreement

THIS MASTER SUBSCRIPTION AND SERVICE AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF ALL OUR SERVICES.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on July 31, 2015. It is effective between You and Us as of the date of You accepting this Agreement.

Table of Contents

1. Definitions
2. Purchased Services
3. Use of the Services
4. Professional Services, Cooperation: Delays
5. Fees and Payment for Purchased Services
6. Proprietary Rights
7. Confidentiality
8. Warranties and Disclaimers
9. Limitation of Liability
10. Term and Termination
11. Governing Law and Jurisdiction
12. General Provisions
13. Mutual Indemnification

1. DEFINITIONS

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Malicious Code" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"Professional Services" means work performed by Us for You by Our professional services division under this Agreement or any relevant purchase order. Such work may include, but not limited to, Grant Writing, Peer Review, Technical Assistance and/or Training services.

"Purchased Services" means Services that You or Your Affiliates purchase under this Agreement for Grants NetworkTM products and Professional Services.

"Services" means the products and services that are ordered by You and made available by Us online via the customer login link at <http://www.ecivis.com> and/or other web pages designated by Us.

"Users" means individuals who are authorized by You to use the Services, and who have been supplied user identifications and passwords by You (or by Us at Your request). Users are limited to Your employees. Non-employees such as Consultants, contractors and agents, and third parties with which You transact business may not be granted access.

"We," "Us" or "Our" means eCivis, a Delaware corporation.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Your Data" means all electronic data or information submitted by You to the Purchased Services.

2. PURCHASED SERVICES

2.1. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and any relevant Purchase Order during a subscription term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in writing, (i) Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions. User subscriptions are for designated Users only and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

3.1. Our Responsibilities. We shall: (i) provide Our basic support for the Purchased Services to You at no additional charge, and/or upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which We shall give at least 8 hours notice via the Purchased Services and which We shall schedule to the extent practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

3.2. Our Protection of Your Data. We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 7.3 (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

3.3. Your Responsibilities. You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the user guide and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

3.4. Usage Limitations. Services may be subject to other limitations, such as, for example, limits on the number of grants that can be managed in Our Grants Network™ Tracking & Reporting product, on the number of grant applications, peer reviews and/or trainings provided by Us. Any such limitations are specified in the signature page of this Agreement.

3.5. Third Party Data. We do not own data or files submitted to Grants Network by third parties. You assume all risks that may occur from downloading third-party data or files.

4. PROFESSIONAL SERVICES, COOPERATION: DELAYS

4.1. Should this Agreement include Professional Services as part of its User Subscriptions and each party agrees to cooperate reasonably and in good faith with the other in the performance of such Professional Services and acknowledges that delays may otherwise result. You agree to provide, or provide access to, the following as needed, and when applicable, for Services that require Us to be at Your location: office workspace, telephone and other facilities, suitably configured computer equipment with Internet access, complete and accurate information and data from Your employees and agents, continuous administrative access to its ecivis.com account, coordination of onsite, online and telephonic meetings, and other resources as reasonably necessary for satisfactory and timely performance of the Professional Services.

4.2. Each party agrees its respective employees and agents will reasonably and in good faith cooperate with each other in a professional and

courteous manner in the performance of their duties under this Agreement to complete such Professional Services.

4.3. It is understood by You that delays in providing material or information resulting in missed grant application deadlines does not constitute non delivery of grant writing services by Us. We shall provide a reasonable timeline to ensure the delivery of Our Professional Services.

4.4. Peer Review Services. Should this Agreement include Peer Review services, upon mutual agreement by Us and You, Peer Review services may be exchanged with "customized services" of equivalent value, if such Services are available at the time of request. Such "customized services" may include, but not limited to, customized funding searches, consulting, coaching, and training.

4.5. You shall provide to Us written acceptance of each Professional Service listed in Exhibit A within 5 business days of Professional Services being delivered to You. Failure to provide written acceptance during this period shall be deemed acceptance of Professional Services delivered.

5. FEES AND PAYMENT FOR PURCHASED SERVICES

5.1. Fees. You shall pay all fees specified under this Agreement. Except as otherwise specified herein, (i) fees are based on Services purchased and not actual usage for Purchased Services, (ii) payment obligations are non-cancelable and fees paid are non-refundable and will not result in any refund or credit and (iii) the number of User subscriptions purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or pay by check. If You provide credit card information to Us, You authorize Us to charge such credit card for all Services listed under this Agreement for the initial subscription term and any renewal subscription term(s) as set forth in Section 10.2 (Term of Purchased User Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated under this Agreement. Unless otherwise stated in this Agreement, invoice charge(s) are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our Services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, suspend Our Services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue.

5.5. Taxes. Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. Restrictions. You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorized herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

6.3. Your Applications and Code. If You, a third party acting on Your behalf, or a User creates applications or program code using the Services, You authorize Us to host, copy, transmit, display and adapt such applications and program code, solely as necessary for Us to provide the Services in accordance with this Agreement. Subject to the above, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

6.4. Your Data. Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

6.5. Suggestions. We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information is subject to open records requirements defined by state statute, unless explicitly exempt under state statute. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement other than its Affiliates and their legal counsel and accountants without the other party's prior written consent.

7.3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We warrant that (i) We have validly entered into this Agreement and have the legal power to do so, (ii) the Services shall perform materially in accordance with this Agreement, (iii) We will not transmit Malicious Code to You, provided it is not a breach of this subpart (iv) if You or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty above, Your exclusive remedy shall be as provided in Section 10.3 (Termination for Cause) below.

8.2. Your Warranties. You warrant that You have validly entered into this Agreement and have the legal power to do so.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. LIMITATION OF LIABILITY

9.1. Limitation of Liability. NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT FOR PURCHASED SERVICES).

9.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10. TERM AND TERMINATION

10.1. **Term of Agreement.** This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement have expired or been terminated.

10.2. **Term of Purchased User Subscriptions.** User subscriptions purchased by You commence on the start date specified under this Agreement and continue for the subscription term specified herein.

10.3. **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

10.4. **Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Purchased Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

10.5. **Surviving Provisions.** Section 5 (Fees and Payment for Purchased Services), 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Limitation of Liability), 10.4 (Return of Your Data), 11 (Governing Law and Jurisdiction), 12 (General Provisions) and 13 (Mutual Indemnification) shall survive any termination or expiration of this Agreement.

11. GOVERNING LAW AND JURISDICTION

11.1. **Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California as it applies to a contract made and performed in such state.**

12. GENERAL PROVISIONS

12.1. **Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department (legal@ecivis.com).

12.2. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

12.3. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

12.4. **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

12.5. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

12.6. **Attorney Fees.** You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 5.2 (Invoicing and Payment).

12.7. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto constitutes the entire Agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification,

amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted.

13. MUTUAL INDEMNIFICATION

13.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "Claim Against You"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

13.2. Indemnification by You. You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "Claim Against Us"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us (provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

13.3. Exclusive Remedy. This Section 13 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

[Remainder of page intentionally left blank, signature page is on the cover page to this Agreement]

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: July 17, 2015
Re: Water Conservation Ordinance

With our current weather and dry conditions, I have started looking at ways to keep our water system safe. Since the City has nothing on Water Conservation, I have been talking with Dan about this issue of drafting a Water Conservation Ordinance. Dan has drafted an Ordinance that I think will help protect our valuable water.

This issue started to pop up in early June. Kevin and I started reviewing our well outputs, and we were seeing that our current well levels were currently at levels normally seen in late August and September. With this information, we consulted Gray and Osbourn about what we could do to help with our declining water in the well field. They gave us some suggestions on turning down output from the wells and possibly limiting our back washing cycles. Both items were implemented and have helped our wells slowly recover.

The City has also cut our normal irrigation usage in half, stopped flushing hydrants unless necessary and have put a message on our website asking for voluntary water conservation. I have put the website message on page 2 for your information.

Action Requested:

Please allow the Mayor to sign the Ordinance for Water Conservation measures.

With our drier than normal winter, dry warm spring and early summer, the City and our ground water supplies are at risk of overuse. The demand on our aquifer can be greater than the amount supplied by rain and snowmelt. Water conservation is an important measure to help with, due to increases with demand on the City's potable water resource.

Keep in mind that it is often cheaper, easier, and safer to use less water and there are many ways for homeowners to conserve water. It is important for our consumers to use water wisely to assure an adequate supply of water for our community. Following are some conservation measures will help reduce water usage during hot, dry weather:

Outdoor and Lawn watering tips:

- The average lawn requires only one inch of water per week to stay green. Overwatering doesn't improve your lawn's health and results in runoff and water waste. Place a series of shallow containers throughout your lawn. Turn the sprinklers on and water your grass. When you're finished, measure the water in the dishes. Adjust the time until the water is about one inch deep.
- Regularly check and adjust your sprinklers. Water only your lawn and not the driveway, streets and sidewalks.
- In order to reduce the amount of water lost to evaporation, the best time to water your lawn is in the mornings between 6am-9am.
- Mow your lawn with blades set high; grass that is 2"-3" tall promotes a healthier root system and helps retain soil moisture.
- Consider replacing lawn with native plants to use less water, fewer chemicals, and eliminate mowing.
- Apply mulch around plants and trees to retain moisture and inhibit weed growth.
- Use a broom, not a hose, to clean driveways and sidewalks

Indoor water conservation tips:

- Don't use the toilet as a wastebasket. Each flush wastes water.
- Check toilets and faucets for leaks and fix any problems.
- Run your dishwasher only when it's full.
- Wash only full loads of laundry or use the proper water level setting for your load size.
- Don't leave the water running when brushing your teeth or shaving. With the tap running at full force, shaving takes 20 gallons of water, teeth-brushing takes 10.
- Take shorter showers or use less water in your bath. A full bathtub requires about 36 gallons of water. A five-minute shower using a water-conserving showerhead will use just 15 to 25 gallons.
- Consider installing water-efficient toilets, faucets and showerheads as a water-saving investment.

ORDINANCE NO. _____

AN ORDINANCE RELATING TO PUBLIC UTILITIES,
ADDING A NEW CHAPTER TO TITLE 13 OF THE
MUNICIPAL CODE, PROVIDING FOR PENALTIES,
ENFORCEMENT, AND SEVERABILITY.

R E C I T A L S:

1. The Director of Public Works has reported to the Mayor and Council that the source of the City's water supply is currently at a level normally reached in the early Fall.

2. The indication is such an unusual level of availability is associated with the weather of the recent months which has involved much less rainfall than would be normal.

3. A review of the Municipal Code has disclosed no existing provisions authorizing the implementation of measures to control water usage in situations arising from a shortage of supply.

4. As a protective measure for the public good, it is found appropriate to implement the provisions set forth below so that, in the event such action becomes necessary, specific guidelines as to steps to be taken to protect the public health and safety are in place.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY Council OF THE CITY OF McCLEARY:

SECTION I: When, as the result of information provided by the Director of Public Works (the Director), it is deemed necessary in the judgment of the Council to conserve water within the City's domestic water supply system during critical water shortage periods, the Council may by resolution declare an emergency condition and direct the Director to implement any or all of the following actions after publication of notice thereof in a newspaper of general circulation distributed in the city. In the event the Director has determined it necessary to make this recommendation and more than fourteen calendar days must pass before the next regular meeting of the Council, the Mayor may issue a proclamation declaring the emergency which shall remain in place until the Council ratifies, reverses, or modifies the action of the Mayor at its next meeting.

Based upon the information provided to the Council or the Mayor, as the case may be, the resolution or declaration shall define the emergency as a mild, moderate, or severe emergency. Such definition shall govern the steps taken in the implementation of the program. Upon implementation of a program, the public works department shall monitor the supply and demand for domestic water on a daily basis and the Director shall provide reports to the Mayor and Council on a weekly basis of the status of the domestic water system.

SECTION II: Upon adoption of a water supply emergency resolution, the Director shall implement a water consumption

curtailment program corresponding to the emergency level declared by Council. The water curtailment program shall consist of the following measures and any other measures necessary, in the judgment of the Director, to maintain the operational capabilities of the City's water supply system and thus insure the safety and health of those served by it.

A. Stage I-Mild:

1. The public works department shall place a notice of a water supply emergency upon the City's website and any social media service upon which it maintains a "site". It shall also notify the newspapers of general circulation within the City of this situation.

2. The public works department shall prepare and send a water status report to large water users as identified in the city's utility billing system.

3. The Director may take such steps as may be deemed appropriate requesting that domestic water users using city water for irrigation conform to the following landscape watering schedule, such watering to be allowed before 9:00 am and after 6:00 pm:

a. Even-numbered addresses water on even-numbered calendar days.

b. Odd-numbered addresses water on odd-numbered calendar days.

4. The public works department may develop and distribute to customers within the water utility billing system a water conservation guide.

B. Stage II-Moderate: In addition to the following measures, all of the measures indicated in the mild stage water emergency shall apply.

1. A representative of the public works department shall meet with the large water users as identified in the water utility billing system to inform them of the current condition and request a voluntary percentage reduction in their water consumption.

2. Mandatory landscape water restrictions shall be implemented. Landscape watering restriction may include required schedules up to and including prohibition of landscape watering.

3. Washing of streets, sidewalks, driveways, or decks shall be prohibited except as necessary for public health and safety.

4. Washing of boats and vehicles shall be prohibited unless at a commercial car washing facility equipped with water recycling equipment.

5. The filling of swimming pools, spas, and similar artificially created water features is prohibited.

6. Construction operations receiving water from a hydrant shall not use water unnecessarily for any purposes other than those required by regulatory agencies.

7. All restaurants that provide table service shall be requested to post in a conspicuous place a notice of emergency water conditions as provided by the Director and shall refrain from serving water except upon a specific request by a customer.

8. Operators of commercial establishments offering lodgings, including by way of example bed and breakfasts and motels, shall be requested post in each room a notice of emergency water conditions as provided by the Director.

C. Stage III-Severe: In addition to the following measures, all of the measures indicated in the mild stage and moderate stage water emergencies shall apply.

1. All watering of any lawn, yard, city park, landscaping, recreational area, or any other area containing vegetation shall be prohibited.

2. Hydrant permits shall be rescinded and no new permits issued.

3. In the event the above measures do not prevent a shortage of water supply available for the basic function of health and sanitation, the Director may be authorized to implement a rolling system of water system outages as necessary to preserve basic health and sanitation.

SECTION III. Enforcement:

A. Accountability: For the purposes of this ordinance, the legal owner of any premises upon which a violation of this section occurs or, in the case of rented or leased

premises, the legal occupant thereof, shall be deemed accountable for the conduct of all other persons being present thereon or having access to the premises. Any such owner or occupant may be found to have committed a violation of this ordinance upon proof of the commission of a violation of this section and proof that the named individual is the owner or legal occupant of the premises upon which the violation occurred, though the persons claimed to have committed the violation have not been prosecuted or convicted, or have been acquitted.

B. Violations & Penalties:

1. It is unlawful for any person to violate any provision of this ordinance. For the purpose of this section, person includes, in addition to the definition provided in MMC 9.04.160, those accountable for the conduct of others as defined in this section. Notices of infraction or citations, as may be merited under subparagraph 2, may be issued for violations of this ordinance.

2. Any person found to have violated any provision of this ordinance shall be deemed to have committed a civil infraction subject to a civil penalty as set forth in MMC 8.16.230: Provided that, if the same violator has been found to have committed an infraction violation for the same or similar conduct two separate times, with the violations occurring at the same location, involving the same or similar sections of the Municipal Code or other similar codes, and having been issued

within a thirty day period, the third or subsequent violation shall be issued as a citation and shall be deemed to constitute a misdemeanor, punishable as provided in MMC 9.02.030.

C. Discontinuance of Service: If a person accountable for service at a location has been given written notification of violation of the provisions of this ordinance and has failed to timely take reasonable efforts to correct the violation, in addition to the enforcement provisions set forth in the prior subparagraphs, in the Director's discretion, a written notification of intention to discontinue service may be given. It shall be given no less than five business days in advance of the intended date of discontinuance of service. The person may appeal such notification pursuant to the procedure set forth in Sections 5.04.030 and 5.04.040. Such notice of appeal must be filed within three business days of the giving of the notice. All other provisions of the two sections apply, including staying of the actual termination of service.

SECTION IV: Severability: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been

declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION V: Effective Date: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION VI: Corrections by the Clerk-treasurer or Code Reviser: Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

SECTION VII: Codification: Sections I through III shall constitute a new chapter in Title 13 of the Municipal Code.

PASSED THIS _____ DAY OF _____, 2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

ORDINANCE -C- 8
07/15/2015
DG/le

CITY OF McCLEARY
100 SOUTH 3RD STREET
McCLEARY, WASHINGTON 98557

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, WENDY COLLINS, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

WENDY COLLINS

SIGNED AND SWORN to before me this _____ day of _____, 2015, by WENDY COLLINS.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON, Residing at:
My appointment expires:

ORDINANCE NO. _____

**AN ORDINANCE ADOPTING A SUPPLEMENTAL
BUDGET FOR THE CALENDAR YEAR 2015;
AMENDING ORDINANCE 806 AS TO A PARTICULAR
ELEMENT; AND DECLARING AN EMERGENCY.**

R E C I T A L S:

1. Since the adoption of the budget for 2015, certain fiscal matters in relation to not only funding of the law enforcement agency of the City but also the appropriate method of providing such services have been the subject of continued discussions. The Council and Mayor have received a fiscal report from the Clerk-treasurer summarizing the current situation of the funding for the Police Department and analyzing the impacts of various alternatives.

2. Previously, the Council and Mayor approved the submission to the City's voters in November a proposal requesting the authority to collect a special excess levy for collection in 2016. If approved, any funds received as a result of that levy will be restricted for use in funding the City's Police Department.

3. In the adoption of the City's budget for 2015, \$150,000.00 was transferred from the expenditures to be utilized for funding of the Police Department and placed in an unallocated position. Those funds are still unallocated.

4. In light of the fact that the ballot proposition will not be decided until November's election, the Council finds it appropriate to transfer the funds set forth upon Exhibit #1 the Police Department's budget for the purpose of funding the Department's operations for a defined period. To achieve that goal, it is recognized that the Department's administration will have to carefully manage the Department's operations

5. Thus, this ordinance was introduced at the regular council meeting of August 12, 2015, so as to allow the opportunity for public comment.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: The portions of the budget adopted pursuant to Ordinance 806 are amended as shown upon Exhibit #1, which was adopted as Attachment A to Ordinance 806, attached hereto and incorporated by this reference.

SECTION II: The Office of the Clerk-treasurer shall be authorized to modify the referenced funds and accounts as may be required and authorized pursuant to the BARS accounting system issued by the Office of the State Auditor to correctly reflect revenues and expenditures.

SECTION III: To the extent not amended by Section I, the budget adopted pursuant to Ordinance 806 is reaffirmed.

SECTION IV: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

PASSED THIS ___ DAY OF AUGUST, 2015, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of August, 2015.

CITY OF McCLEARY:

D. GARY DENT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

Amended Attachment "A"
City of McCleary
2015 Revised Fund Summary

<u>Fund Title</u>	<u>Revenue</u>	<u>Expenditure</u>
Current Expense	\$1,111,542.00	\$1,111,542.00
Street	\$399,318.00	\$399,318.00
REET	\$14,280.00	\$14,280.00
Light and Power	\$3,203,090.00	\$3,203,090.00
Water	\$925,778.00	\$925,778.00
Sewer	\$1,080,985.00	\$1,080,985.00
Stormwater	\$168,560.00	\$168,560.00
Ambulance	\$87,520.00	\$87,520.00
Total	\$6,991,073.00	\$6,991,073.00

Per Adoption of the amended supplemental budget, increase law enforcement expenditures in the current expense fund by \$150,000.