



McCleary City Council

AGENDA

April 08, 2015

7:00 City Council Meeting

- **Flag Salute**
- **Roll Call**
- **Public Comment**
- **Public Hearings**

- **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:** - Storm Pond Discussion
Accident Prevention Discussion

- **New Business:**
 - GHC Jail Contract Amendment (Tab E)
 - FD5 Mutual Response Agreement (Tab F)

- **Ordinances:** - Astound WAVE Broadband Ordinance (Tab G)

- **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

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

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, March 25, 2015

ROLL CALL AND FLAG SALUTE Councilmember's Reed, Schiller, Catterlin, Ator and Peterson.

ABSENT Mayor Dent was absent. Mayor Pro Tem Ator chaired the meeting.

STAFF PRESENT Present at the meeting were Todd Baun, Wendy Collins, George Crumb, Dan Glenn, and Paul Nott.

PUBLIC COMMENT Gary Atkins addressed the Council and stated he would like to have them look into implementing business licenses for a \$50.00 fee, which he believes would help track who is doing business in town.

Gary Atkins also wanted to talk about City Council politics. He said everyone respects every decision the Council makes, and what they do, but they are the city government. He said we need more government and less politics because we never seem to get straight answers. He would like the Council to discuss the agenda items in between meetings so they can come up with some resolutions to problems, which will make the meetings are more productive.

Mr. Atkins wants the Council to discuss contracting with Elma Police Department. He asked about it at the last meeting and Dan Glenn told him Elma was not interested. He contacted the Elma Police Chief, Susan Shultz, and she is interested in merging with us. She told him the reason they are not talking with us is because Mayor Dent does not want to talk to them about this subject. Dan Glenn will be seeing Mayor Osgood tomorrow and will be discussing this.

Gary Atkins understands Mayor Dent is ill and frail and is stressed about all the commotion, which he brought upon himself, because he used a scare tactic trying to get the police issue solved, and it backfired on him. Now everyone is lashing out at the Mayor. He stated the Mayor is missing a lot of meetings and our town is going broke. We need a leader who can step in and take over as Mayor, and can help run this town. He is asking, on record, that the Mayor step down from his capacity and allow somebody else to fulfil his shoes, that wants to take this committee on, and who wants to see changes and positive growth, and can make executive decisions in a more timely manner.

PORT OF GRAYS HARBOR PRESENTATION Kayla Dunlap, Public Affairs Manager from the Port of Grays Harbor gave a presentation to the Council and the community on all the great things the Port is doing and planning.

MINUTES APPROVED **It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to approve the minutes from the March 11, 2015 meeting. Motion Carried 4-0.**

CITY ATTORNEY REPORT Dan Glenn provided a written report for the Council.

MAYOR'S COMMENTS None.

DIRECTOR OF PUBLIC WORKS REPORT Todd Baun provided a written report to the Council.

ITRON SALES AGREEMENT Itron, which are the meters the City currently uses, can provide a contract giving us the ability to monitor the Simpson Mill and prepare us for future growth. Paul Nott provided a detailed explanation of why this is needed and how it will benefit the City. **It was moved by Councilmember Catterlin, seconded by Councilmember Schiller to authorize the Itron Agreement. Motion Carried 4-0.**

ATV ORDINANCE The Council discussed allowing ATV's within the city limits. Todd Baun prepared a map with potential designated streets. The City of Elma recently passed an ATV ordinance allowing usage on all streets under 35 mph. The Council decided they would follow Elma and allow the same usage with the understanding the ordinance can be repealed, if it becomes a safety hazard. **It was moved by Councilmember Catterlin, seconded by Councilmember Reed to adopt Ordinance 807, an ordinance relating to motor vehicles, authorizing the utilization of certain wheeled all-terrain vehicles upon certain streets of the city under certain terms and conditions, adding new sections to chapter 10 of the municipal code and imposing penalties for violation. Roll call taken in the affirmative. Ordinance adopted 4-0.**

3RD STREET DESIGN QUESTIONS	Discussion took place regarding options for 2nd Street, which is currently closed. Options include keeping it closed or changing it to a one way street. It was moved by Councilmember Catterlin, seconded by Councilmember Reed to close 2nd Street to traffic. Motion Carried 4-0.
3RD STREET CONTRACT TIME EXTENSION	It was moved by Councilmember Catterlin, seconded by Councilmember Reed to authorize the Mayor to sign the 3rd Street contract time extension at no cost to the City. Motion Carried 4-0.
ACCIDENT PREVENTION	Tabled. Council needs time to review it's entirety.
STORM POND DISCUSSION	There are several privately owned storm ponds in the City that are currently not maintained and do not meet the City's maintenance standard, outlined in the Department of Ecology's 2005 Stormwater Manual Volume V. 124 Residents of Cedar Heights, Evergreen Heights 2, Evergreen Heights 1 and Summit Place 2 received a letter from the City asking how they would like to have their storm ponds maintained. They were given three options including options to maintain the ponds themselves or have the City take care of them. A lengthy conversation took place between some of the residents impacted by the storm pond maintenance requirements, and the City Council. Many concerns were raised and discussed. Residents agreed there should be a "cap" on future cost increases to the option given for the City to maintain the storm ponds. Dan Glenn asked the homeowners to provide him with the names and numbers of the individuals they have contacted, such as banks, home owner associations, etc., regarding this issue.
ASTOUND WAVE BROADBAND ORDINANCE DRAFT B	Councilmember Schiller didn't see anything in the ordinance about what would happen in an emergency or a natural disaster with third party damage. How will they respond if they see one of their lines or a pole on the ground? What will be their response time for something of that nature? Tabled until the next meeting. Dan Glenn said they may want to have a representative attend a meeting to address any questions or concerns.
PUBLIC COMMENT	Councilmember Schiller will be working on setting up a town hall meeting and will have more information at the next meeting. He will work with staff to get the information out on the website and to collect the public's input on what type of topics to discuss at the town hall meeting. Helen Hamilton said three businesses are leaving town. Trader Joe's is moving to Elma, Brilliant Moon is closing and so is the massage therapy business.
APPROVAL OF VOUCHERS	Accounts Payable vouchers/checks approved were 39307 - 39350 including EFT's in the amount of \$207,539.64. It was moved by Councilmember Peterson, seconded by Councilmember Reed to approve the vouchers. Motion Carried 4-0.
EXECUTIVE SESSION	None.
MEETING ADJOURNED	It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to adjourn the meeting at 8:47 pm. The next meeting will be Wednesday, April 8, 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: April 3, 2015
RE: LEGAL ACTIVITIES as of APRIL 8, 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.

1. **ASTOUND BROADBAND FRANCHISE ORDINANCE**: You have been provided in two forms the proposed final draft of this ordinance. One form shows the changes from the original draft to allow your review and comparison. The second is the clean copy which would be subject to formal consideration and adoption. It has been approved by the Applicant's counsel but can not be formally approved by the Company until adopted by the City. As you will note, the number of years for which it is valid remains the same. I have added provisions to handle potential changes in federal and state laws governing the franchise so they will be automatically incorporated and, if it occurs, the City may impose a franchise charge for use of its rights of way.

As a side point, Paul, Wendy, Todd, and I are going through the current methodology and enactments utilized to establish the charges paid by entities such as the telephone company which desire to attach their equipment to the City's light and power poles. It does not appear that this has been reviewed for many years, perhaps even pre-dating my assuming the position of City Attorney.

I believe that a representative of the Company will be present this evening to answer any questions you might have about the Company. Hopefully you will find the matter appropriate for final action this evening.

2. **FIRE DISTRICT #5 REQUEST FOR AUTOMATIC RESPONSE AGREEMENT:** This was referenced in the prior Report. Ms. Collins has provided you a copy of the current version.

The agreement provides that each entity will be "toned out" by the Communication Center in the event of certain types of incidents. Chief Nott has reviewed it and indicated that he feels it appropriate and, hopefully, beneficial to both entities.

The draft before you this evening has a new section added making it clear the agreement is between the City and District only and not for the benefit of any third party. The purpose is to reduce the chance that someone who feels they were harmed by what they deem to have been an "inadequate" response can claim they were intended to be a beneficiary of the contract.

Thus, assuming you have no further questions or concerns, I would recommend that signing of the Agreement by the Mayor and Ms. Collins be authorized.

3. **JAIL SERVICES CONTRACTS:**

A. **Grays Harbor Sheriff's Requested Amendment:** The Sheriff has indicated that, due to capacity issues, his office can no longer "guarantee" booking and housing for prisoners the Department brings to the jail. That "benefit" was related to the prepayment approach in the contract. From the plain language of the contract which requires mutual consent to amend the contract during its term, theoretically you could not agree to the amendment. However, reality would likely have the same result.

I would recommend the Chief and Ms. Collins review the other elements potentially involved, including the "discounted" daily rate, to make certain there are no other impacts upon the operation of the Department. The bottom line is that I would recommend the Mayor be authorized to sign after that review is completed. Alternatively, hold it over until the next meeting.

B. **Chehalis Tribal Correctional Services Agreement:** Based upon prior discussions and the reality that the County's facility seems to be facing, I requested the Tribe's Corrections Department provide us with a draft agreement specifically between the Tribe and the City. I have received it and I will provide it to Chief Crumb and Ms. Collins. After their review and comments, I will provide it to the six of you for review.

It is my understanding that the per diem cost is less than we currently are required to pay to the County. Also, we will also want to look at the other services the Tribe can

provide to individuals taken into custody and spending extended times in custody.

4. **BUSINESS LICENSING MATTER:** This matter was raised at the last meeting of the Council. When discussed in prior years, the decision was to not adopt such a program as an additional cost to the businesses even in the absence of imposing any business and occupation tax. I do not know if you wish to revisit this matter. I would appreciate your direction.

5. **STORMWATER POND MAINTENANCE ISSUE:** As you are aware, this is an issue which is of distinct interest to the property owners within the developments currently identified as being in non-compliance with the necessary maintenance requirements. After the meeting of two weeks ago, we had the opportunity to meet with residents of Cedar Heights to discuss the matter. It was noted the situation is a bit odd in the following aspects:

A. The common areas ownership cycle is from the developer to the lender bank which foreclosed the deed of trust to the successor bank which took over the properties when the first lender bank went out of business.

B. The successor bank then transferred over 20 of the lots to a single owner whose apparent position is that she has no responsibility.

C. The successor bank did not transfer the ownership of the pond and thus still owns it.

However, the covenants, conditions, and regulations adopted for the development make it clear that, in the event of a failure to maintain, the City may do so and collect the cost from the homeowners directly. We will continue to work to achieve a mutually agreeable and beneficial solution.

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

DG/le

STAFF REPORT

To: Mayor Dent
From: Todd Baun, Director of Public Works
Date: April 2nd, 2015
Re: Current Non-Agenda Activity

City Sewer Camera Work

All of the city sewer lines have been videoed and documented for potential problems. Gray and Osborne has all the information and is using it to finish our Sewer Plan.

6th and Oak St.

The Public Works crew is performing some storm water drainage work in the area of 6th and W. Oak St. There is currently a limited system in the area, so we are installing a couple of catch basins and pipe and tying them into our system. This will be a good improvement for the area.

3rd Street Design

Skilling Connolly is progressing with the 3rd Street design.

STAFF REPORT

To: Mayor Dent
From: Colin Mercer
Date: April 3, 2015
Re: March Building Department

Activities

- Submit copies of permits issued to Grays Harbor County Assessor's Office.
- High Definition Homes 1493 N Summit Road is in the finishing stage.
- The Beehive is in the painting stage.
- 116 S 4th Street inspection by City engineer documenting incomplete items.
- 108 Summit Place Dr. Garage conversion to Day Care is in the finishing stage.
- 103 W Hemlock accessory structure in progress.
- 628 W Simpson plan review and permit issued for a Pole Garage with breezeway.
- 414 S Main St plan review and permit issued for an addition to the side of the residence.

Nuisance Issues in Progress

- 525 W Maple, bank has been notified to clean up and secure the structure from unlawful entry.
- 335 S 2nd St. was notified to preform vegetation maintenance on the lot to the South, and remove the junk boat, boat has been loaded onto the trailer.
- 221 S. Main St conditions have not improved and the incident has been forward to the Police for citation.
- 343 S 1st St. letter has been sent to occupant and property owner regarding excessive amount of junk vehicles and have removed some of them so far.
- 118 E Pine – notified property owner about complaint of logs remaining on property and requested removal.
- 329 S. 2nd St. – notified property owner to repair fence.
- Sent out two letters regarding Scotch Broom removal.

Nuisances Resolved

- 107 W Hemlock address numbers have been installed and the junk has been removed from the front yard.
- 413 S 3rd St, owner has cleaned up junk, moved the vehicle and covered it with a tarp.
- Sing Log Homes has provided clearance around their on-site fire hydrants.
- 329 property owner has removed the fence completely.

Conservation Program

Month	Applications Received	Conservation Permits Issued	Rebates Paid This Month	Total Rebates Paid To Date
February	0	0	\$0.00	\$22,320.80
March	1	1	\$70.00	\$22,390.80

Conservation Update:

We submitted a request for our portion of additional Unassigned Funds and received and additional \$3,298.44 for conservation projects. I have prepared optional lighting calculators for City Hall departments to be considered by the Director of Public Works.

Hometown electric is preparing a lighting retrofit proposal for the City's consideration to update some of our outdated T12 fixtures to the new LED technology.

The Energy Smart Grocer program is returning \$15,000.00 of funds originally allotted to them for commercial conservation projects. The business in town that qualify for these types of projects choose not to proceed with any improvements so the agreement is being modified to return the BPA funds to the general conservation budget for use my other commercial or residential customers.

Building Department Activity

ACTIVITY	MONTHLY TOTALS	YEAR TO DATE TOTALS	ACTIVITY EXPLANATION
Customer Service	44	88	Answer building department related questions in person or by phone, meeting with potential applicants.
Building Permits Issued	3	4	Remodels, new construction & additions, both residential and commercial.
Plan Reviews Performed	2	2	Reviewing plans for building code and municipal code compliance.
Inspections Performed	2	13	Field inspections, writing of corrections or approving work.
Finals or Certificates of Occupancies	0	0	Performing of the final inspection & issuing of certificate of occupancy allowing use of the structure.
Complaints Received	2	3	Investigate and address citizen or staff reported issues, obtain resolution or acceptable compromise.
Nuisance Letters Sent	2	12	Formal notice from the City informing citizens of violations and providing expectation of the City for compliance.
Lemay's Garbage Letters Sent	7	10	Formal notice from City after notification from Lemay that service has been stopped.
Building Department Revenue	\$699.60	\$788.60	Funds generated by the Building Department from permits, inspections, reviews etc.

Comments:

Staff Report for McCleary Police Department

To: Mayor Dent
From: George M. Crumb, Chief of Police
Date: Friday, April 3, 2015
RE: For April 8, 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.

0546 Incident histories reported this year as of time of this 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
- DWLS
- DUI
- Disorderly Conduct/Verbal Argument-1
- Drug Incidents (VUCSA)
- Death Report(s)
- Domestic Violence/Verbal/Mal Mis.
- Extra Patrol Request
- Fire Responses
- Found/Lost Property Report(s)
- Fraud/0-Firearm Compl-
- Harassment-
- Insurance Violation(s)
- Juvenile Problem/Run-a-way
- Motorist Assist
- Malicious Mischief
- Missing Person
- 00-Noise Complaints
- 00-No Valid Operator's License (NVOL)
- 05-Police Information-, Protection Order Scv-
- 00-Public Works Assist
- 03-Parking Complaint
- 06-Police Referral
- 00-Speeding Stops
- 00-Speed in School Zone
- 09-Suspicious Person-/Vehicle-/Circumst-
- 05-Subject Stop
- 00-Sex Offense-0/Sex Offen Add Confirmation-
- 00-Suicide-0/Suicide Attempt-0
- 01-Traffic Offense-/Reckless-01/Hazard-
- 00-Theft Reports/Vehicle-(Shop lifter-)
- 02-Traffic Accident
- 20-Traffic Stop
- 00-Trespass
- 00-Vehicle Prowl-0/Prowler-0
- 00-Vehicle Lockout Assist-/Disabled-
- 02-Warrant Service/Confirmation
- 00-Warrant Search
- 02-Warrant Arrest
- 03-Welfare Check
- 00-Weapons Offense
- 01-911 Open Line or Hang Up
- 01-No classification-, or Unknown Problem-
- 01-Threats by Phone/In Person-1

Discussion: Open.

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

Mayor Dent: Present / Not Present _____

Officer Reporting: Chief Crumb _____

STAFF REPORT

To: Mayor Dent

From: Colin Mercer Webmaster

Date: April 3, 2015

Re: March Website

Re-Occurring Website Activities

- Council Agenda/Packet posted online.
- Council Minutes posted online.

New Website Activity

- Remove notice of Xpress bill pay from “Official Public Notice” sidebar on the home page.
- Added “Rules and Regulations” section to the Cemetery page.
- Changed the yellow highlighted cemetery plots to green making all plots available for sale to the public.
- Cemetery Map and Name Log updates.
- Added a note to the Public Notice sidebar about Spring Clean Up day April 18th.
- Updated Bear Festival page to the 56th annual.
- Post Celebrate McCleary event to the calendar.
- Post Ordinance 807 to the Ordinance table.

Additional Tasks

- Assist the Director of Public Works with distribution of the Storm Pond Maintenance letters.
- Attend ADA transition plan class given by WSDOT.

Website Comments:

- None this month

Website Traffic March 1, 2015 through March 31, 2015 (Top visited pages shown only)

Section	Page Views	Percent of Total
<u>Default Home Page</u>	4014	34.34%
<u>Mayor and Council</u>	863	7.38%
<u>City Jobs</u>	601	5.14%
<u>Agendas and Minutes</u>	552	4.72%
<u>Events Calendar</u>	449	3.84%
<u>City Departments</u>	331	2.83%
<u>Utilities</u>	320	2.74%
<u>Conservation Program</u>	286	2.45%
<u>Home Page</u>	209	1.79%
<u>Cemetery Data Page</u>	162	1.39%
<u>Public Facilities</u>	152	1.3%
<u>Administration</u>	152	1.3%
<u>Police</u>	147	1.26%
<u>Bear Festival</u>	145	1.24%
<u>Municipal Code</u>	144	1.23%
<u>Staff Page</u>	140	1.2%
<u>Previous Years Council Agendas</u>	140	1.2%
<u>City Forms & Documents</u>	132	1.13%
<u>Cemetery</u>	125	1.07%
<u>Light & Power</u>	115	0.98%
<u>Search Results</u>	110	0.94%
<u>Helpful Links</u>	107	0.92%
<u>FAQ's Page</u>	106	0.91%
<u>Chamber of Commerce</u>	103	0.88%
<u>Water / Wastewater</u>	96	0.82%
<u>2008-15 Budget</u>	96	0.82%
<u>Name Log</u>	95	0.81%
<u>Planning Department</u>	95	0.81%
<u>Fire</u>	79	0.68%
<u>Citizens Help Desk</u>	77	0.66%
<u>Resolutions</u>	75	0.64%
<u>Tell Us What You Think!</u>	73	0.62%
<u>Interlocal Agreements</u>	66	0.56%
<u>Ordinances</u>	63	0.54%



Grays Harbor County Sheriff's Department

RICHARD R. SCOTT, Sheriff

March 2, 2015

Honorable Donald Gary Dent
City of McCleary
100 South 3rd
McCleary, Washington 98557

Dear Mayor Dent:

Please find attached to this letter two copies of the first addendum to the interlocal agreement between Grays Harbor County and the City of McCleary for jail services. We request that you review, sign and return both copies. After which we will submit them to the Board of County Commissioners for signage and return an original copy to you for your files.

This addendum speaks to the removal of Section 6.8 of the contract for jail services. It has become necessary to cease allowing pre-payment for guaranteed jail beds due to constant over-crowding in our jail facility, which in turn has caused a safety concern for both staff and inmates. Until such time that our facility capacity is enlarged and/or our population lowered through other means, we can no longer continue the practice of accepting pre-pay bookings.

I look forward to our continued partnership in providing jail services to your city and apologize for any inconvenience this change may cause your police department. If you have questions or comments, please feel free to contact me at your convenience.

Sincerely,

RICK SCOTT, Sheriff
Grays Harbor County

Enclosure

RS/rf

100 W. BROADWAY, SUITE 3 * P.O. BOX 630 * MONTESANO, WA 98563 * (360) 249-3711

**FIRST ADDENDUM TO THE INTERLOCAL AGREEMENT BETWEEN
GRAYS HARBOR COUNTY AND THE CITY OF McCLEARY
FOR JAIL SERVICES**

THIS ADDENDUM is made and entered into this _____ day of _____, 2015 by and between GRAYS HARBOR COUNTY, a political subdivision of the State of Washington (hereinafter referred to as the COUNTY), and the CITY OF McCLEARY, a municipal corporation of Grays Harbor County, State of Washington (hereinafter referred to as the CITY), as a first addendum to the Interlocal Agreement between the parties for jail services executed on the 14th day of January, 2013, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, and filed in the office of the Grays Harbor County Auditor, pursuant to RCW 39.34.040.

WITNESSETH:

WHEREAS, the parties have heretofore contracted for jail services to be provided to the CITY by the COUNTY and each appreciates that contracting for such services provides a number of mutually beneficial advantages, and

WHEREAS, pursuant to Section 2.1 of the Agreement, the Sheriff has the right to refuse to accept for confinement any City Prisoner if acceptance of said prisoner will result in overcrowding of the jail, and

WHEREAS, the COUNTY has represented to the CITY that overpopulation of the jail has resulted from accepting certain City Prisoners under Section 6.8 of the Agreement, and

WHEREAS, it is necessary to modify the Agreement to rescind the "prepayment for incarceration" clause in its entirety, and to instead utilize the existing payment on usage provision, in order to control inmate population;

NOW THEREFORE, in consideration of their mutual covenants, conditions and promises, the PARTIES HERETO HEREBY AGREE as follows:

ITEM ONE. Section 6.8 of the Agreement is rescinded effective immediately. However, the CITY shall be able to apply any remaining prepaid incarceration funds remaining upon execution of this Agreement toward the County's Prisoner Day charges at the reduced rate provided in Section 6.8 for a period of sixty (60) days following the execution of this First Addendum. Thereafter the funds remaining in the CITY's prepaid

account shall be refunded in full. Upon the refund of the prepaid incarceration fees, or upon the expenditure of said funds prior to the 60-day usage period, whichever occurs first, all further Prisoner Day charges shall be at the full rate provided for in Section 6.1.

ITEM TWO. REMAINING TERMS UNCHANGED: That all other provisions of the Interlocal Agreement between the parties for jail services dated January 14, 2013, pursuant to the Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, and filed in the office of the Grays Harbor County Auditor, pursuant to RCW 39.34.040, shall remain unchanged, and in full force and effect.

In witness whereof, the parties have executed this Agreement.

GRAYS HARBOR COUNTY

CITY of McCLEARY

By: _____
Wes Cormier
Its: Chair, Board of Commissioners

By: _____
Donald Gary Dent
Its: Mayor

Date: _____

Date: _____

Attest:

Attest:

Jenna Amsbury
Clerk of the Board

City Clerk-Treasurer

Approved as to form:

Approved as to form:

Norma J. Tillotson
Deputy Prosecuting Attorney

Daniel Glenn
City Attorney

Date: _____

Date: _____

Approved and recommended:

Richard R. Scott, Sheriff

**FIRST ADDENDUM TO THE INTERLOCAL AGREEMENT BETWEEN
GRAYS HARBOR COUNTY AND THE CITY OF McCLEARY
FOR JAIL SERVICES**

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In witness whereof, the parties have executed this Agreement.

GRAYS HARBOR COUNTY

CITY of McCLEARY

By: _____
Wes Cormier
Its: Chair, Board of Commissioners

By: _____
Donald Gary Dent
Its: Mayor

Date: _____

Date: _____

Attest:

Attest:

Jenna Amsbury
Clerk of the Board

City Clerk-Treasurer

Approved as to form:

Approved as to form:

Norma J. Tillotson
Deputy Prosecuting Attorney

Daniel Glenn
City Attorney

Date: _____

Date: _____

Approved and recommended:

Richard R. Scott, Sheriff

**CITY OF MCCLEARY – GRAYS HARBOR FIRE PROTECTION DISTRICT #5
AUTOMATIC AID AGREEMENT**

This agreement is entered into between City of McCleary and Grays Harbor Fire Protection District #5, both of which are municipal corporations of the State of Washington.

This agreement is entered into under the authority of Chapter 39.34 RCW, the Interlocal Cooperation Act and RCW 52.12.031(3).

RECITALS

1. Grays Harbor Fire Protection District #5 (the District) and the City of McCleary (the City) are already parties to a County-wide mutual aid agreement in relation to the provision of emergency service aid upon request entitled “Mutual Aid Assistance Agreement For Fire Districts and Fire Departments Located Within Grays Harbor County, Washington” (the Interlocal).

2. Automatic aid is assistance dispatched automatically by contractual agreement between emergency services departments of governmental entities.

3. The City of McCleary and Grays Harbor Fire Protection District #5 wish to create such an agreement between their entities as to responses by their respective Fire Departments.

4. Both of the parties owns and maintains apparatus and equipment for the suppression of fires and for the supplying of emergency medical services and responses to other situations, which may be hazardous to the public. Both of the parties also employ and/or supervise firefighting personnel who are trained to provide various levels of emergency medical services and response to other hazardous conditions.

5. Both of the parties is so situated as to be capable of providing fire suppression and/or emergency medical services to one or more other agencies in Grays Harbor County and/or in portions of another party’s service area.

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6. Both of the parties may have the necessary equipment and personnel to enable it to provide such services to another party in the event of such an emergency.

7. The geographical boundaries of each party are located so as to enable each party to render automatic aid service to certain other parties in described areas.

The parties subject to the terms of this agreement, to carry out the purposes and functions described above and in consideration of the benefits to be received by each of the parties, agree as follows:

NOW THEREFORE, it is agreed as follows:

1. Authorization to Dispatch Center: The Grays Harbor 911 Communication Center shall be notified that the Parties are authorizing and requesting that it automatically dispatch emergency response resources according to the established response plans of each of the agencies (See Appendix "A").

2. Scope of Agreement: Response to structure fires and rescue operations located within the corporate limits of the City and the boundaries of the District, as those respective boundaries are shown upon the officials records of the Grays Harbor County Auditor.

3. Automatic Response: Subject to the provisions relating to discretionary response set forth in the County-wide interlocal, the parties shall respond to fire suppression and rescue response incidents in accordance with the procedures set forth in the Cooperative operational response plan (the Plan). Feasibility and availability shall be determined within each jurisdiction's command structure. For example, in certain jurisdictions the duty chief or shift command officer shall have the authority and responsibility to determine if it is necessary to withhold resources from automatic aid in order to ensure adequate protection within the "home jurisdiction". In such cases, the responsible officer shall notify dispatch of any unit or units that are unavailable for dispatch outside the home jurisdiction to such otherwise automatic aid calls.

"Authority Having Jurisdiction" means the agency or entity within whose boundaries an incident
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occurs necessitating some emergency response. This agreement is intended primarily to validate, support and/or legitimize the agency response plans and/or run cards, insofar as the same provide for responses outside agency boundaries and is not intended to require any agency to provide automatic aid to any other agency irrespective of such agency's response plan.

4. Compensation. Each party agrees not to seek compensation for services rendered under this agreement. The mutual consideration supporting this agreement is the reciprocal services provided by each agency to the other parties; provided, however, that upon request by a responding agency, the party requesting assistance shall attempt to obtain financial assistance from federal and State agencies where such assistance is available to reimburse the assisting party for losses or damages incurred in supplying aid under this agreement. Exception: A party that provides assistance may request re-supply or reimbursement for disposable goods expended while providing services to or upon behalf of the other party under this agreement. For example, a party may seek re-supply from the other party for firefighting foam and rehabilitation supplies.

5. Command Responsibility at Emergency Scene. The nearest available unit will assume Incident Command upon arrival at scene. The Authority Having Jurisdiction (AHJ) may assume command of incidents within their boundaries or at the request of the department receiving assistance. Incidents shall be managed using the Incident Command System in compliance with the National Incident Command System (NIMS). All responding equipment and personnel shall fall under the authority of the incident commander. The equipment and personnel of any responding party shall be released from service and returned to the responding party by the incident commander as soon as conditions warrant.

6. Liability. The parties agree that the department assuming command control (incident command) at the scene shall assume liability for, defend, indemnify and hold all other parties harmless from all liabilities arising out of command decisions or judgments. Subject to the above, each party hereto agrees to assume responsibility for liabilities arising out of the

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actions of its own personnel and to defend, indemnify and hold the other parties hereto harmless therefrom as to each party's own actions relating to performance under this agreement.

7. Insurance. Each party agrees to maintain adequate Automobile and Commercial General Liability insurance coverage for its own equipment and personnel, covering their operations. Limits of such coverage should be no less than \$2,000,000.00 combined single limit per occurrence. Each party agrees to provide workers compensation, liability, errors and omissions, and all other applicable insurance coverage, for each and every one of its personnel participating in services arising from this agreement, notwithstanding the fact that the location of provision of such services is outside of the boundaries of the party's jurisdiction, pursuant to RCW 52.12.111 and RCW 52.12.121.

8. Pre-emergency Planning/First Response. The chief officers of the parties may, from time to time, mutually establish pre-emergency plans which shall indicate: the types of and locations of potential problem areas where emergency assistance may be needed; the type of equipment that should be dispatched under various possible circumstances. Such plans shall take into consideration and ensure proper protection by the responding party of its own geographical area. When applicable, the parties shall share pre-incident plan documents or programs.

9. Duration. The duration of this agreement shall be for one year commencing from the date of filing. However, the agreement shall be automatically continued from year to year unless terminated as provided below in section 10.

10. Termination. This agreement shall remain in full force and effect unless and until terminated as follows:

10.1 Written notice shall be served by any party hereto upon all parties of its intention to terminate the agreement. Such notice shall be served not less than thirty (30) days prior to the termination date set forth therein, and a copy shall be forwarded to each party signatory hereto.

Said notice shall automatically terminate the agreement on the date set out unless rescinded prior thereto in writing.

10.2 Termination of the agreement between parties affected by such notification shall not affect the continuation of the agreement as to any party hereto not indicating an intention to withdraw as provided herein.

10.3 Termination of the relationship affected by this agreement shall not preclude future agreements for mutual aid between the parties terminated hereunder.

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

11. Agreement Not Exclusive. This agreement is not intended to be exclusive as between the several parties hereto. Any of the parties hereto may, as they deem necessary or expedient, enter into separate automatic aid or mutual aid agreements with any other party or parties. Entry into such separate agreements shall not, unless specifically stated therein, affect any relationship or covenant herein contained; provided that no such separate agreement shall terminate any responsibility herein undertaken unless notice shall be given pursuant to Section 8 of this agreement.

12. Benefitted Parties: This Agreement and the provisions thereof are for the benefit of the parties executing it and are not for the benefit of any third party.

13. Filing. As provided by RCW 39.34.040, this agreement shall be separately filed prior to its entry in force, with the district secretary of any participating fire protection district and with the County Auditor. Alternatively, the agreement may be posted on an agency's web site, and filing shall be deemed completed as to such agency. For "filing" to be complete, all of

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the foregoing filings shall be accomplished. An agreement shall be deemed “filed” on the date of the last filing of the foregoing.

14. Legal Counsel Review: Each Party has had the opportunity to have this agreement reviewed by Counsel of their Choice.

15. Complete Agreement. This Agreement expressed herein writing constitutes the entire agreement between the parties and no oral statement shall add to or supersede any of its provisions.

16. Signature Pages:

DATED: _____

City Of McCleary

Gary Dent, Mayor

Paul Nott, Fire Chief

Daniel O. Glenn, City Attorney

Attest:

Wendy Collins, City Clerk

DATED: _____

Grays Harbor Fire District 5

Gerald Bailey, Chair
Board of Commissioners

Dan Prater, Fire Chief

Attest:

Patty Smith, Board Secretary

Appendix "A"

Response Plan

RESPONSES Apparatus substitutions may be made as necessary by the Officer(s) in charge. A minimum of two qualified trained responders shall be on each apparatus; unless the Incident Commander is contacted and approves of a lesser response.

Grays Harbor Fire District 5 responses within the City of McCleary and Grays Harbor Fire Protection District #12 (Fire Block(s) 9501, 1504 and 1835) service area.

- Structure Fire – One Chief Officer (If available), One (1) Type I structural engine and one (1) EMS apparatus with certified personnel.
- Motor Vehicle Collision/Rescues – One (1) or more EMS apparatus with certified personnel and one (1) Type I structural engine with rescue/extrication tools.

City of McCleary Fire responses within the Grays Harbor Fire District #5 service area (As defined).

- Structure Fire in all of District 5 response area– One (1) Type I structural engine and one (1) Water Tender.
- Motor Vehicle Collision/Rescues with injuries in (East side of Fire District) Fire Block(s) 1585 up to and including Heise Rd. N., 1584 up to and including Heise Rd. S, 1508 and State Route 8 up to Heise Rd. – One (1) Rescue unit with rescue/extrication tools shall respond and then one (1) Type 1 structural engine.

PROVISIONS

Annual review: In the first quarter of each year the participating agencies will meet to evaluate the equity and effectiveness of the automatic aid agreement, appendices and operations. This provision does not impede regular and ongoing discussions relating to the needs and performance of the participating agencies whether related to this agreement or not.

Training: Participating agencies may conduct joint training activities as deemed necessary to facilitate safe and efficient emergency scene operations. The frequency and nature of joint training events will be determined by the respective Fire Chiefs or their designee(s).

Dispatch processing: The Public Safety Answering Point(s) will be encouraged to process requests for service under this agreement within their adopted performance measures. Careful attention should be given to NFPA 1061 Professional Qualifications for Public Safety Telecommunicator, NFPA 1221 Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems when considering call processing and handling matters. When the assisting agencies personnel and apparatus check in with the host agencies PSAP by radio, the hosting PSAP should accept responsibility for tracking those resources until they notify the PSAP that they are returning to their home service area.

Radio communications: Each agency is responsible for possessing the necessary equipment and training its personnel to communicate in accordance with the host agencies communications plans.

Incident Command / Operating Procedures / Guidelines: It is recognized that ICS, SOG, SOP and FOG's may vary between agencies and counties. The participating agencies are responsible for ensuring that any difference(s) do not create unacceptable risk to responding personnel or the public. The Fire Chiefs and or their designee(s) may review, revise and publish joint operating practices that serve as preventative measures. The joint training function is another approved vehicle to reduce risk and improve interoperability.

Post incident review: A formal post incident analysis or informal post incident review may occur at the discretion of the Incident Commander.

Conflict resolution: Conflicts occurring between personnel should be reported in accordance with each participating agencies policies. Resolution of conflicts will be as directed by the Fire Chiefs of the agencies involved.

ORDINANCE NO. _____

AN ORDINANCE GRANTING A REQUESTED FRANCHISE TO ASTOUND BROADBAND, LLC UPON CERTAIN TERMS AND CONDITIONS, ESTABLISHING AN EFFECTIVE DATE AS PROVIDED BY RCW 35A.47.040, AND PROVIDING FOR SEVERABILITY.

R E C I T A L S:

1. Astound Broadband, LLC, a limited liability company licensed to do business in the State of Washington, has submitted a request to be granted a non-exclusive franchise to utilize rights of way within the corporate limits for the installation, utilization, and maintenance of fiberoptic tele-communication lines and associated facilities.

2. As authorized by RCW 35A.21.020 and RCW 35A.47.040, the Council has considered the request after having the opportunity to receive citizen input.

3. After consideration of the potential benefits to the citizens of the City and the County, the Council finds such a grant to be in the best interests of the City subject to compliance with certain terms and conditions.

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

SECTION I: A Franchise is hereby granted to ASTOUND BROADBAND, LLC, a limited liability company in the State of

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Washington, its successors and assigns; hereinafter referred to as the GRANTEE, for a period of fifteen (15) years from and after the date of adoption of this ordinance to construct, operate, and maintain fiber optic telecommunication lines and system facilities in, over, along, and under public rights of way within the corporate limits of the City, as they now exist and may hereafter be expanded.

This franchise is granted upon the terms and conditions set forth in the following sections.

SECTION II: Scope of Authority: Subject to compliance with any requirements for prior notice, permitting, and authorization, ASTOUND BROADBAND, LLC, its successors and assigns, (hereinafter the GRANTEE) shall have the right and authority to enter upon the public roads and rights-of-way within the corporate limits for the purpose of constructing its fiber optic telecommunication lines and system and all necessary facilities connected therewith (hereinafter referred to collectively as the DISTRIBUTION SYSTEM) and for repairing, operating, and maintaining said distribution system.

SECTION III: Construction Conditions:

3.1. Construction to be Approved by the Director of Public Works. All construction and installation work where crossing roads, streets, alleys, or rights-of-way within the corporate limits shall be subject to the prior approval of and pass the inspection of the Building Official, after consultation

with the Director of Public Works (the Director) or their respective designees.

3.2. Permit Application, Review & Approval.

A. Prior to commencement of construction or modification of any portion or element of the distribution system and associated elements which will result in or require utilization or modification of City property or restriction upon utilization or public access, Grantee shall first file with the Building Official its application for a permit to do such work, together with duplicate plans and specifications showing the position, depth, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, which shows their relative position to existing streets, roads, alleys, or rights-of-way upon plans drawn to scale, hereinafter collectively referred to as the "Map of Definite Location." It shall concurrently provide a copy of the documents to the Director.

B. The plans and specifications shall designate the class and type of material and equipment to be used, manner of excavation, construction, installation, back fill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, road obstructions, etc. No such construction shall begin without the Grantee first securing a written permit from the Building Official, including approval endorsed on one set of plans and specifications which will be

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returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Building Official, in consultation with the Director.

C. In addition to any permit fee required, in recognition of the potentiality of the requirement of specialized inspection services, the Grantee shall pay those reasonable costs and expenses incurred in the examination, inspection, and approval of such work on account of granting of the permit pursuant to RCW 35.21.860, as now existing or hereafter amended or succeeded.

D. The improvements installed pursuant to the authorization of a permit issued pursuant to this grant, including the initial distribution system, shall be laid in substantial conformity with said Map of Definite Location, except in instances where deviation may be allowed thereafter in writing by the Building Official pursuant to application by Grantee.

E. A set of as-built maps of Grantee's lines or facilities shall be furnished to the Director within sixty (60) days after completion of the work.

3.3. Roads to be Replaced & Restoration Guaranteed by Bond.

A. In any work which requires breaking of surface of a public road, street, alley, or right-of-way subject to this franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said distribution system, and

making connections between the same to structures and buildings of consumers, or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the standards and specifications set forth by the Director.

B. The Grantee at its own expense and within a reasonable time period shall complete the work for which the surface has been broken and promptly replace the work and make good the street, road, alley or right-of-way, restoring the same to as good condition as before the work was commenced; PROVIDED, however, that no such breaking of the surface of the streets, alleys, roads, or rights-of-way shall be done prior to the obtaining of the permit issued by the Building Official; PROVIDED, however, that in cases of emergency arising outside of normal office hours when an immediate excavation may be necessary for protection of public or private property, the necessary excavation may be made and shall be reported to the Director in the manner herein provided as soon as practical, but in no case later than the next following business day.

C. Application for the permit required as a condition precedent of the work covered by this section shall be accompanied by specifications for the restoration of the street, alley road, or rights-of-way to the same condition as it was in prior to such breaking, and such specifications must be approved by the Director before such breaking of the surface is commenced.

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The Grantee shall pay those costs and expenses incurred in the examination, inspection, and approval of such restoration pursuant to RCW 35.21.860, as now existing or hereafter amended or succeeded.

D. In the event the Grantee, after receiving notice from the Director or designee, fails to correct a condition in a timely manner, the Director may undertake, order, or have done any and all work that is reasonably considered necessary to restore to a safe condition any such street, alley road, or right-of-way left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee, upon demand, shall pay to the City all costs associated with or arising from such corrective action.

3.4. General Conditions & Reservation of Rights.

A. Minimum Interference with Public Travel, Grantee Liable for Damage. All work done under this franchise shall be done in a thorough and workmanlike manner. The Grantee shall leave trenches, ditches, and tunnels necessary in the laying of fiber optic or other telecommunications system distribution lines, the openings of trenches and the construction of other facilities in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or other injury shall not arise or occur by reason of such work; where any such trenches, ditches, or tunnels are left open at night, the Grantee

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shall place warning lights and barricades at such a position as to give adequate warning of such work. The Grantee shall be liable for any injury to person or persons, or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

B. All City Road Rights Reserved. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, rights-of-way, or other City property, and this franchise shall not be construed to deprive the City of any powers, rights, or privileges which it now has or may hereafter acquire to regulate the use of and to control the City roads, rights-of-way, and other City property covered by this franchise.

C. City may Change and Improve Roads Without Liability.

1. If at any time the City determines it appropriate to improve or change any City road, right-of-way, or other City property subject to this franchise, whether by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same, by construction of drainage facilities, or in any other manner, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at its own expense, move and change any items,

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attachments, or appurtenances it has installed pursuant to the rights granted by this ordinance to conform to such public improvement. The City will avoid the need for such moving or changing whenever reasonably possible.

2. In the event Federal, State, or other funds are specifically available for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent any such funds are actually obtained for utility relocating purposes.

3. The City shall in no way be held liable for any damage to said Grantee that may occur by reason of any of the City's improvements, changes, or works above enumerated, except for damage caused solely by negligence of the City's employees or agents.

4. All work performed by the Grantee under this section shall be under the direction and approval of the Director and shall be subject to the Director's approval. The Grantee shall pay those costs and expenses incurred in the examination, inspection and approval of such work.

D. Notice of Activities by the City. The laying, construction, operation, and maintenance of the Grantee's distribution system authorized by this franchise shall not preclude the said City, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work

contiguous to the said lines and facilities of the Grantee providing the Grantee shall be given five (5) business days' notice of said work: PROVIDED THAT, the necessity of such notice shall be deemed waived if the work in question is required to be commenced immediately due to the threat to public safety.

E. Reference, Monuments and Markers. Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Director. The cost of monuments or other markers lost, destroyed or disturbed and the expense of replacement by approved monuments shall be borne by the Grantee.

F. Vacation of City Streets, Roads, Alleys, or Rights of Way. If at any time the City determines it appropriate to vacate any City road, street, alley, or right-of-way which is subject to rights granted by this franchise and said vacation, then the City shall give ninety (90) days written notice to the Grantee, and may at their option, after granting a reasonable

alternate route, terminate this franchise with reference to such vacated City street, alley, road, right-of-way: PROVIDED THAT, the vacation shall be subject to the grant to the Franchisee of a reasonable time to relocate at its sole expense the facilities it had installed in the vacated property. The City shall not be liable for any damages or loss to the Grantee by reason of such termination.

SECTION IV: Taxes, Fees, and Financial Controls.

4.1. Washington law, RCW 35.21.860, currently limits the tax City may impose on Grantee's activities under this Ordinance to six percent (6%) of revenue derived from the provision of network telephone service and otherwise prohibits City from imposing a franchise fee or other fee or charge for Grantee's use of the right-of-way. In addition, the federal Internet Tax Freedom Act prohibits the imposition of a tax or other fee on revenue derived from Grantee's provision of internet access services. If federal or Washington law is changed such that City may impose a franchise fee, tax, or other charge on Grantee's services, or if City elects to impose on providers within the City a tax on network telephone service under RCW 35.21.860, other than that currently imposed pursuant to Chapter 3.24 of the Municipal Code, as now existing or hereafter amended or succeeded, the City shall provide Grantee with at least 6 months' written notice of its intent to revise this Ordinance or otherwise impose such a fee, tax, or charge. In recognition of

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the state and federal limitation, at this time the City will not require the payment of a franchise fee, but specifically reserves the right to require the commencement of such a payment under the following terms and conditions:

A. Commencement: The City shall give the Grantee written notice no less than six months before the date upon which the fee will begin to be assessed. The fee shall be in an amount no greater than the maximum allowed by applicable law from the gross revenue upon which the fee may be imposed derived from the operation of Grantee's system to provide service in the Franchise Area; PROVIDED THAT, the fee may be initially set at a lesser figure, but may be adjusted by action of the City Council on an annual basis and in such event the City shall provide Grantee with not less than six months notice.

B. For purposes of determination of the amount to be paid in the event a franchise fee is established such definitions as may be set forth in the applicable federal law shall apply; PROVIDED THAT, in the absence of any such definitions, the following definitions shall apply:

1. "Gross Subscriber Revenues" is defined to mean all amounts derived by Grantee in whatever form and from all sources, from the operation of Grantee's telecommunications system to provide telecommunications service within the Franchise Area. "Gross Subscriber Revenues" shall include all amounts for all

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telecommunications services including internet services to the extent permitted by applicable law.

2. "Gross Subscriber Revenues" shall not include bad debt, sales taxes, or other taxes and fees that are collected by Grantee on behalf of, and for payment to, the local, state, or federal government. The Franchise fees are in addition to all other fees, assessments, taxes, or payments of general applicability that the Grantee may be required to pay under any federal, state or local law.

This Franchise and the Franchise fees paid hereunder are not in lieu of any other generally applicable required permit, authorization, fee, charge, or tax.

3. Grantee's Franchise fee payments to City shall be computed semiannually on June 30 and December 31. Each semiannual payment shall be due and payable no later than thirty (30) days after the last day of the preceding semiannual calendar period.

4.2 Acceptance of Payment and Recomputation. No acceptance of any payment shall be construed as an accord by City that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim City may have for further or additional sums payable or for the performance of any other obligation of Grantee.

4.3. Semiannual Franchise Fee Reports. Each payment shall be accompanied by a report to the City, containing an accurate statement in summarized form.

4.4. Audits. Upon thirty (30) days' prior written notice, City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting principles. The City may hire an independent certified public accountant to audit the Grantee's financial records, in which case the Grantee shall provide all necessary records to the certified public accountant. If the audit shows that Franchise fees have been underpaid by ten percent (10%) or more, Grantee shall pay the cost of the audit in an amount not to exceed five thousand dollars (\$5,000) per year being audited.

4.5. Additional Commitments Not Franchise Fees. The Grantee may, in lieu of all or a portion of ~~tax or~~ fee payment required pursuant to the provisions of this ordinance, provide telecommunications or other services to the City or its affiliated entities. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation, and the offset value of any such services provided to the City or its affiliated entities will be determined based on the standard rates Grantee charges to third-party customers for substantially equivalent services.

4.6. Costs of Publication. Grantee shall pay the reasonable cost of newspaper notices and publication pertaining to this Franchise and any amendments thereto, as such notice or publication is reasonably required by City or applicable law.

4.7. Tax Liability. Payment of any Franchise fees which may be imposed upon Grantee under this Franchise shall not exempt Grantee from the payment of any generally applicable license, permit fee, or other generally applicable fee, tax or charge on the business, occupation, property, or income of Grantee that may be imposed by City.

4.8. Payment on Termination. If this Franchise terminates for any reason, the Grantee shall file with the City within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Subscriber Revenues received by the Grantee since the end of the previous fiscal year. The City reserves the right to satisfy any remaining financial obligations of the Grantee to the City by utilizing the funds available in security provided by the Grantee.

SECTION V: Grantee to Indemnify City; Liability Insurance.

5.1. The Grantee does hereby agree to protect and save harmless said City from all third party claims, actions, or damages of every kind and description which may be asserted against such City by reason of the Grantee's negligent or

intentional acts in connection with the construction, operation, and maintenance of said distribution system.

A. In case that a suit or action is brought against the City for damages arising out of or by reason of the above-mentioned causes, the Grantee will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense.

B. In case a final judgment shall be rendered against the City in such suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined by a trial court, appellate court or courts, if appeal be taken, if determined adversely to said City.

C. Upon Grantee's failure to satisfy any such final judgment within the ninety (90) day period, the City, by action of the City Council, may upon due notice terminate this franchise and the City shall have a lien upon the distribution system which may be enforced against the property for the full amount of any such final judgment so taken against said City: PROVIDED THAT, such lien shall not restrict the City from taking any lawful action to collect any balance of such judgment, as well as the reasonable costs and fees incurred by the City in taking the collection action.

5.2. For the purpose of securing to the City full and complete performance of the covenants contained in this

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paragraph, the Grantee shall, at its own expense, procure and keep in force during the life of this franchise, liability insurance in a company or companies to be approved by the City, the minimum limits of such insurance to be not less than \$2,000,000 and such additional proof thereof shall be furnished to the City from time to time as it shall require. The policy shall be of an occurrence nature. Upon request of the City, the minimum limits of insurance shall be changed to reflect inflationary (cost of living) costs increases.

5.3. Acceptance by the City of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

SECTION VI: Franchise Not Exclusive. This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit said City from granting other franchises of like nature or franchises for other public or private utilities under, along, across, over, and upon any of the City streets, alleys, roads, or rights-of-way subject to this franchise.

SECTION VII: Provisions Bind Successor. All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

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SECTION VIII: Revocation for Non-Compliance. If the Grantee shall willfully violate or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect after the giving of written notice of such violation or failure to comply or fail to heed or comply with any other notice given the Grantee under the provisions of this grant, then Grantee shall forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the City, by action of the City Council, PROVIDED, however, that the City shall give thirty (30) days' written notice of its intention to revoke or annul the franchise during which period the Grantee shall have the opportunity to remedy the situation.

SECTION IX: Grantee to File Acceptance. The full acceptance of this franchise and all its terms and conditions by Astound Broadband, LLC, in writing within thirty (30) days from the date of execution of this Ordinance by the Mayor, is to be filed with the Clerk-treasurer of the City, and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

SECTION X: Notifications, Venue & Associated Matters.

10.1. Any notice provided for or concerning this franchise to be sent to the Grantee shall be in writing and be deemed sufficiently given when either [a] personally served upon the authorized representative of the other party or [b] sent by

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certified or registered mail, return receipt requested, and first class mail to the address of the other set forth in the following paragraphs.

A. The address of the Grantee is Astound Broadband, LLC, 401 Kirkland Parkplace, Kirkland, WA 98033 Attention: Steve Weed, CEO, and Jim Penney, EVP.

B. The address of the City is P.O. Box 3005, Elma, Washington 98541 Attention: Diana Easton, Clerk-treasurer.

In recognition that the individuals named may leave those positions or the parties relocate, a notice shall be deemed properly addressed if it is sent to the indicated address to the attention of the position designate unless a successor address has been provided pursuant to the following paragraph. A notice shall be deemed to have been given upon the date of service, if personally served, or upon the fifth business day following its mailing, properly addressed and postage prepaid.

Either party may from time to time notify the other party in writing of a change of address to which notifications are to be sent. In the absence of such notification, the addresses set forth above shall be deemed applicable,

10.2. In the event of any litigation arising out of the performance of this Contract, it is agreed the Courts of the County of Grays Harbor, State of Washington, shall be Courts of proper venue. Further, in addition to any other relief which may

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be granted to the prevailing party, the Court may award the prevailing party reasonable attorneys' fees and costs.

SECTION XI: 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 XII: This Ordinance shall take effect upon the fifth day following date of publication.

SECTION XIII: 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.

PASSED THIS _____ DAY OF _____,
2015, by the City Council of the City of McCleary, and signed in

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approval therewith this _____ day of _____,
2015.

CITY OF McCLEARY:

D. GARY DFNT, Mayor

ATTEST:

WENDY COLLINS, Clerk-Treasurer

APPROVED AS TO FORM:

DANIEL O. GLENN, City Attorney

STATE OF WASHINGTON)

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: 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

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WASHINGTON, Residing at:

My appointment expires:

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