



McCleary City Council

AGENDA

October 8, 2014

6:00 Watershed Company - Shoreline Master Plan Presentation
7:00 City Council Meeting

Flag Salute

Roll Call

Public Hearings: Combined Revenue Sources
Property Tax Levy

Public Comment:

Minutes: (Tab A)

Mayor's Report/Comments:

Staff Reports: Dan Glenn, City Attorney (Tab B)
Todd Baun, Director of Public Works (Tab C)
Staff Reports (Tab D)

Old Business:

New Business: PECI Contract Assignment (Tab E)
Fire District 5 Contract (Tab F)

Ordinances:

Resolutions:

Vouchers

Mayor/Council Comments

Public Comment

Executive Session

Adjournment

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

Please Turn Off Cell Phones – Thank You

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

CITY OF MCCLEARY
Regular City Council Meeting
Wednesday, September 24, 2014

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

ABSENT None.

STAFF PRESENT Present at the meeting were Todd Baun, Wendy Collins, George Crumb, and Chris Coker attended for Dan Glenn.

PUBLIC HEARING None.

PUBLIC COMMENT Helen Hamilton stated the property west of her office looks really nice and wanted to compliment the City on the clean-up effort.

Gary Atkins thanked the City for the water lines. He then asked the Mayor how the funding for the police department is happening next year. He asked if all the voting turmoil and the levy was for nothing because he was going to come up with the money anyway. Mayor Dent responded stating the City Council in Elma does not want to go with the County Sheriff's office either. He said the Sheriff's office originally offered us 40 hours of service for \$110,000 and now it's up to \$250,000 for potentially one to two deputies. Response time is still an issue. Mayor Dent added he is working on the budget and will be providing revenues to the Council by October 8th. He said the newspaper reported the County is in financial trouble and they want to get as much contracted services as possible. He said they gave big raises to the Sheriff's Department. The Mayor said the McCleary Court is almost a \$90,000 operation and he will be meeting with Grays Harbor County Courts in the next couple of weeks to discuss contracting options with them. Right now his budget includes keeping the police department.

Gary Atkins stated our police are so expensive and we are in the red. He said the Cheif of the Seattle Police Department makes \$250,000 per year. He added we are paying high dollars for a police department in McCleary where there are no murders or nothing. Mayor Dent and Helen Hamilton stated there have been murders in McCleary. Gary Atkins said he meant like Seattle has. He said this doesn't make any sense to take from our PUD to pay our police staff. Mayor Dent disagreed with him. He said \$55,000 is authorized to be transfered from the light and power fund, which he has already transfered, but might transfer it back to the light and power reserve fund.

Councilmember Catterlin said the Mayor gave his opinion and now he wants to give his own opinion. He said Mayor Dent had said the Sheriff's office quoted us \$110,000 per year. Mr. Catterlin said it was actually \$150,000 to \$200,000 per year. The quote they gave Elma recently was a ball park figure of \$900,000. The Sheriff assured him we could contract with the County for no more than \$200,000 per year. Mayor Dent responded that the Sheriff's Deputies get paid more money than our officers.

Gary Atkins asked the Mayor if he was trying to extend the police going out because the Chief of Police is getting close to retirement and the two of them are very, very good friends. He asked if that is what this is really about? Mayor Dent said no, there might be implications about that by people but that simply is not the case. Mr. Atkins said money is money to him and he sees more shereiffs driving around here than McCleary Police officers. Mayor Dent told him he was entitled to his opinion. Mr. Atkin's said he lives here on the main street of town. He said unfortunately he lives inside the City limits and asked the Mayor, "do you"? Mayor Dent said he does live inside the City limits and Mr. Atkins said he must hide then because he never sees him. Mayor Dent said he does not live in Mr. Atkins neighborhood and Mr. Atkins said, "well I hope not too close". Mayor Dent told him to keep a civil attitude and Mr. Atkins replied, "I am". Mayor Dent said if it gets much worse he would have him escorted out. Mr. Atkins said he was leaving anyway. Mr. Atkins left the meeting.

MINUTES APPROVED **It was moved by Councilmember Ator, seconded by Councilmember Reed to approve the minutes from the September 10, 2014 meeting. Motion Carried 5-0.**

CITY ATTORNEY REPORT None.

MAYOR'S COMMENTS Dan Glenn is gone on vacation so Chris Coker attended in his absence. The Mayor said we are getting close to having the revenues ready for the Council.

DIRECTOR OF PUBLIC WORKS
REPORT

Todd Baun, Mayor Dent and Wendy Collins have begun working on the budget for 2015 and are currently going through revenue projections.

LABOR NEGOTIATIONS

Mayor Dent will begin labor negotiations with all three unions. He asked for the Council's approval to enter into labor negotiations. **It was moved by Councilmember Ator, seconded by Councilmember Reed to authorize the Mayor to enter into union negotiations for the employee union contracts. Roll Call taken in the affirmative. Motion Carried 5-0.**

PERMISSIVE USE
APPLICATION FOR KELLIE
HOWELL AND BRIAN
PETERSON

Brian Peterson asked for approval of the Permissive Use Application he submitted for a six-foot fence that will run down Hemlock Street. He spoke with Colin Mercer about site issues and options for backing out of his driveway. Councilmember Schiller asked if the Council still has the right to require the owner to lower or move the fence if there is a complaint and Todd confirmed that is correct. **It was moved by Councilmember Schiller, seconded by Councilmember Reed to approve the permissive use application for a fence for Brian Peterson and Kellie Howell. Motion Carried 5-0.**

NAME THE POND

The students at McCleary Elementary were given the opportunity to name a pond that had never been officially named. The students had two names they suggested: Wildcat Pond or Seahawks Slough. Councilmember Catterlin asked Todd if he had confirmed that the pond didn't already have a name and Todd said no, he could not find any prior name after researching old maps. After considering the options, Councilmember Catterlin suggested "Wildcat Pond" to keep with the same theme of the school and mascot, which is the McCleary Wildcat's. **It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to name the pond, "Wildcat Pond" in keeping with the school mascot theme. Motion Carried 5-0.**

PWTF LOAN AMENDMENTS

The City has three loans with the Public Works Trust Fund (PWTF). They are asking for an amendment for all three loans to formally alter the day and month in which the loan payments are due. **It was moved by Councilmember Ator, seconded by Councilmember Schiller to amend the PWTF loans; PW-01-691-PRE-130 Wastewater Treatment Plant Upgrade, PW-5-95-792-TIM-201 Simpson Avenue Water Main Upgrade and PP09-951-013 Stormwater Comprehensive Plan, to formally change the payment due dates. Motion Carried 5-0.**

ELCON WORK ORDER 2014-1

The work order we have been using for Elcon Associates is now under \$500 that previously was authorized and signed in 2012. Elcon has provided an updated work order to continue the great service we have been receiving. **It was moved by Councilmember Catterlin, seconded by Councilmember Peterson to authorize the Mayor to execute Work Order 2014-1 with Elcon Associates. Motion Carried 5-0.**

ELCON WORK ORDER 2014-2

The 3rd Street Improvement Project design includes the design of the placement of existing electrical facilities underground. Skillings Connolly originally had Elcon performing the work as their sub-contractor. Staff believes it would be more cost effective if we contract directly with Elcon for the electrical design and there are sufficient funds available in the Light and Power budget. **It was moved by Councilmember Schiller, seconded by Councilmember Reed to authorize the Mayor to execute Work Order 2014-2 with Elcon Associates, not to exceed \$12,352.00. Motion Carried 5-0.**

APPROVAL OF VOUCHERS

None.

PUBLIC COMMENT

Councilmember Schiller commented about the vote at the last meeting regarding marijuana prohibition. He stated the Council went totally opposite of what Hearing Examiner's recommendation was and he believes the Council should consider that. Other Cities are being sued around the state because they are not authorizing them. Mayor Dent said they do not have to follow the Examiner's opinion and if they wanted to reconsider their vote, it would take a motion from one of the Council that voted in the majority. Councilmember Reed added Westport extended their moratorium for another six months.

Councilmember Catterlin asked to make a statement. He said last year on December 11, 2013, when they approved the 2014 budget, before they voted, he made a statement that the records will show that said, "Mayor Dent, I need your word that the council will be included in the preparations and negotiations for the levy and we will start that process well before the levy is run and the voters have all the information they deserve. Also the council will be included in searching out solutions for next years budget and your response was, of course". Mayor Dent said the Council just voted for him to do contracts. Councilmember Catterlin asked the Council which one of them have been included in searching out solutions for next years budget.

Mayor Dent said the Council would be receiving the estimated revenues and then they will go into expenditures, but the preliminary budget, which is submitted to the Council, is totally within his control. Mr. Catterlin asked the Mayor if he is not keeping his word. Mayor Dent said he doesn't believe Councilmember Catterlin has kept his word on occasion either so shall they will just drop it there. Chief Crumb asked Councilman Catterlin if he researched the tape for Mayor Dent's response he just quoted. Councilman Catterlin said a day after he made this statement, he came into Wendy's office and handed her a copy of his typed speech to make sure it got into the minutes word for word. Chief Crumb said he believes the Mayor's response was different and he will research it again.

EXECUTIVE SESSION

None.

MEETING ADJOURNED

It was moved by Councilmember Ator, seconded by Councilmember Reed to adjourn the meeting at 7:43 PM. The next meeting is scheduled for October 8, 2014 at 7:00 PM. Motion Carried 5-0.

MEMORANDUM

TO: MAYOR AND CITY COUNCIL, City of McCleary
FROM: DANIEL O. GLENN, City Attorney
DATE: October 6, 2014
RE: LEGAL ACTIVITIES as of OCTOBER 8, 2014

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.

What follows will be one of the shortest Reports you will have had to tolerate. However, with one exception it has been a relatively tranquil period since the last meeting.

1. **AUDIT REPORT:** I have had the opportunity to review the draft of the report being prepared by the State Auditor. As they have made very clear, it is a draft only and is a work in process. I am preparing a draft of my thoughts/opinion on certain issues. As you have been informed by Ms. Collins, the date for the exit audit has been set and all of you have been invited. If a majority of the Council attend, it will be treated as a special meeting with notice being given to the media and posted upon the entrance to City Hall.

2. **FIRE DISTRICT #5 CONTRACT DISCUSSIONS:** As you are aware, the contract is up for renewal/renegotiation at this time. The proposal which has been submitted by the District is basically to extend the terms of the current contract for an additional three years. The Mayor has met with Chief Prater. I would anticipate that a document will be submitted for your review prior to the next meeting for possible action at that meeting.

3. **COBAIN LITIGATION:** The "discovery" process in this litigation continues. Counsel for the Cobains has taken the depositions of Ms. Collins and Ms. Mercer. Mr. Kamerrer has taken the depositions of the Cobains. We can anticipate there will be additional depositions taken, potentially of former

employees of the City. As expected, it appears that the Cobains' position continues to be that any problem is the fault of the City.

4. ENHANCED ALL TERRAIN VEHICLE STREET USE ORDINANCE:

The material on this issue was provided back in August. I believe Chief Crumb was reviewing the issue and has/will be reporting back with his recommendation. I would suggest that a decision be made on the matter at your convenience since the matter will, if it has not already, arise. It boils down to whether or not to allow the WATVs to operate on certain of the City's streets.

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
Date: 10/06/2014
Re: Staff Report

No Staff Report

STAFF REPORT

To: Mayor Dent
From: Colin Mercer
Date: October 3, 2014
Re: September Building Department

Activities

- Submit copies of permits issued to Grays Harbor County Assessor's Office.
- High Definition Homes 500 E Huckleberry is in the finishing phase.
- High Definition Homes 1493 N Summit Road is in the framing stage.
- The Beehive is in the rough in stage of phase 2 of their project.
- 116 S 4th Street was issued a 30 day Temporary Occupancy to allow for the completion of a few minor construction items.
- 439 E Mommsen has been issued a permit for a new Single Family Home.
- 108 Summit Place Dr. has been issued a permit to convert the garage into a licensed day care facility.

Nuisance Issues in Progress

- 415 S Main Street Dangerous Garage we are still waiting for the demolition permit to be pulled.
- 832 N Summit Road dangerous accessory structure was posted to abate the conditions by either demolition or repair. Demolition Permit has been applied for and issued.
- Travel trailer at 626 W Ash, the property owner has been notified they are only allowed 30 days per MMC.
- 150 Wildcat attempting to work with bank to get property boarded up and the landscape cut down.
- 137 S. 3rd Street, notified tenant that the commercial zone does not allow for residential dwelling units and they are not allowed to live there without the proper facilities.
- 622 S. Main St. owner has been notified about possible living in a trailer, gave them 30 days to discontinue.

Nuisances Resolved

- 817 W Simpson has made major improvements on the appearance of the property as far as junk and garbage.
- 541 S 3rd Street, the bank has maintained the property and removed the burn barrel.
- RV at 626 W Ash has been removed.

Conservation Program

| Month | Applications Received | Conservation Permits Issued | Rebates Paid This Month | Total Rebates Paid To Date |
|-----------|-----------------------|-----------------------------|-------------------------|----------------------------|
| August | 2 | 2 | \$0.00 | \$16,570.00 |
| September | 1 | 1 | \$2,544.00 | \$19,114.00 |

Conservation Update: The 2014-15 BPA conservation budget total was \$98,039.00.

We have earmarked \$30,000 for Simpson Door company and \$25,000.00 for the Energy Smart Grocer program. This left us with \$43,039.00. We have paid out \$19,114.00 in conservation incentives for varies residential improvements such as windows, ductless heat pumps, insulation etc. the City will receive \$5,654.67 in performance payments to administer the program leaving our balance at \$18270.33 through October 1 2015.

Building Department Activity

| ACTIVITY | MONTHLY TOTALS | YEAR TO DATE TOTALS | ACTIVITY EXPLANATION |
|---------------------------------------|-----------------------|----------------------------|--|
| Customer Service | 38 | 410 | Answer building department related questions in person or by phone, meeting with potential applicants. |
| Building Permits Issued | 5 | 40 | Remodels, new construction & additions, both residential and commercial. |
| Plan Reviews Performed | 2 | 12 | Reviewing plans for building code and municipal code compliance. |
| Inspections Performed | 19 | 144 | Field inspections, writing of corrections or approving work. |
| Finals or Certificates of Occupancies | 0 | 10 | Performing of the final inspection & issuing of certificate of occupancy allowing use of the structure. |
| Complaints Received | 2 | 15 | Investigate and address citizen or staff reported issues, obtain resolution or acceptable compromise. |
| Nuisance Letters Sent | 4 | 48 | Formal notice from the City informing citizens of violations and providing expectation of the City for compliance. |
| Lemay's Garbage Letters Sent | 14 | 40 | Formal notice from City after notification from Lemay that service has been stopped. |
| | | | |
| Building Department Revenue | \$2691.30 | \$13,576.88 | Funds generated by the Building Department from permits, inspections, reviews etc. |

Comments:

STAFF REPORT

To: Mayor Dent
From: Paul Nott, Light & Power
Date: October 3, 2014
Re: September Report



| | Monthly Statistics; | YTD Totals; |
|---------------------------------|----------------------------|--------------------|
| New Services; | 0 | 5 |
| System Outages; | 0 | 8 |
| Pole Replacements; | 3 | 22 |
| Maintenance Work Orders; | 3 | 36 |
| Billable Work Orders; | 0 | 5 |

The month of September consisted of continued transformer change outs in conjunction with the cut over, a three pole rebuild out at the old mill on the East Elma Hicklin, installation of a three phase vault at the intersection at Mommsen and Third St. and some tree removals.

The old "Brooks" mill was purchased by a new owner and while discussing electrical service to the facility we discovered that all the infrastructure had either been destroyed by vandalism and as far as utility poles were concerned, they were rotten to the point of just barely remaining upright. Since this is a safety concern we rebuilt all of it and we are awaiting to install the permanent service.

We are still proceeding with numerous transformer change outs preparing for the cut over.

We installed a three phase vault at the intersection of Mommsen and Third Street also in preparation of cutting over the area located on the East side of Third Street. We have a lot of other work to complete to get the 12 KV to that point, but once complete we will cut over that area to the new substation and also eliminate that pole currently at the intersection that needs to be removed.

As always if you have any questions feel free to contact us...

In case of a power outage, please contact:

Light and Power Department 360-495-4533
City Hall 360-495-3667
Dispatch Non-Emergency 360-533-8765

Staff Report for McCleary Police Department

To: Mayor Dent
From: George M. Crumb, Chief of Police
Date: Friday, October 3, 2014 (0905)
RE: For October 8, 2014 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.

\$ written in bail amounts for Notice of Infractions and Criminal incidents.

1512# (90 additional since last report) Incident histories reported as of time of this report (100313 / 0953), 1422 last report.

| | |
|--------------------------------------|---|
| 00-Assault(s) | 00-Noise Complaints |
| 10-Agency Assist(s) | 00-No Valid Operator's License (NVOL) |
| 00-Alcohol Offense | 05-Police Information-4, Protection Order Scv-1 |
| 00-Audible Alarm | 01-Public Works Assist |
| 00-Abandon Vehicle | 00-Parking Complaint |
| 05-Animal Complaint | 02-Police Referral |
| 05-Burglary | 00-Speeding Stops (Traffic Stop) |
| 00-Curfew Violation | 00-Speed in School Zone |
| 00-Citizen Dispute | 07-Suspicious Person-2/Vehicle-4/Circumst-1 |
| 00-Civil | 00-Subject Stop |
| 00-Court Order Violation | 00-Sex Offense-0/Sex Offen Add Confirmation- |
| 04-Citizen Assist | 00-Suicide-0/Suicide Attempt-0 |
| 00-DWLS | 04-Traffic Offense-1/Reckless-0/Hazard-3 |
| 00-DUI | 02-Theft Reports/Vehicle-1(Shop lifter-1) |
| 01-Disorderly Conduct | 00-Traffic Accident |
| 00-Drug Incidents (VUCSA) | 07-Traffic Stop |
| 00-Death Report(s) | 00-Trespass |
| 01-Domestic Violence/Verbal/Mal Mis. | 01-Vehicle Prowl-0/Prowler-0 |
| 00-Extra Patrol Request | 02-Vehicle Lockout Assist-1/Disabled-1 |
| 15-Fire Responses | 00-Warrant Confirmation |
| 00-Found/Lost Property Report(s) | 00-Warrant Search |
| 01-Fraud/Firearm Compl-1 | 00-Warrant Arrest |
| 02-Harassment-2 | 01-Welfare Check |
| 00-Insurance Violation(s) | 00-Weaponss Offense |
| 01-Juvenile Problem/Run-a-way | 03-911 Open Line or Hang Up |
| 02-Motorist Assist | 05-No classification-3, or Unknown Problem-2 |
| 01-Malicious Mischief | 01-Threats by Phone-1 |
| 01-Missing Person | |

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  1046 hrs

STAFF REPORT

To: Mayor Dent
From: Kevin Trewhella, Water & Wastewater manager
Date: September, 5, 2014

Day to day operations, at both treatment plants, are very good. After many years of dependable service, pumps start to break down. We are having our Effluent Pumps serviced since we have started to notice some problems with them. The mechanical seal went out on the #1 effluent pump and the bearings went out on the #2 effluent pump motor.

At the Waste Water Treatment plant, we are currently working on upgrading the SCADA operating system. This Upgrade was approved in the 2014 budget. The cost for replacing the computer, upgrading the license and the cost for the engineer to do the programming changes, will be approximately \$15,000.00. I am working with the Engineer to control costs as much as possible

STAFF REPORT

To: Mayor Dent

From: Colin Mercer Webmaster

Date: October 3, 2014

Re: September Website

Re-Occurring Website Activities

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

New Website Activity

- Upload copies of the City Resolutions for public access.
- Posted a note on the Planning Page regarding Marijuana Uses are prohibited in all Zones per Ordinance 804.
- Posted the Burn Ban lift order.
- Posted a new picture on the home page of a rainbow over City Hall.
- Updated the Conservation Page with any new incentive modification from BPA that take effect on October 1st.
- Changed over to the new Help Desk tab, where the messages come to my email for distribution, as MRSC no longer is hosting our previous Help Desk program.

Additional Tasks

- Cemetery Map updates and Name Log updates.

Website Comments:

- None this month

Website Traffic September 1, 2014 through September 30, 2014 (Top visited pages shown only)

| Section | Page Views | Percent of Total |
|---|-------------------|-------------------------|
| Default Home Page | 3227 | 26.48% |
| Events Calendar | 1343 | 11.02% |
| City Jobs | 1088 | 8.93% |
| Home Page | 744 | 6.11% |
| Cemetery Data Page | 553 | 4.54% |
| Agendas and Minutes | 409 | 3.36% |
| City Departments | 295 | 2.42% |
| Conservation Program | 276 | 2.27% |
| Utilities | 268 | 2.2% |
| Police | 211 | 1.73% |
| Bear Festival | 159 | 1.3% |
| Mayor and Council | 156 | 1.28% |
| City Forms & Documents | 151 | 1.24% |
| Municipal Code | 141 | 1.16% |
| Administration | 139 | 1.14% |
| Staff Page | 125 | 1.03% |
| Search Results | 122 | 1% |
| Public Facilities | 119 | 0.98% |
| Chamber of Commerce | 119 | 0.98% |
| Helpful Links | 109 | 0.89% |
| Cemetery | 105 | 0.86% |
| Planning Department | 104 | 0.85% |
| 2008-14 Budget | 101 | 0.83% |
| FAQ's Page | 100 | 0.82% |
| Resolutions | 99 | 0.81% |
| Tell Us What You Think! | 96 | 0.79% |
| Light & Power | 90 | 0.74% |
| Data Page | 85 | 0.7% |
| Ordinances | 84 | 0.69% |
| Water / Wastewater | 75 | 0.62% |
| Development Services / Building | 73 | 0.6% |
| Interlocal Agreements | 64 | 0.53% |
| Fire | 63 | 0.52% |
| Municipal Court | 58 | 0.48% |

STAFF REPORT

To: Mayor Dent
From: Todd Baun- Director of Public Works
Date: October 3rd, 2014
Re: PECI Contract Assignment

The City currently has a contract with Portland Energy Conservation, Inc. (PECI). PECI implements the Energy Smart Grocer (ESG) program for Bonneville Power's conservation program.

PECI is requesting a change in contracting entity name only. All contract terms, pricing, scope, and delivery requirements, personnel and location of personnel will remain the same.

I have attached the amendment and our current contract with PECI.

Action Requested:

Please authorize the Mayor to sign the amendment for the PECI contract

ACKNOWLEDGMENT OF CONSENT TO ASSIGNMENT

By this acknowledgment, City of McCleary ("Consenter") consents to the assignment by Portland Energy Conservation, Inc., an Oregon corporation ("Assignor") to CLEAResult Operating, LLC, a Delaware limited liability company and/or its affiliates ("Assignee"), of all right, title and interest of Assignor under the agreement(s) between Assignor and Consenter set forth above (the "Agreement(s)") and to the assumption by Assignee of all of the obligations of Assignor under the Agreements. Assignor is discharged from any further obligations under the Agreement(s). All other terms and conditions of the Agreement(s) are ratified by the Consenter and the Assignee.

City of McCleary

CLEAResult Operating, LLC

Authorized Signer and Date



Authorized Signer

Printed Name and Title

James R. Stimmel, Executive Vice President
Printed Name and Title

Portland Energy Conservation, Inc.



Authorized Signer

Phil Welker, Executive Director
Printed Name and Title



UTILITY PARTICIPATION AGREEMENT

THIS UTILITY PARTICIPATION AGREEMENT (this “**Agreement**”) is dated Dec. 19, 2012 (the “**Effective Date**”) between Portland Energy Conservation, Inc., an Oregon nonprofit corporation (“**PECI**”) and City of McCleary (“**Utility**”).

OVERVIEW

- A. P E C I and the Bonneville Power Administration (“**BPA**”) have entered into an agreement dated October 21, 2011 (the “**BPA Agreement**”) under which P E C I is implementing and managing the EnergySmart Grocer Program (the “**Program**”) throughout various territories in the Northwest on behalf of BPA.
- B. The Program encourages improvements in energy efficiency by evaluating and executing energy saving initiatives. Customers (defined in Section 2 below) that participate in the Program may qualify for incentives funded by Utility. P E C I and Utility are entering into this Agreement so that P E C I may carry out its obligations under the BPA Agreement and Utility can avail itself and its customers to the services offered by P E C I.
- C. By signing this Agreement, Utility affirms and agrees to the terms and conditions contained in this Agreement. As an additional requirement for participation in the Program, Utility must provide P E C I with the Energy Smart Grocer Program Sign-up Form (the “**Form**”) provided by BPA to be attached to this Agreement as Exhibit A. Utility affirms and agrees that the information provided by Utility in the Form (including the final incentive budget) is accurate and acknowledges that such information will be relied upon by both P E C I and BPA. Utility will provide P E C I with sixty (60) days notice prior to changing any funding amounts or program scopes.

AGREEMENT

1. **TERM.** This Agreement is effective from the Effective Date and will continue until September 30, 2013 renewing automatically for successive two (2) year periods, unless terminated in accordance with the provisions in this Agreement. Prior to the expiration of the preceding Term, Utility will provide P E C I and BPA with an updated Form in the format set forth in Exhibit A.
2. **PROGRAM ELIGIBILITY.** “**Customers**” under the Program means Utility customers that have commercial refrigeration load, including for example, supermarkets, restaurants, institutional kitchens, and other commercial refrigeration sites (each, a “**Facility**”).
3. **PECI PROGRAM SERVICES.**
 - a. **Customer Contact.** Utility authorizes P E C I to contact Customers by phone, mail, email or in person for the purpose of informing them about the Program and its processes.
 - b. **Audits.** P E C I will work with Customers to schedule audits of their Facilities (each, an “**Audit**”). Utility may elect to attend an Audit following notice to P E C I. Audits will be



conducted in accordance with Subsection(h) below. P E C I may elect to conduct site assessments in addition to or in lieu of Audits.

- c. **Direct Installs.** P E C I or P E C I's field energy analyst may, with the Customers' approval and in their sole discretion, decide to install some "quick payback" items on their first visit to a Facility. Quick payback installations may include, but are not limited to, beverage merchandise controls or compact fluorescent lamps. The cost of the install will be borne by the Customer and not the Utility.
- d. **Recruiting and Managing Trade Allies.** P E C I may assist Customers in selecting general contractors to perform work under the Program (each, a "**Contractor**"). P E C I will assist Customers with their selected Contractor by providing training on the Program and support to the Contractor that P E C I deems necessary in its sole discretion. P E C I is not responsible for Contractor conduct and Utility holds P E C I harmless from any third party claims against Contractor (including Customer claims), Contractor misrepresentations, or misconduct occurring in connection with the Program.
- e. **Technical Design Review.** P E C I will obtain a technical design review of a potential measure(s) for a Customer upon Customer's request.
- f. **Determining kWh Savings.** In addition to regionally deemed savings methods, P E C I will use its proprietary modeling software to determine energy savings by measure a Customer installs in a Facility. The energy savings are based on DOE-2 parametric runs and engineering calculations which account for many variables including the Facility's particular climate zone, compressor configuration, condenser type, condenser degradation factors, and hours of operation. P E C I's software estimates are site and climate specific. P E C I will use these savings calculations when submitting savings measurements to Utility. P E C I will also derive prescriptive energy savings for measures that do not require an onsite audit. These measures are not climate or system specific. Lighting savings will be estimated using the BPA Commercial/Industrial Lighting Offer procedures.
- g. **Post Installation Inspections.** P E C I performs post installation inspection through site inspection or verification of documentation controls.
- h. **Service Levels.** P E C I will conduct audits with in accordance with the schedule below based upon committed incentive funds.

Service Level I (\$50,000 and above in committed incentive funds for FY2012-2013): Utilities in the Service Level I category will receive a minimum of two (2) field visits annually, audit requests fulfilled within sixty(60) days, and offered deemed and calculated measures. P E C I will provide post installation inspections for all projects with total project costs over \$10,000.

Service Level II (less than \$50,000 in committed incentive funds for FY2012-2013): If Utility falls into Service Level II category, P E C I may elect to perform a field visit at its sole discretion. As a standard offering, P E C I will offer deemed Measures only. Audits,



calculated measures, and post installation inspections will be offered on a case by case basis and at PECI's sole discretion. PECI will also offer outreach training for Utility staff (at Utility's request). Utilities in Service Level II will be required to commit a minimum of \$25,000 of Incentive funding or be subject to PECI approval for participation in the Program.

- i. **Rebate Processing and Reporting.** PECI will review and approve all Customer rebate applications and invoices for completeness and provide the information necessary to substantiate energy savings and Customer rebate eligibility. For Utilities that elect the BPA Turnkey Option, PECI will submit all rebates applications to BPA for its review and approval. PECI shall not be responsible for any claims rejected by BPA for any reason. For Utilities that elect the Self-funded Turnkey Option, PECI will submit all rebates applications to the Utility for its review and approval. PECI shall not be responsible for any claims rejected by the Utility for any reason. PECI reserves the right to subcontract rebate or check processing and similar functions. The chart below designates the responsible party for each Program component depending on which funding option is elected in the Form.

| Program Component | BPA Turnkey Option Responsible Party | Self-funded Turnkey Option Responsible Party |
|--|--------------------------------------|--|
| Rebate check issuance | PECI | PECI |
| Post Installation verification | PECI | PECI |
| Management of required back-up documentation | PECI | PECI |
| Review and acceptance of PECI-submitted data to BPA | BPA | Utility |
| Reimbursement to PECI for incentives paid to Customers | BPA | Utility |

- j. **Rebate Payments.** Within ten (10) business days of BPA's or Utility approval of submitted rebates, PECI will mail checks to Customers or Customer designated rebate payees. Checks will be accompanied with a letter including Utility's logo in accordance with Section 5 below, thanking the Customer for their participation in the Program.
- k. **Program Reports.** PECI will provide Utility with limited access to its online portal, Salesforce Sprocket or Sprocket Dashboard, which Utility may use for the sole purpose of viewing completed Audits, dates of any re-visits, rebate activity, rebate savings, to obtain copies of completed audit reports, view pipeline projects and associated kWh savings.
- l. **Targeted Facilities.** Utility would like PECI to target all eligible facilities. More specifically, for Program initiatives around refrigeration PECI will target:



- i. Grocers and national accounts;
 - ii. Convenience stores;
 - iii. Restaurants; and
 - iv. Other commercial refrigeration sites.
4. **ACCEPTANCE.** Utility's acceptance of the terms and conditions set forth in this Agreement is required for participation in the Program. Utility acknowledges that the terms and conditions of the Program are subject to change at PECEI's sole discretion.
5. **USE OF UTILITY MARKS.** During the term of this Agreement, Utility grants to PECEI a nonexclusive, royalty free right to use its trademarks, service marks, trade names, logos, or similar markings (each a "**Mark**") subject to the limitations contained in this Agreement. PECEI may use the Marks on its website, in its advertising and other promotional activities related to the Program as well as on checks and other mailings to Customers or Contractors. Utility represents and warrants that it owns title to all Marks and agrees to indemnify PECEI for any third party claims against PECEI for misuse or infringement of the Marks or any claims by any third party pursuant to the exercise of PECEI's rights under this Agreement.
6. **TERMINATION.** The parties may terminate this Agreement for cause in the event of any default by the other party following written notice of any default and commercially reasonable opportunity for the defaulting party to cure such default. PECEI reserves the right to terminate the Program, this Agreement or any part of this Agreement at the direction of BPA for any reason or for no reason in its sole discretion. In the event of such termination, the Utility shall at the election of PECEI: (a) immediately cease participation in the Program, including but not limited to, any applicable use of Program materials, logos or other advertising tools, equipment, and incentive forms; or (b) finalize Program projects in progress at the time of termination as directed by PECEI. PECEI and BPA will not pay Utility for post-termination activity after receipt of notice of termination unless such PECEI elects for Utility to finalize such projects pursuant to Section 6 (b) above.
7. **CONFIDENTIAL INFORMATION.** The parties will not use any Confidential Information for any purpose other than as needed to perform their respective obligations under this Agreement. Each party agrees to hold all Confidential Information in strict confidence and not disclose any Confidential Information to any person other than to its employees and independent contractors who (a) have a "need to know", (b) have been advised of the confidential and proprietary nature of the Confidential Information and (c) have signed a written agreement that is as protective of the Confidential Information as that set forth in this Section. When the parties have fully performed their respective obligations under this Agreement, or at any other time upon request from the party disclosing the Confidential Information, the party in receipt of the Confidential Information will return or destroy all Confidential Information in tangible form that is in their possession. The term "**Confidential Information**" means all information and materials relating to Utility or PECEI's business, in whatever form or medium, disclosed to or received by the receiving party, whether visually, by perception, orally or in writing, whether disclosed before or after the Effective Date, and whether or not specifically marked or otherwise identified as "**Confidential**" or "**Proprietary**," including all summaries and notes prepared by or on behalf of the other party, except that "**Confidential Information**" does not include any information that the receiving party demonstrates: (x) has become generally available to the



public without breach of this Agreement; (y) was later received from another person who did not violate any duty of confidentiality; or (z) that was developed without use of any Confidential Information by persons who were not exposed to the Confidential Information.

- 8. PROGRAM CHANGES.** P E C I reserves the right to make changes to the Program. P E C I will notify Utility of such changes by email or another nationally recognized mail carrier.
- 9. MISCELLANEOUS.**

(a) Indemnity. Utility will indemnify, hold harmless, and defend BPA, P E C I and, their respective officers, employees, agents, representatives, and affiliates against any and all losses, liabilities, damages, claims, suits, proceedings, judgments, assessments, costs, and expenses (including interest and penalties), and including reasonable attorney fees and expenses, incurred by BPA and P E C I arising from (i) negligent or wrongful acts or omissions of the Utility or of its officers, employees, agents, representatives, or subcontractors, affiliates, or (ii) breach by Utility or its officers, employees, agents, representatives, subcontractors, or affiliates of this Agreement.

P E C I shall defend, indemnify and hold harmless Utility, and its respective employees, agents, officers and directors, from and against any losses, liabilities, damages, claims, damages, proceedings, judgments, assessments, costs and expenses (including interest and penalties), and including reasonable attorney fees and expenses arising out of, or resulting from any act or omission of P E C I relating to, or arising out of, performance or nonperformance of this Agreement by P E C I, except to the extent such act or omission is due to the negligence of Utility or its subcontractors or any other third party.

The parties specifically agree that the provisions of this Section also apply to any claim of injury or damage to the persons or property of the Utility's employees. Utility acknowledges and agrees that, as to such claims, Utility, with respect to P E C I waives any right of immunity which Utility may have under any applicable law. This waiver was specifically negotiated by the Parties, is solely for the benefit of the Parties and their successors and assigns, and is not intended as a waiver of Utility's right of immunity under said industrial insurance for any other purpose.

(b) Attorney's Fees. In the event an action is brought to enforce any provision of or declare a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal costs including attorney's fees incurred.



(c) Notices. Except as otherwise provided in the Agreement, all notices or other communications under this Agreement must be in writing and delivered to the addresses, including e-mail addresses, below the signatures to this Agreement. Such addresses may be changed by notice given by such party to the other pursuant to this section or by other form of notice agreed to by the parties.

(d) Assignment. Neither party may assign, voluntarily, or by operation of law, or otherwise, any rights or delegate any duties under this Agreement without the other Party's prior written consent. Any attempt to do so without that consent will be void.

(e) Entire Agreement; Counterparts. This Agreement contains the entire agreement of the parties regarding the subject matter described of the Agreement, and all other promises, representations, understandings, arrangements and prior agreements related to this Agreement are merged and superseded by this Agreement. The provisions of this Agreement may not be amended, except by an agreement in writing signed by the party against whom enforcement of any amendment is sought. This Agreement may be executed in two (2) or more counterparts, all of which will constitute but one and the same instrument.

(f) Governing Law; Jurisdiction and Venue. This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of Oregon, without reference to its conflicts of law principles. Utility irrevocably consents to the jurisdiction of the state and federal courts located in the State of Oregon, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. Utility further agrees that it will not initiate any action against P E C I in any other jurisdiction.

(f) Severability. Should any provision of this Agreement be held by a tribunal of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement will remain in full force and effect.

(g) Waiver of Breach. The failure of either party to enforce strict performance by the other of any provision of this Agreement, or to exercise any right available to the party under this Agreement, shall not be construed as a waiver of such party's right to enforce strict performance in the same or any other instance.

(h) Representation on Authority of Signatory. The individual signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute and deliver this Agreement on behalf of Recipient. The Recipient represents and warrants that the execution and delivery of this Agreement and Recipient's obligations under this Agreement have been duly authorized and that the Agreement is a valid and legal agreement binding on Recipient and enforceable in accordance with its terms.

(i) Disclaimer. P E C I'S REVIEW OF THE DESIGN, CONSTRUCTION, OPERATION OR MAINTENANCE OF INSTALLATIONS SHALL NOT CONSTITUTE ANY REPRESENTATION AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY OR RELIABILITY OF THE INSTALLATIONS. CUSTOMERS AND CONTRACTORS ARE SOLELY RESPONSIBLE FOR



THE ECONOMIC AND TECHNICAL FEASIBILITY, OPERATIONAL CAPABILITY AND RELIABILITY OF ALL INSTALLATIONS. PECE SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOSS OF ANTICIPATED REVENUE, PROFITS, OR GOODWILL, WHETHER ARISING IN NEGLIGENCE, BREACH OF CONTRACT, OR UNDER STATUTE OR RULE.

The parties, by their respective duly authorized representatives, have executed this Agreement on the date shown below. This Agreement shall not bind either party until executed by both parties.


PECE

Utility

Portland Energy Conservation, Inc.

City of McCleary

By: _____
 Dan McDonald
 Associate Director

By: 
~~Nick Bird~~ D. Gary Dent
 Title: Mayor

Notice Address:
 100 SW Main St., Suite 1600
 Portland, OR 97204
 Attention: Dan McDonald
 Phone: (503) 575-4179
 Email: dmcdonald@peci.org

Notice Address:
 100 S 3rd Street
 McCleary, WA 98557
 E-mail: Nick B @ City of McCleary.wa
 Work: (360) 495-3667
 Cell: () _____

With a copy to:
 100 SW Main St., Suite 1500
 Portland, OR 97204
 Attention: Joe Mattoon
 Phone: (503) 248-4636
 Email: jmattoon@peci.org



EXHIBIT A
Energy Smart Grocer Program Sign-up Form

INTERLOCAL AGREEMENT
For
EMS AVAILABILITY and SERVICES

By and Between

GRAYS HARBOR
FIRE PROTECTION DISTRICT #5

And

CITY OF MCCLEARY

INTERLOCAL AGREEMENT

THIS AGREEMENT is made and entered into upon the dates set out below by and between Grays Harbor Fire District #5, Washington (hereinafter known as the Provisioner, or Fire District #5), and City of McCleary, ~~and the City of Elma~~ (hereinafter known as the ~~Entities~~ Entity or the ~~eities~~ city).

RECITALS

A. RCW 39.34.080 authorizes public fire districts to enter into contracts with one or more public agencies to perform service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, that such contract shall be authorized by the governing body of each party to the contract.

B. The Parties have exchanged proposals in relation to the continuation of the provision of emergency medical services by the District to those within the Entities jurisdictions. The entities have reached an agreement as to the terms and conditions for the provision of and payment for such services.

C. The Parties wish to memorialize the terms of that Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged by all Parties, it is agreed as follows:

Section 1. Term, Termination, and Renewal.

1.1. This agreement shall commence on the 1st day of January, 2015 ~~2012~~, (the "Commencement Date") and shall expire on December 31, 2017 ~~2014~~, (the "Initial Term"). ~~unless the Parties enter into an extension agreement on or before October 15, 2014, or such other later date as may be agreed to subsequently in writing by all Parties. The Parties shall commence negotiations as to any extension on or before August 1, 2014.~~ This agreement shall automatically be renewed for an additional three (3) year term, subject to neither party providing a written request to enter into negotiations no later than one hundred and twenty (120) days prior to the expiration date of the term.

1.2. The Initial Term is subject to earlier termination in accordance with Section 3 hereof.

Section 2. Duties of Fire District #5. Throughout the Term, the District shall be responsible for the following duties:

2.1 Ambulance and Emergency Medical Services. Fire District #5 shall operate and staff an Advanced Life Support ambulance service. The Ambulance Service shall stock and maintain at least two ambulances in accordance with ALS (Advanced Life Support) standards. The Ambulance Service shall operate with at least one ambulance 24 hours per day, seven days per week. Additional ambulances may be utilized for back-up purposes as needed. The Ambulance Service shall respond to all 911 aid calls occurring within the entity in accordance with Chapter 246-976 WAC with the exception of the calls which are identified as Public Assistance Calls which shall be responded to by the respective Entities within their individual boundaries. The formal written definition of this excluded call for service shall be provided in writing to the Entities City by the District

A. Performance Standards. Fire District #5 shall operate the Ambulance Service in compliance with the requirements set forth in 246-976 WAC for the provision of Ambulance Services. The Ambulance Service shall meet requirements of response time and availability set forth therein.

B. Management. The District's Board of Commissioners shall manage the Ambulance Service.

C. Staffing. Fire District #5 shall staff the Ambulance Service at a level of service of no less than one paramedic and one emergency medical technician at all times unless a different level of staffing is agreed to by the Parties in writing.

D. Response Plan.

1. Fire District #5 will dispatch an appropriately staffed ambulance to all 911 aid calls within the Entities Entity within its capabilities other than a call identified as a Public Assistance call.

2. Fire District #5 shall provide emergency medical and transport services as necessary to all ALS and BLS patients originating within the ~~Entities~~ Entity.

3. Fire District #5 shall maintain response times, service levels, and availability consistent with, and not less than, the minimum requirements set forth in Chapter 246-976 WAC. The District shall provide pre-hospital and paramedic services to the residents of the Entity at no lesser level than provided to residents of Fire District #5 subject to the provisions of Section 2.4.

E. Rehabilitation and Standby. Fire District 5 shall provide rehabilitation and standby services to the Fire Departments of the ~~Entities~~ Entity for major fire incidents. This function shall be ideally performed by off-duty Fire District 5 EMS personnel to protect the availability of the on-duty unit though the on-duty unit may initially respond.

F. Service Limitation. The above services shall be rendered on the same basis as such services are provided to areas within the District, but the District assumes no liability for failure to do so by reason of any circumstances beyond its control. In the event of simultaneous calls whereby facilities of the District are taxed beyond its ability to render equal services, the officers and agents of the District shall have discretion as to which call shall be answered first. The District shall be the sole judge as to the most expeditious manner of handling and responding to emergency calls.

2.2 Notice of Proposed Rate Changes.

A. In the event District undertakes consideration of an action which would result in a change in the fees and costs charged to the individual user of its service, whether related to the response itself, a mileage charge, or supplies provided in the course of a response, it shall provide the ~~Entities~~ Entity with written notice of the proposed changes no less than twenty-one days prior to the date at which Fire District #5's Commission will consider adoption of any such proposed change.

B. The District's Commission will take into consideration in good faith any concerns or recommendations the ~~Entities~~ Entity may have in reference to said changes. Any rates established shall not distinguish between service provided to individuals within the boundaries of ~~Entities~~

Entity limits and service provided to individuals within the boundaries of Fire District #5.

2.3 **Provision of Information.** The District shall provide the ~~Entities~~ Entity such information as may be reasonably requested in relation to the performance of this contract, including such matters as call levels and totals, fiscal performance, and operational status and projections.

3. **Termination for cause.** This agreement may be terminated prior to the expiration date of the Term specified in Section 1 for cause. This shall apply in the event that a party contends the other party has failed to comply with a duty created by this agreement. In that event, the party shall give the other party written notice specifying in reasonable detail the duty breached. In the event the recipient party does not take reasonable steps to correct the failure within fourteen days of receipt of the notice, then the other party may give written notice of its decision to terminate the agreement 90 days following the date of the giving of the notice.

4. **Fiscal Matters.** In recognition of the importance of the contracting ~~Entities'~~ Entity's understanding of the Fire District's fiscal operations, the District agrees to make its budgetary records and information available to representatives of the contracting ~~Entities~~ Entity upon request of the ~~entities~~ entity, but in any event no more frequently than quarterly. In furtherance of that, the District's Chief Financial Officer shall cooperate fully in responding to any requests for information, as well as to meeting with contracting ~~parties'~~ party's representatives during the course of the review of the District's fiscal operations.

5. **Compensation:**

5.1. For provision of the services to be provided by the District pursuant to this Agreement for the year ~~2012~~ 2015, the ~~entities~~ entity shall pay to the District the sums set forth in Paragraph A of Attachment #1. The responsibility of ~~each of the~~ ~~Entities~~ Entity shall be as set forth upon that attachment.

5.1.A. The equal monthly installment shall be paid by ~~each of the~~ ~~entities~~ entity directly to the District with

an equal amount to be paid on or before the 15th day of each month thereafter during the term of this contract.

~~5.1.B. In recognition of the retroactivity of the payment amounts and the fact that a cost of living adjustment was made commencing with January 1, 2012, to achieve full payment of the adjusted amount for 2012, the monthly payment of Fire District #12 commencing with the payment due for April shall be in the amount of \$2745.76. This amount includes the nine monthly installments of \$14.23 for the prorated amount of \$128.04.~~

5.2. As of January 1, 2013, and January 1, 2015 2014, the annual amount to be paid to the District by the two contracting entities entity shall be adjusted by a percentage established as the average of the Seattle-Tacoma-Bremerton Area Bi-Monthly Index CPI-U (October to October) and the US All City Average (November to November). [Example: S-T-B Area Bi-monthly Index CPI-U is 4.0% and the US All City Average CPI-U for that period is 3.0%. The adjustment to be utilized is 3.5%.] In no event shall the adjustment be less than two (2) percent nor greater than four point five (4.5) five (5) percent.

6. Notices.

6.1 Any and all notices or communications required or permitted to be given under any of the provisions of the Agreement shall be in writing and shall be deemed to have been given upon receipt when personally delivered or two (2) days after deposit in the United States mail if sent by first class, certified mail, return receipt requested. All notices shall be addressed and delivered to the parties at the addresses set forth below or at such other address as a party may specify by written notice to the other party. Further, as to any notice not personally delivered, it shall be mailed with one copy being sent by first class mail, postage prepaid, and the other by certified mail, return receipt requested.

6.2. Any notice to be given to either of the Cities City shall be given in writing to the Clerk-treasurer of the City by leaving that notice at the Office of the Clerk-treasurer during normal business hours or mailing it as set forth above to the attention of the Clerk-treasurer of the City as follows:

~~Elma: P.O. Box 3005, Elma, WA 98541.~~

McCleary: 100 S. 3rd Street, McCleary, WA 98557.

6.3. Any notice to be given to the District shall be given in writing to the District by leaving the notice with the individual in charge of the emergency medical service division of the District or by mailing it to the Grays Harbor Fire District #5, **Attention: Chief** P.O. Box 717, Elma, WA 98541.

7. **Entire Agreement/Modification.** This Agreement represents the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior negotiations or discussions with respect thereto. This Agreement may be amended or modified by written instrument signed by the parties hereto after approval by their respective governing bodies. Such amendments may be for the purposes of, among other things, adding or deleting parties to this Agreement.

8. **Assignment.** No party to this Agreement may assign its rights or obligations hereunder.

9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which taken together shall constitute but one and the same instrument.

10. **Filing Requirements.** Upon execution of the Agreement, the parties shall file or post a true and complete copy thereof in compliance with the provisions of Chapter 39.34 RCW.

11. **Authorization.** Each Party does hereby represent and warrant to the others that it is duly authorized to enter into and to carry out the Terms of this Agreement.

12. **Indemnification & Insurance:**

12.1 Any and all claims, suits, or judgments for liability which hereafter arise on the part of any and all persons as a direct or indirect result of the acts or omissions of the District (including its officers, employees, and agents) in carrying out its duties under this Contract shall be the sole obligation of the District. The District shall defend, indemnify, and hold harmless the Entities, (including their officials, officers, employees, and agents)

in full, including costs, expenses, and attorneys' fees, for any and all acts or failures to act on the part of the District, its officers, agents, and employees.

12.2 The District shall purchase and maintain such insurance as will protect against claims, damages, losses and expenses arising out of, or resulting from, all activities relating to this Contract. Such insurance coverage shall name the ~~Entities~~ Entity as additional named insured's and shall be for a minimum of the following amounts:

- A. Bodily Injury liability - \$2,000,000
- B. Property Damage liability - \$1,000,000

The limits set out above shall be per incident limits and not aggregate limits. Certificates of Insurance in accordance with this paragraph shall be filed with the Clerk-treasurer of ~~each of the Cities~~ City within thirty calendar days of the effective date of this Contract. Such policies shall provide that ~~Entities~~ Entity shall receive notification from the insurer no less than ninety calendar days prior to any cancellation, expiration, or termination of the policy.

13. Other Provisions:

13.1 **Severability:** Each provision of this Contract stands independent of all other provisions. If any provision of this Contract or the application thereof to any persons or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application. Should any provision be adjudged invalid, that judgment shall not invalidate the total Contract; only provisions judged invalid shall not be enforced.

13.2. **Dispute Resolution & Enforcement:**

A. In the event of any dispute arising out of this Agreement, the Parties agree they shall attempt to resolve the dispute by informal discussions. In the event such efforts are not successful, they may submit the dispute to non-binding mediation and binding arbitration under the then prevailing rules of the American Arbitration Association: PROVIDED, that, in the event either party objects to the submission of

the matter to arbitration within 30 days after demand for arbitration has been filed with an appropriate agency, then the procedure shall be terminated and the matter shall be processed as the Parties deem appropriate through the Courts of the State of Washington.

B. In the event of resolution of a covered dispute by either arbitration or litigation, in addition to any other relief granted to the substantially prevailing party, if any, the arbitrator or court shall award that party reasonable attorneys' fees and costs incurred in prosecuting or defending the matter, as the case may be.

C. Any action at law, suit in equity, or judicial proceeding for the enforcement of this contract or any provisions hereto shall be instituted only in the Courts of competent jurisdiction within Grays Harbor County, Washington.

13.3. **Interpretation:** Each party has had the opportunity to have this Agreement reviewed by Counsel of its choice prior to execution. Therefore, the rule of interpretation against the drafter shall not apply.

13.4. **Taxes:** As an independent contractor and governmental entity, the District is solely responsible for the payment of all payroll taxes (including but not limited to FICA, FUTA, federal income tax withholding, workers' compensation, and state unemployment compensation) on behalf of all persons providing services pursuant to this Contract. Further, the District shall maintain any and all business and other required licenses. The ~~Entities~~ Entity reserve the right to require annual certification by the District of its compliance with the terms of this paragraph and, at its own expense, to have the compliance confirmed by a Certified Public Accountant or such other qualified financial professional as it may deem appropriate.

13.5 In the event one of the three recipient contracting parties provides facilities or equipment to the District for use in the District's operations required under the terms of this contract, prior to such utilization, an amount shall be

agreed upon between the District and the providing entity. That amount shall be credited against the monetary amount which the providing entity would otherwise be required to pay under the terms of this Contract.

EXECUTED by the District this _____ day of ~~April~~
~~October, 2012~~ 2014.

GRAYS HARBOR COUNTY FIRE
PROTECTION DISTRICT NO. 5

JERRY BAILEY, Fire Commissioner

DAVE HAUGE, Fire Commissioner

ERIC PATTON, Fire Commissioner

ATTEST:

PATTY SMITH, District Secretary

EXECUTED by the City at the CITY OF MCCLEARY this _____
day of ~~April~~ October, ~~2012~~ 2014.

CITY OF MCCLEARY:

D. GARY DENT, MAYOR

ATTEST:

WENDY COLLINS, Clerk-treasurer

Attachment #1

A. ANNUAL AMOUNT FOR 2012 2014 BY ENTITY

| | |
|-------------|--------------|
| 1. McCleary | \$76,776.15 |
| 2. ELMA | \$182,643.39 |
| 1. McCleary | \$79,917.24 |

B. MONTHLY PAYMENTS FOR 2012 2014 COMMENCING AS OF APRIL, 2012

| | |
|-------------|-------------|
| 1. McCleary | \$ 6,831.11 |
| 2. ELMA | \$16,250.58 |
| 1. McCleary | \$ 6,659.77 |

C. ANNUAL AMOUNT FOR 2015 FOR THE ENTITY SHALL BE SET AS THE 2014 RATE PLUS THE INCREASE PERCENTAGE ESTABLISHED IN SECTION 5.2. MONTHLY AMOUNT SHALL BE SET TAKING THE ANNUAL AMOUNT AND DIVIDING IT BY 12.