

MUTUAL ASSISTANCE AGREEMENT
executed by the
UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
acting by and through the
BONNEVILLE POWER ADMINISTRATION
and
CITY OF MCCLEARY

This MUTUAL ASSISTANCE AGREEMENT (Agreement) is executed by the UNITED STATES OF AMERICA, Department of Energy, acting by and through the BONNEVILLE POWER ADMINISTRATION (BPA) and CITY OF MCCLEARY (McCleary). BPA and McCleary may participate in this Agreement as either “Assisting Party” or “Requesting Party” as the situation requires. BPA and McCleary may be referred to individually as “Party” and collectively as “Parties.”

RECITALS

The Parties recognize that assistance may be desired when electric service has been disrupted by acts of the elements, equipment malfunctions, accidents or any other occurrence where the Parties deem assistance to be necessary or advisable.

It is in the mutual interest of the Parties to be prepared to provide or receive assistance for emergency repair and restoration to such electric service and facilities.

The Parties recognize that, in the case of electric service interruption, one Party can provide valuable assistance to the other Party in the form of personnel, equipment and/or materials, and other technical assistance. The purpose of this Agreement is to provide the procedures under which one Party may request and receive assistance from the other Party.

The Parties therefore agree as follows:

1. DEFINITIONS

When used in this Agreement, the following terms have the meaning shown below:

- (a) “Assistance” means the actions taken by the Assisting Party, including during Mobilization, to provide personnel, materials, equipment, supplies and/or tools to the Requesting Party in order to expedite restoration of electrical service that has been disrupted by acts of the elements, equipment malfunctions, accidents or any other emergencies. Assistance does not include routine maintenance or work stoppages.

- (b) “Assistance Period” means the period of time that starts when the Assisting Party has mobilized and dispatched resources to the Requesting Party and shall be deemed to have terminated when Demobilization is complete.
- (c) “Demobilization” means the actual return of all of the Assisting Party’s mobilized resources to the Assisting Party’s normal base.
- (d) “Mobilization” means the planning, collecting, assigning, preparing and transporting of all assistance personnel, materials, equipment, supplies and/or tools. Mobilization also includes any pre-engineering work necessary to provide Assistance. Mobilization may start in advance of execution of the Reimbursable Agreement.
- (e) “Reimbursable Agreement” means a separate agreement whereby the Assisting Party agrees to provide Assistance to the Requesting Party, and the Requesting Party agrees to pay the Assisting Party’s expenses incurred while providing Assistance.
- (f) “Assisting Party” means the Party that is asked to provide Assistance.
- (g) “Requesting Party” means the Party that is requesting Assistance.

2. TERM OF AGREEMENT

This Agreement will be effective at 0000 hours on the date that this Agreement has been signed by the Parties (Effective Date), and shall terminate on the earlier of:
(1) 90 days written notice of either Party, or (2) 30 years after the Effective Date.

3. EXHIBITS

Exhibit A, Notices, is incorporated into and made part of this Agreement.

4. NO OBLIGATION TO REQUEST OR PROVIDE ASSISTANCE

Nothing in this Agreement shall be construed to create an enforceable legal obligation to provide or receive Assistance. The Assisting Party has the right to refuse, in its sole discretion, to provide Assistance, or to discontinue providing Assistance with notice to the Requesting Party, and shall not be liable for any damage or consequences resulting from any refusal, failure or delay in providing Assistance. The Requesting Party shall be liable for all costs incurred by the Assisting Party up to the point the Assisting Party no longer provides Assistance. All costs incurred by the Assisting Party will be resolved in accordance with Section 5(e) of this Agreement.

5. REQUESTING AND PROVIDING ASSISTANCE

- (a) In the event of an emergency affecting the generation, transmission or distribution services and/or related facilities owned or controlled by a Party, the Requesting Party may request the Assisting Party to provide Assistance by contacting the appropriate representative listed in Exhibit A.

- (b) The Requesting Party shall provide the Assisting Party with a general description of the damage sustained, including location of the damages, and the Assistance desired.
- (c) The Assisting Party shall, in its sole discretion, determine if it will provide Assistance, including the extent and limitations of Assistance.
- (d) If the Assisting Party determines it can provide Assistance, the Assisting Party shall document in an email or letter to the Requesting Party of the Assistance it will provide, including equipment, materials, supplies, number of personnel by job function and an estimate of the Assistance Period. Before Mobilization can occur, the Requesting Party shall confirm in an email or letter to the Assisting Party that it will accept the Assistance.

By accepting Assistance, the Requesting Party agrees to pay all costs that the Assisting Party incurs to provide Assistance, including applicable overheads, from the period when Mobilization begins through the term of the Reimbursable Agreement executed by the Parties pursuant to section 5(e) below or Demobilization. The Requesting Party shall also pay the costs for any materials that are used to provide Assistance that the Assisting Party determines it cannot re-use. The Assisting Party will determine the costs for such materials by either determining the cost to replace the materials, including applicable overheads, or, if the Assisting Party chooses to not replace the materials, the current value of the materials, including applicable overheads.

The Assisting Party shall specify all costs it incurs to provide Assistance in an invoice that it will send to the Requesting Party, and the Requesting Party shall pay the Assisting Party consistent with the instructions on the invoice.

- (e) A Reimbursable Agreement shall be executed by the Parties as soon as possible after the agreement to proceed with Mobilization. Before a Reimbursable Agreement is executed, the Assisting Party may provide Assistance to the Requesting Party under this Agreement. Cost of Assistance provided under this Agreement prior to the Reimbursable Agreement will be reflected in the Reimbursable Agreement. After the Reimbursable Agreement is executed, the Reimbursable Agreement shall provide the terms and conditions under which Assistance is provided and will supersede this Agreement for the Assistance Period; provided, however, that the Reimbursable Agreement will not relieve the Requesting Party of its obligation to pay the Assisting Party for all costs it incurs providing Assistance under this Agreement.

6. SCOPE OF ASSISTANCE

- (a) All costs associated with the furnishing of Assistance shall be the responsibility of the Requesting Party and are deemed to have commenced upon Mobilization by the Assisting Party.
- (b) The Assisting Party and Requesting Party shall coordinate the preparation of Mobilization and Demobilization.
- (c) Wages, hours and other terms and conditions of employment applicable to personnel provided by the Assisting Party shall continue to be those of the Assisting Party.
- (d) If the Assisting Party provides a crew or crews, it shall assign supervisory personnel as deemed necessary by the Assisting Party, who shall be directly in charge of the crew or crews providing Assistance.
- (e) All time sheets, equipment and work records pertaining to personnel, material, vehicles, equipment, supplies and/or tools provided by the Assisting Party shall be kept by the Assisting Party for billing and auditing purposes as provided in this Agreement.
- (f) No Party shall be deemed the employee, agent, representative, partner or the coventurer of another Party or the other Parties in the performance of activities undertaken pursuant to this Agreement.
- (g) The Parties shall, in good faith, attempt to resolve any differences in work rules and other requirements affecting the performance of the Parties' obligations pursuant to this Agreement.

7. OPERATION OF FACILITIES

- (a) **Dispatch Jurisdiction**
Dispatch jurisdiction and switching authority will not change during the period Assistance is provided, except that in emergency situations when life or property is endangered, any Party may de-energize lines or equipment and perform such switching as necessary according to its best judgment. The jurisdictional dispatcher must be notified and involved as soon as practical. The Parties will continue to follow all instructions issued by the jurisdictional dispatcher.

(b) **Safety Standards and Work Procedures**

The Assisting Party shall follow the Requesting Party's and jurisdictional dispatcher's safety standards and work practices when providing Assistance. However, the Assisting Party shall have the right to stop work if it has concerns regarding safety.

8. **ACCESS**

The Requesting Party shall grant access to the Assisting Party in accordance with the Requesting Party's safety and security requirements. Access and escort by the Requesting Party shall be sufficient to allow the Assisting Party to provide Assistance.

9. **LIABILITY**

Neither Party shall be liable to the other Party for any lost or prospective profits or any special, punitive, exemplary, consequential, incidental or indirect losses or damages under this Agreement.

McCleary is solely responsible to BPA for damage to United States (BPA) property caused by McCleary, and its employees, contractors, and agents. McCleary is also solely responsible for any claims arising out of negligent conduct by its employees, contractors, and agents performing the work described in this Agreement on or at United States-owned (BPA-owned) real property, facilities, or equipment. Any claim for personal injury, death, or property damage against BPA (the United States) must be made in accordance with the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b), and ch. 171.

10. **STANDARD PROVISIONS**

(a) **Amendments**

Except where this Agreement explicitly allows one Party to unilaterally amend a provision or revise an exhibit, no amendment or exhibit revision to this Agreement shall be of any force or effect unless set forth in a written instrument signed by authorized representatives of each Party.

(b) **Assignment**

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld.

(c) **Choice of Law**

This Agreement shall be interpreted, construed and enforced in accordance with Federal law.

(d) **Entire Agreement**

This Agreement, including documents expressly incorporated by reference, constitutes the entire agreement between the Parties. It supersedes all previous communications, representations, or contracts, either written or oral, which purport to describe or embody the subject matter of this Agreement.

(e) **Freedom of Information Act (FOIA)**

BPA may release information provided by McCleary to comply with FOIA or if required by any other federal law or court order. For information that McCleary designates in writing as proprietary, BPA will limit the use and dissemination of that information within BPA to employees who need the information for purposes of this Agreement.

(f) **No Third Party Beneficiaries**

This Agreement is made and entered into for the sole benefit of the Parties, and the Parties intend that no other person or entity shall be a direct or indirect beneficiary of this Agreement.

(g) **Uncontrollable Forces**

The Parties shall not be in breach of their respective obligations to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

“Uncontrollable Force” means an event beyond the reasonable control of, and without the fault or negligence of, the Party claiming the Uncontrollable Force, that prevents that Party from performing its contractual obligations under this Agreement and which, by exercise of that Party’s reasonable care, diligence and foresight, such Party was unable to avoid. Uncontrollable Forces include, but are not limited to:

- (1) strikes or work stoppage;
- (2) floods, earthquakes, fire, or other natural disasters, terrorist acts, epidemics, pandemics; and
- (3) final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the Party claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction.

Neither the unavailability of funds or financing, nor conditions of national or local economies or markets shall be considered an Uncontrollable Force. The economic hardship of either Party shall not constitute an Uncontrollable Force. Nothing contained in this provision shall be construed to require either Party to settle any strike or labor dispute in which it may be involved.

If an Uncontrollable Force prevents a Party from performing any of its obligations under this Agreement, such Party shall: (1) immediately notify the other Party of such Uncontrollable Force by any means practicable and confirm such notice in writing as soon as reasonably practicable; (2) use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligation hereunder as soon as reasonably practicable; (3) keep the other Party apprised of such efforts on an ongoing basis; and (4) provide written notice of the resumption of performance. Written notices sent under this section must comply with Exhibit A, Notices.

(h) **Waivers**

No waiver of any provision or breach of this Agreement shall be effective unless such waiver is in writing and signed by the waiving Party, and any such waiver shall not be deemed a waiver of any other provision of this Agreement or any other breach of this Agreement.

11. SIGNATURES

This Agreement may be executed in several counterparts, all of which taken together will constitute one single agreement, and may be executed by electronic signature and delivered electronically. The Parties have executed this Agreement as of the last date indicated below.

CITY OF MCCLEARY

UNITED STATES OF AMERICA

Department of Energy
Bonneville Power Administration

By: _____

By: **TROY SIMPSON** Digitally signed by TROY SIMPSON
Date: 2021.06.23 10:19:54 -07'00'

Title: _____

Title: Transmission Account Executive

If opting out of the electronic signature:

By: _____

Name: _____
(Print / Type)

Title: _____

Date: _____

**EXHIBIT A
NOTICES**

1. REQUESTS FOR ASSISTANCE AND NOTICES OF AN OPERATING NATURE

Any notice or other communication related to this Agreement shall be delivered in person, or with proof of receipt by email, facsimile, First Class mail or overnight delivery service. Notices are effective on the date received. Either party may change the contact information by providing notice of such change to the following person and address:

To City of McCleary:

100 S 3rd St
McCleary, WA 98557-0360
Attention: Todd Baun
Title: Public Works Director
Phone: (360) 495-3667 ext. 103
Fax: (360) 470-965
Email: toddb@cityofmccleary.com

With a copy to:

Attention: Paul Nott
Title: Senior Lineman
Phone: (360) 495-3667 ext. 120
Fax: (360) 495-3097
Email: pauln@cityofmccleary.com

To Bonneville Power Administration:

(a) **To request Assistance of personnel, material, equipment, supplies and/or tools, contact the BPA representative in the order listed below:**

(1) District Manager: (360) 570-4301

(2) Dispatch with Primary Jurisdiction for the Customer:

Munro Dispatch:
Phone: (509) 465-1820
or (509) 465-0315
Fax: (509) 466-2444

(3) Dispatch with Alternate Jurisdiction:

Dittmer Dispatch:
Phone: (360) 418-2281
or (360) 418-2280
Fax: (360) 418-2938

(4) Chief Substation Operator: (360) 570-4311

(5) Transmission Customer Service Engineer:
Phone: (360) 570-4335

(6) Transmission Account Executive:
Phone: (360) 418-8659
or (360) 852-6491

(b) **To request Assistance for materials-only, contact the BPA Representative in the order listed below:**

(1) BPA Logistics Services Foreman:
(360) 907-4217

(2) Traffic Management Specialist:
(360) 518-0784

2. ADMINISTRATIVE CONTACTS

Any notice or other communication related to this Agreement, other than notices of an operating nature (section 1 above), shall be delivered in person, in writing, by email, facsimile, First Class mail, overnight delivery service. Notices are effective on the date received. Either party may change the contact information by providing notice of such change to the following person and address:

To City of McCleary:

100 S 3rd St
McCleary, WA 98557-0360
Attention: Brenda Orffer
Title: Mayor
Phone: (360) 495-3667 ext. 118
Fax: (360) 495-3097
Email: brendao@cityofmccleary.com

To Bonneville Power Administration:

To request a Reimbursable Agreement

Attention: Transmission Account Executive for City
of McCleary – TSE/TPP-2
Phone: (360) 619-6016
Fax: (360) 619-6940
Email: txsalescontracts@bpa.gov

First Class Mail:

Bonneville Power Administration
P.O. Box 61409
Vancouver, WA 98666

Overnight Delivery Service:

Bonneville Power Administration
905 NE 11th Avenue
Portland, OR 97232

3. CHANGES IN NOTICES

If either Party revises its contact information, that Party shall notify the other Party within 3 business days and such notice shall be deemed to have been received if delivered in person, in writing, by email, facsimile, First Class mail or overnight delivery services. BPA shall revise this Exhibit upon such notice.