

**AGREEMENT OF PARTIES TO SETTLE APPEAL
BETWEEN
CITY OF MCCLEARY
AND
THE WASHINGTON STATE DEPARTMENT OF LABOR & INDUSTRIES**

The parties in this matter, CITY OF MCCLEARY (“Employer”), and the DEPARTMENT OF LABOR & INDUSTRIES (“Department”) (collectively, “Parties”), enter into the following Agreement of Parties to Settle Appeal (“Agreement”).

FACTS

On February 22, 2024 the Department initiated an inspection of the Employer’s worksite located at 5129 State Route 12, Elma, WA 98541. As a result of that inspection, the Department issued Citation and Notice No. 317978751 (“Citation”) to the Employer on June 26, 2024, alleging violations of the Washington State Industrial Safety and Health Act (WISHA) and assessing a monetary penalty of \$7,200.00. The Employer filed a timely appeal to the Citation on July 19, 2024, and the Department exercised its discretion and reassumed jurisdiction over the matter. The Employer and the Department signed an Extension of Reassumption Process on August 20, 2024.

AGREEMENT

The Parties are each aware of the facts and proceedings stated above and have considered those facts in entering into this Agreement.

The Parties enter into this Agreement for the purpose of expediting the abatement of workplace hazardous exposures and precluding protracted and expensive litigation.

Once the Department issues a Corrective Notice of Redetermination (“CNR”) related to this appeal, that CNR in conjunction with the following will become the final and binding Agreement between the Parties in relation to this Citation.

1. In exchange for the penalty reduction shown on the CNR, the Employer agrees to take the following extra steps. It is understood that expenditures for extra steps shall be documented and be available for Department review upon request or as set forth in this Agreement.
 - a. The contact person for the Department for extra steps will be:
LYNDSAY BANKS, Regional Manager
Department of Labor & Industries
7233 Linderson Way SW
Tumwater, Washington 98501
Phone: (360) 902-5409
Email: lyndsey.banks@lni.wa.gov

- b. The contact person for the Employer will be:
ANDREW PITTMAN, Fire Chief
CITY OF MCCLEARY
100 South 3rd Street
McCleary, Washington 98557
Phone: (360) 495-3667
Email: apittmanghfd12@gmail.com
 - c. Employer agrees to purchase three decontamination kits by January 1, 2025, and provide the Department's contact person with proof of purchase by January 15, 2025.
 - d. Employer agrees to purchase a sink and install an ultrasonic mask cleaner by January 1, 2025, and provide the Department's contact person with proof of purchase by January 15, 2025.
 - e. Employer agrees to purchase a shower and eye wash station by January 1, 2025, and provide the Department's contact person with proof of purchase by January 15, 2025.
 - f. Once steps listed in Paragraph 1 above have been completed, the Department's contact person will send an email to the DOSH Appeals Program stating all contingencies have been met. A copy of that email will be sent to the Employer's contact person.
 - g. If the Employer does not comply with the terms or deadlines set forth above, the Department will send the Employer a Notice and Opportunity to Cure. The Employer shall have 10 business days from the date of receiving the Notice and Opportunity to Cure to provide the Department with written confirmation that the Employer has cured the alleged compliance issue(s). If the Employer does not cure the alleged compliance issue, then the Department reserves the right to void any or all of this Sidebar Agreement and reinstate Citation and Notice No. 317978751 including the original penalty and any and all past and future interest that has and may accrue until the penalty is paid in full, without right of appeal to the Board, subject to the rights and remedies set forth below or as otherwise permitted by law. The Employer's rights and remedies shall be as set forth in Paragraph 5 below.
2. The Parties agree that the total penalty after modification will be \$2,700.00 The Employer promises to pay the amount of penalties within 15 days of signing this Agreement. Payment can be made online by visiting <https://www.lni.wa.gov/agency/pay-a-balance-due/>. You may also mail a check made payable to the Department of Labor and Industries. Payment checks shall reference Corrective Notice of Redetermination No. 317978751, and payments shall be sent to:

Department of Labor and Industries
ATTN: CASHIER
P. O. Box 44835
Olympia, WA 98504-4835

3. The Employer further promises and agrees that all violations shall be abated by the dates set forth in the corresponding CNR, if not already abated. Employer further agrees to complete and send in the Employer's Certification of Hazards Corrected forms, if any, that accompany the CNR.
4. Employer agrees to post a copy of this Agreement at each establishment to which it applies, in a conspicuous place or places where notices to employees are customarily posted, for a period of seven (7) days or until all extra steps referenced above are completed, whichever is later.
5. Venue for enforcement of this Agreement shall be in the Superior Court of Thurston County, Washington. In any action brought to enforce the Agreement, the other party shall pay the prevailing party's attorney's fees and costs.
6. This Agreement does not render the Employer immune from future compliance efforts generated by complaints, accident investigations, monitoring inspections, follow-up inspection protocol, and/or by Division of Occupational Safety & Health's inspection targeting system.
7. By entering into this Agreement, the Department does not admit that it could not have established the Citation as originally written. Rather, the Department believes that settlement of the Citation is in the Department's best interest in order to avoid the costs and uncertainties of litigation. Nonetheless, nothing shall limit the Department's ability to use the affirmation of the violations contained in this Agreement in future proceedings/inspections instituted by the Department under Chapter 49.17 RCW, including establishing repeat, failure to abate or willful violations.
8. No further appeal action will be taken by the Employer regarding the Citation or Corrective Notice of Redetermination.

DATED: 9/26/2024

DATED: _____

DEPARTMENT OF LABOR & INDUSTRIES

CITY OF MCCLEARY

ADAM ZAHN

ADAM ZAHN
Hearings Officer

ANDREW PITTMAN, Fire Chief