

RESOLUTION NO. **17 - 0854**

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN INTERLOCAL)
AGREEMENT BETWEEN THE CITY OF MILLWOOD AND)
SPOKANE COUNTY TO ALLOW THE COUNTY PUBLIC WORKS) **RESOLUTION**
DEPARTMENT TO PROVIDE PUBLIC WORKS SERVICES)
WITHIN THE CITY OF MILLWOOD LIMITS)

WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County, Washington, ('the Board') has the care of county property and the management of county funds and business; and

WHEREAS, pursuant to Chapter 39.34RCW, Chapter 35.77 RCW, and Chapter 47.24 RCW, the City of Millwood and Spokane County ('the County') may enter into a cooperative Interlocal Agreement wherein the County can perform Public Works services for the Town of Millwood as mutually agreed upon; and

WHEREAS, the County, pursuant to RCW 35.77.020, by resolution of the Board must approve the cooperative agreement between the City of Millwood and the County prior to the County commencing reimbursable services; and

WHEREAS, the Spokane County Engineer recommends the approval of this Interlocal Agreement as it is in the best interest of the public; and

WHEREAS, the Board feels that the best interests of the public will be served by entering into said agreement with the City of Millwood.

NOW, THEREFORE BE IT RESOLVED by the Board that the Interlocal Agreement between the City of Millwood and the County to provide services within the City of Millwood limits by the Spokane County Public Works Department is approved.

BE IT FURTHER RESOLVED by the Board that the Interlocal Agreement between the City of Millwood and the County may be executed by the Chair, or a majority of the Board, at other than an open meeting.

PASSED AND ADOPTED this 3rd day of October, 2017.



BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON

Al French
Al French, Chair

Josh Kerns
Josh Kerns, Vice-Chair

May E. Koney
Commissioner

ATTEST:

By *Ginna Vasquez*
Ginna Vasquez, Clerk of the Board

PUBLIC WORKS UMBRELLA INTERLOCAL AGREEMENT
CITY OF MILLWOOD
AND
SPOKANE COUNTY

This Public Works Umbrella Interlocal Agreement (AGREEMENT) is made and entered into by and between the CITY OF MILLWOOD (CITY), a Municipal Corporation within the State of Washington, having offices for the transaction of business at 9103 East Frederick Avenue, Millwood WA 99206 and SPOKANE COUNTY (COUNTY), a Political Subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane WA 99260. Together, the CITY and the COUNTY are referred to as the PARTIES. This AGREEMENT between the PARTIES is entered into this 3rd day of October, 2017.

The PARTIES enter into this AGREEMENT pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), Chapter 35.77 RCW (Streets ~ Planning, Establishment, Construction, and Maintenance), and Chapter 47.24 RCW (City Streets as Part of State Highways). This AGREEMENT allows the COUNTY, if specifically requested by the CITY, to undertake and manage public works projects within the CITY. The COUNTY'S Public Works Department will provide engineering, administration, construction, clerical services, material, equipment, labor, maintenance services, and/or contract management as necessary to execute certain public works projects within the CITY.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. The CITY may specifically request that the COUNTY undertake and manage a public works project(s) within the CITY. The COUNTY may accept or reject any specific request. If accepted by the COUNTY, the PARTIES shall memorialize terms of the proposal in a Reimbursable Public Works Task Request (TASK) document. That TASK document will be considered an addendum to this AGREEMENT and must be mutually adopted by the PARTIES as an amendment to this AGREEMENT.
2. The CITY grants permission to the COUNTY under provisions of Chapter 35.77 RCW to perform the work necessary to execute a specific TASK.
3. The COUNTY will provide all engineering, administration, construction, clerical services, material, equipment, labor, maintenance services, and/or contract management as necessary for execution of the TASK. In providing such, the County Engineer may exercise all the powers and perform all the duties vested by law or ordinance in the CITY'S Engineer or other officer or department charged with street administration.
4. The CITY hereby agrees to reimburse the COUNTY for the actual cost of completing the TASK, which will include the full direct and indirect cost of all services, materials, and work as set forth in Spokane County Board of Commissioners' Resolution #2011-0893 – *“Interlocal, Interfund, Other Service Agreement, and Fee Setting Policy and Procedures”*. The COUNTY shall not be liable for any costs, direct or indirect, in performing the requested TASK. The COUNTY will submit to the CITY, on a regular basis, a certified statement of costs. Within thirty (30) days of receiving said statement, the CITY shall pay to the COUNTY the full amount of said statement.

5. The CITY, in consideration of the faithful performance by the COUNTY, agrees to reimburse the COUNTY for the actual costs, both direct and indirect, of all services, materials, and work in performing the requested TASK.
6. The COUNTY in performance under this AGREEMENT, including any addendum, shall abide by the provisions of, but not limited to, Chapter 39.34 RCW, RCW 35.77.020, 35.77.030, & 35.77.040, RCW 36.75.200 & 36.75.205, Chapter 36.77 RCW, RCW 47.24.050, and Chapter 136-18 WAC (Standards of Good Practice ~ Construction by County Forces) as applicable.
7. Both PARTIES recognize that RCW 35.77.030 requires that all construction work performed by the COUNTY on CITY streets, pursuant to RCW 35.77.020 through 35.77.040, that exceeds \$10,000 must be done by contract after competitive bidding unless “...it appears that bids are unobtainable or that the lowest bid exceeds the amount for which such construction can be done by means other than contract.” Both PARTIES also recognize that the contract and bidding requirement, as stipulated in RCW 35.77.030, does not apply to repair or maintenance work performed by the COUNTY on CITY streets.

The term “construction” is defined in WAC 136-18-020(1) as “...the building of a new road facility or improvement of an existing facility to a higher geometric or structural standard.”

8. The COUNTY will prepare the final construction documentation in general conformance with the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION CONSTRUCTION MANUAL (WSDOT MANUAL). The COUNTY will maintain one set of plans as the official "as-built" set, then make notations in red ink of all plan revisions typically recorded per standard practices as directed by the WSDOT MANUAL. Once the CITY has accepted the completed project described in the TASK document, the COUNTY will provide one reproducible set of as-built plans to the CITY within sixty (60) working days.
9. The CITY hereby grants to the COUNTY and its authorized agents, contractors, subcontractors, and employees a right of entry upon the CITY right of ways to undertake and complete the TASK.
10. After acceptance of the completed project by the CITY, in the event of claims for damages or loss attributable to bodily injury, sickness, death, injury, or destruction of property that occurs within the limits of the completed and accepted project described in the TASK document, the CITY shall defend such claims and hold harmless the COUNTY therefrom, and the COUNTY shall not be obligated to pay any claim, judgement, or cost of defense. Nothing in this section, however, shall remove from the COUNTY any responsibility defined by the current laws of the State of Washington or from any liability for damages caused by the COUNTY'S own negligent acts or omissions independent of the work performed pursuant to this AGREEMENT.
11. Upon acceptance by the CITY of the completed public works project described in the TASK document, the CITY shall be the sole owner of said project and the CITY shall be solely responsible for ownership and all future operation and maintenance at its sole cost, without expense, cost, or liability to the COUNTY.

12. GENERAL PROVISIONS

- A. **Amendment:** This AGREEMENT may be amended or modified only by the mutual agreement of the PARTIES. Such amendments or modifications shall not be binding unless they are in writing and signed by persons authorized to bind each of the PARTIES.

B. Term of AGREEMENT: This AGREEMENT will terminate five years after its execution by the PARTIES, which date shall be October 3, 2022. The PARTIES may extend the term of this AGREEMENT by mutually executing an amendment which specifies a new termination date.

C. Termination of AGREEMENT: This AGREEMENT may be terminated at the end of each calendar year by either party for any reason or for no reason, by giving ninety (90) days advance written notice of termination to the other party. Any termination notice delivered pursuant to this section, shall specify the date on which the AGREEMENT will be terminated. If this AGREEMENT is terminated pursuant to this section, the COUNTY shall continue performing services through the date of termination. The CITY shall compensate the COUNTY for all services performed by the COUNTY through the date of termination. The CITY obligation to make such final payment to the COUNTY shall survive the termination of this AGREEMENT.

If this AGREEMENT, including any addendum, is terminated prior to the fulfillment of the terms of this AGREEMENT or addendum, the CITY agrees to reimburse the COUNTY for the actual costs, both direct and indirect, it has incurred for the work up to the date of termination, as well as the actual costs, both direct and indirect, for those products or services which were obligated prior to the date of termination and are non-cancelable.

Any termination of this AGREEMENT or an addendum shall not prejudice any rights or obligations accrued to the PARTIES prior to termination.

D. Independent Contractor: The COUNTY shall be deemed an independent contractor for all purposes, and the employees of the COUNTY or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the CITY.

E. Indemnification: The COUNTY shall defend, indemnify, and hold the CITY, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees arising out of or in connection with the performance of this AGREEMENT or an addendum, except for injuries and damages caused by the sole negligence of the CITY.

Should a court of competent jurisdiction determine that this AGREEMENT or an addendum is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the COUNTY and the CITY, its officers, officials, employees, and volunteers, the COUNTY'S liability hereunder shall be only to the extent of the COUNTY'S negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the COUNTY'S waiver of immunity under Title 51 RCW (Industrial Insurance) solely for the purposes of this indemnification. This waiver has been mutually negotiated by the PARTIES.

F. Acceptance of Liability: The CITY agrees and accepts full liability for:

- (1) Plans, Specifications, and Estimates (PS&E), if any, provided by the CITY to the COUNTY in regards to the TASK; and
- (2) any work the CITY has provided direction to the COUNTY for design and/or construction that does not meet COUNTY standards.

G. Insurance: The COUNTY shall ensure that its contractor, if any, maintains insurance consistent with Section 1-07.18 American Public Works Association [APWA] Local Agency General Special Provisions [GSP] dated January 4, 2016. In addition, the COUNTY must ensure that its contractor, if any, names the CITY as an additional insured pursuant to Section 1-07.18(2) APWA GSP January 4, 2016.

The COUNTY certifies that it is a member of the Washington Counties Risk Pool (the "Pool"), as provided by RCW 48.62.031, and that it is covered by the Pool's Joint Self-Insurance Liability Memorandum of Coverage Document (MLC). Claims submitted under Chapter 4.96 RCW (Actions Against Political Subdivisions, Municipal and Quasi-Municipal Corporations) against the COUNTY, its employees, officers, volunteers, and agents and/or actions in connection with, or incidental to, the performance of this AGREEMENT or an addendum, for which the COUNTY and/or its employees, officers, volunteers, and agents are found to be liable, will be paid by the Pool and/or COUNTY.

The Pool's liability coverage limits of \$10,000,000, per occurrence, exceed limits required by this AGREEMENT or an addendum and commercial excess liability insurance covers all operations and applies over the Pool self-insurance primary policy. The Pool's self-insurance MLC will respond to the same extent as if an insurance policy had been purchased naming the CITY as named insured.

H. Survivability: Sections 12E, 12F, and 12G above, entitled **Indemnification, Acceptance of Liability, and Insurance** respectfully, shall survive the termination of this AGREEMENT or any addendum.

I. Disputes: In the event that a dispute arises under this AGREEMENT or an addendum, it shall be resolved as follows.

- (1) The CITY and the COUNTY shall each appoint a member to a disputes board. Those two members shall select a third board member not affiliated with either Party. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute.
- (2) The PARTIES shall equally share in the cost of the third disputes board member; however, each Party shall be responsible for its own costs and fees.

J. Venue: If either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this AGREEMENT or an addendum, the PARTIES agree that any such action or proceedings shall be brought in Spokane County Superior Court. Further, the PARTIES agree that each will be solely responsible for payment of its own attorney's fees, witness fees, and costs.

K. Audits/Records: All records for the completed public works project TASK, in support of all costs incurred, both direct and indirect, shall be maintained by the COUNTY for a period of six (6) years. The CITY shall have full access to and right to examine said records, during normal business hours, and as often as it deems necessary. Should the CITY require copies of any records, it agrees to pay the costs thereof. The PARTIES agree that the work performed herein or under an addendum is subject to audit by either or both PARTIES and/or their designated representatives, and/or State of Washington and/or the federal government.

L. All Writings Contained Herein/Binding Effect: This AGREEMENT, along with an adopted

addendum, contains the terms and conditions agreed upon by the CITY and COUNTY. The CITY and COUNTY agree that there are no other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT. No changes or additions to this AGREEMENT shall be valid or binding upon the CITY or COUNTY unless such change or addition is in writing and mutually executed by the PARTIES.

- M. Interpretation:** This AGREEMENT has been and shall be construed as having been made and delivered within the State of Washington and it is mutually understood and agreed by each Party that this AGREEMENT shall be governed by the laws of the State of Washington both as to interpretation and performance. Each Party consents to the personal jurisdiction of the Spokane County Superior Court of the State of Washington for all claims, disputes, proceedings, or actions in any way arising under, or relating to, this AGREEMENT or an addendum.
- N. Severability:** The PARTIES agree that if any parts, terms, or provisions of this AGREEMENT or an addendum are held by the courts to be illegal, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the PARTIES shall not be affected regarding the remainder of the AGREEMENT or an addendum. If it should appear that any part, term, or provision of this AGREEMENT or an addendum conflicts with any statutory provision of the State of Washington, then the part, term, or provision thereof that may be in conflict shall be deemed inoperative and null and void insofar as it may be in conflict therewith and this AGREEMENT or an addendum shall be deemed to be modified to conform to such statutory provision.
- O. Headings:** The section headings appearing in this AGREEMENT or an addendum have been inserted solely for convenience and ready reference. In no way do they purport to, and shall not be deemed to define, limit, or extend the scope or intent of the sections to which they pertain.
- P. No Third-Party Beneficiaries:** Nothing in this AGREEMENT is intended to give, or shall give, whether directly or indirectly, any benefit or right, greater than that enjoyed by the general public, to third persons.

13. RCW 39.34 REQUIRED CLAUSES

- A. Purpose:** Authorize the COUNTY to provide to the CITY all engineering, administration, construction, clerical services, material, equipment, labor, maintenance services, and/or contract management necessary to execute mutually agreed upon public works project TASKS requested by the CITY. Any such TASK must be subsequently and mutually executed by the CITY and the COUNTY. The TASK document shall become an addendum and be adopted as an amendment to this AGREEMENT.
- B. Organization of Separate Entity and Its Powers:** No new or separate legal or administrative entity is created to administer the provisions of this AGREEMENT or any addendum.
- C. Duration:** See Section 12B Term of AGREEMENT.
- D. Termination:** See Section 12C Termination of AGREEMENT.
- E. Property Upon Termination:** See Section 11.
- F. Responsibilities of the PARTIES:** See various provisions throughout this AGREEMENT.

- G. AGREEMENT to be Filed:** The COUNTY shall file this AGREEMENT or any amendment with the County Auditor or, in the alternative, place the AGREEMENT or any amendment on the COUNTY'S website or other electronically retrievable public source.
- H. Financing:** A TASK document addendum, as allowed under terms of this AGREEMENT, shall stipulate the method of financing for the specific TASK.
- I. Representatives:** The PARTIES hereby appoint the following individuals as their respective representatives for administering the terms of this AGREEMENT.

City of Millwood

Paul Allen
Public Works Director

City of Millwood
9103 East Frederick Avenue
Millwood, WA 99206-4399

509-924-0960

publicworks@millwoodwa.us

Spokane County

Chad W. Coles, P.E.
Spokane County Engineer

Spokane County Public Works
1026 West Broadway Avenue
Spokane, WA 99260-0170

509-477-3600

ccoles@spokanecounty.org

Project specific representatives will be designated by the respective PARTIES within the TASK document addendum which will be executed as an amendment to this AGREEMENT.

The PARTIES warrant that the officers executing below have been duly authorized to act for and on behalf of the Party for purposes of confirming this AGREEMENT.


In witness, whereof, the PARTIES hereto below have executed this AGREEMENT.

CITY of Millwood

Signature: 
Kevin Freeman, Mayor
City of Millwood

Date: September 12, 2017

Spokane County

Signature: 
Al French, Chair
Board of Spokane County Commissioners

Date: 11/9/2017