

RESOLUTION NO. 18 - 0823

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING AN INTERLOCAL AGREEMENT BETWEEN EAST VALLEY SCHOOL DISTRICT #361 AND SPOKANE COUNTY TO ALLOW REIMBURSEMENT FOR CONSULTANT DESIGN SERVICES) RESOLUTION

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 39.34 RCW, and Section 4(f) of the 2008 Environmental Assessment for Bigelow Gulch Road/Forker Road Urban Connector mitigation measures, East Valley School District No. 361 ('the School District') and Spokane County ('the County') may enter into a cooperative Interlocal Agreement wherein the County will reimburse the School District for consultant design services in conjunction with relocation of the School District's sports fields due to the Bigelow Urban Connector Project; and

WHEREAS, the County, pursuant to RCW 35.77.020, by resolution of the Board must approve the cooperative agreement between the School District and the County prior to the County commencing reimbursement of 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 School District.

NOW, THEREFORE BE IT RESOLVED by the Board that the Interlocal Agreement between the the School District and the County to reimburse the School District for consultant design services pertaining to the relocation of the sports fields in conjunction with the Bigelow Urban Connector Project is approved.

BE IT FURTHER RESOLVED by the Board that the Interlocal Agreement between the School District 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 6th day of November, 2018.



BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

[Signature] Josh Kerns, Chair

[Signature] Mary Kuney, Vice-Chair

[Signature] Al French, Commissioner

ATTEST:

By [Signature] Ginna Vasquez, Clerk of the Board

INTERLOCAL AGREEMENT
RECREATIONAL ARCHITECT SERVICES
EAST VALLEY SCHOOL DISTRICT 361
AND
SPOKANE COUNTY

This Interlocal Agreement (AGREEMENT) for Design Services is made and entered into by and between the EAST VALLEY SCHOOL DISTRICT 361 (SCHOOL DISTRICT), a Public School District within the State of Washington, having offices for the transaction of business at 3830 N. Sullivan Road, Bldg. 1, Spokane Valley, WA 99216 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 SCHOOL DISTRICT and the COUNTY are referred to as the PARTIES.

The PARTIES enter into this AGREEMENT pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), and the 2008 Environmental Assessment for Bigelow Gulch Road/Forker Road Urban Connector mitigation measures Section 4(f).

The subject of this AGREEMENT is to allow reimbursement to the SCHOOL DISTRICT by the COUNTY for *consultant design services* for the relocation of the sports fields (PROJECT) due to the Bigelow Urban Connector Project. The SCHOOL DISTRICT has hired a Recreational Architectural firm to prepare the design of the sport field relocation PROJECT. The SCHOOL DISTRICT will coordinate with the COUNTY to determine the final scope, schedule, and fee for these services.

This AGREEMENT between the PARTIES is entered into this 6th day of November, 2018.

IT IS MUTUALLY AGREED AS FOLLOWS:

1. The SCHOOL DISTRICT has hired a Recreational Architectural firm to prepare the design for the relocation of the sports fields impacted by the County's Bigelow Urban Connector project. The COUNTY will reimburse the SCHOOL DISTRICT for consulting and design services per provisions of the 2008 Environmental Assessment for Bigelow Gulch Road/Forker Road Urban Connector under "Measures for Section 4(f)." The SCHOOL DISTRICT may utilize the architectural firm to preform additional evaluations and design but that the County is not responsible for any work not directly due to the impacts of the Bigelow 6 Urban Connector Project.
2. The SCHOOL DISTRICT agrees to include the design of the PROJECT into their master contract with the selected consultant firm. The County is not responsible for changes made to the accepted PROJECT design without prior approval.
3. The PARTIES agree to comply with all state and federal laws related to the use, sharing, transfer, or disclosure of information.
4. The SCHOOL DISTRICT agrees to provide to the COUNTY all design files, calculations, memorandums, reports, and associated design information or files related to the engineering design of the PROJECT.

5. The PARTIES agree that the PROJECT will be completed concurrently with the COUNTY's Bigelow 6 Urban Connector project unless otherwise mutually agreed. The PARTIES agree that the schedule will be coordinated with the final scope.
6. The SCHOOL DISTRICT will coordinate with the COUNTY to determine the final scope, schedule, and fee for the consulting and design services. The COUNTY hereby agrees to reimburse the SCHOOL DISTRICT for the actual cost of completing the PROJECT, not to exceed \$33,260.00, which will include the full direct and indirect cost of all consulting and design services, as set forth in Spokane County Board of Commissioners' Resolution #2011-0893 – *"Interlocal, Interfund, Other Service Agreement, and Fee Setting Policy and Procedures"*. The SCHOOL DISTRICT will submit to the COUNTY, on a regular basis, a certified statement of costs. Within thirty (30) days of receiving said statement, the COUNTY shall pay to the SCHOOL DISTRICT the full amount of said statement.
7. After acceptance of the completed project by the SCHOOL DISTRICT, 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, the SCHOOL DISTRICT 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.
8. Upon acceptance by the SCHOOL DISTRICT of the completed PROJECT, the SCHOOL DISTRICT shall be the sole owner of said PROJECT and the SCHOOL DISTRICT shall be solely responsible for ownership and all future operation and maintenance at its sole cost, without expense, cost, or liability to the COUNTY.

9. 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 upon completion of the PROJECT as agreed in Section 5 above, specifically the PROJECT will be completed concurrently with the COUNTY's Bigelow Urban Connector project. 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 any time by mutual written consent of the COUNTY and the SCHOOL DISTRICT. If this AGREEMENT is terminated pursuant to this section, the SCHOOL DISTRICT's Recreational Architect shall continue performing services through the date of termination. The COUNTY shall compensate the SCHOOL DISTRICT for all services performed by the SCHOOL DISTRICT's Recreational Architect through the date of termination. The COUNTY obligation to make such final payment to the SCHOOL DISTRICT 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 COUNTY agrees to reimburse the SCHOOL DISTRICT 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 SCHOOL DISTRICT shall be deemed an independent contractor for all purposes, and the employees of the SCHOOL DISTRICT or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the COUNTY.
- E. Indemnification:** The COUNTY shall defend, indemnify, and hold the SCHOOL DISTRICT, 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 SCHOOL DISTRICT.

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 SCHOOL DISTRICT, 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 COUNTY agrees and accepts full liability for:
- (1) Plans, Specifications, and Estimates (PS&E), if any, provided by the COUNTY to the SCHOOL DISTRICT in regards to the PROJECT; and
 - (2) any work the COUNTY has provided directing the SCHOOL DISTRICT for design that does not meet COUNTY standards, pursuant to the SCHOOL DISTRICT'S performance of this AGREEMENT or an amendment.
- 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 SCHOOL DISTRICT 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 SCHOOL DISTRICT as named insured.

- H. Survivability:** Sections 9E, 9F, and 9G 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 SCHOOL DISTRICT 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 PROJECT, in support of all costs incurred, both direct and indirect, shall be maintained by the SCHOOL DISTRICT for a period of six (6) years. The COUNTY shall have full access to and right to examine said records, during normal business hours, and as often as it deems necessary. Should the COUNTY 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 SCHOOL DISTRICT and COUNTY. The SCHOOL DISTRICT 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 SCHOOL DISTRICT 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.

10. RCW 39.34 REQUIRED CLAUSES

- A. **Purpose:** Authorize the COUNTY to reimburse the SCHOOL DISTRICT for *consulting design services* for the relocation of the sports fields (PROJECT) impacted by the County's Bigelow Urban Connector project. The SCHOOL DISTRICT has hired a Recreational Architect firm to prepare the design of the PROJECT. The SCHOOL DISTRICT will coordinate with the COUNTY to determine the final scope, schedule, and fee for these services.
- 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 9B **Term of AGREEMENT**.
- D. **Termination:** See Section 9C **Termination of AGREEMENT**.
- E. **Property Upon Termination:** See Section 8.
- 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. **Representatives:** The PARTIES hereby appoint the following individuals as their respective representatives for administering the terms of this AGREEMENT or any addendum.

I.

East Valley School District 361

Neale Rasmussen
Director of Fiscal Services

East Valley School District 361
3830 N. Sullivan Road, Bldg. 1
Spokane Valley, WA 99216

509-241-5042

rasmusenn@evsd.org

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

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.

East Valley School District 361

Signature: _____

Kelly Shea
Superintendent
EVSD 361

Date: _____

10-24-18

Spokane County

Signature: _____

Josh Kerns
Chair, Board of Spokane County Commissioners

Date: _____

11-6-18