

**2018
INTERLOCAL AGREEMENT
BETWEEN THURSTON COUNTY & CITY OF TENINO**

This Agreement is entered into in duplicate originals this 8 day of May, 2018 between the CITY OF TENINO, a municipal corporation (hereinafter "City"), and THURSTON COUNTY, a municipal corporation (hereinafter "County"), collectively referred to as "parties" and individually as "party" pursuant to RCW 39.34.080.

WHEREAS, it is to the mutual advantage of Thurston County and the City of Tenino to cooperate as described herein in order to make the most efficient use of their resources to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized by law to perform;

NOW THEREFORE, by virtue of RCW 39.34.080 and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof, IT IS MUTUALLY AGREED AS FOLLOWS:

**I
GENERAL**

- 1.0 It is the purpose of the Agreement to permit the parties to make the most efficient use of their resources by enabling them to cooperate by providing resources when available for activities to support the maintenance, operation, upgrades, improvements, security, safety and accessibility of facilities, appurtenances, and improvements of the County's property and right of way of the Yelm-Tenino Trail within the Tenino City Park.

**II
DURATION**

- 2.0 This Agreement shall become effective on the date written above and shall remain in effect for five (5) years and automatically renew for an additional five (5) years unless changed, modified, amended, or terminated sooner as provided for herein. The total duration of this Agreement shall not exceed ten (10) years. Prior to commencement, this Agreement shall be filed or posted in accordance with RCW 39.34.040.

**III
SERVICES**

- 3.0 The City shall provide all planning, design, construction, contract administration, project coordination, and all other work and resources necessary to construct improvements within the County's Yelm-Tenino trail corridor right of way that will provide a pedestrian pathway, remove an existing wooden retaining wall, and install a new ornamental wall (i.e. Memorial Wall) of similar function (in a location as indicated in Exhibit A). The City shall remove and dispose the existing wall and all related features, appurtenances and replace with a new wall of similar length. The City shall have the discretion to choose the materials and design of the new wall, provided the wall does not affect the safety or accessibility of the County's Yelm-Tenino trail, the existing parking area, or existing roadways and driveways. The City shall provide all inspection, operation, maintenance, and upgrades to the wall necessary to ensure the safety, function, accessibility and purpose. The City shall be solely responsible for ensuring the wall and improvements made as part of this agreement meet all existing and future codes and ordinances.

IV PAYMENT

- 4.0 The parties to this Agreement agree that the County shall contribute a one-time payment to the City for the services identified above. It is agreed that any such payment will not constitute agreement as to the appropriateness of any item.
- 4.1 The amount payable for work to be performed under this Agreement is a one-time amount of one-hundred fifty thousand dollars (\$150,000) unless otherwise amended in accordance with section XIV, Changes, Modifications, and Amendments. Upon completion of the services identified above, as determined by the City and to the satisfaction of the County, and upon the County's receipt of a Notification of Completion document from the City, the County shall make payment for said services to the City for the full amount identified in this document.

V RECORDS RETENTION AND AUDIT

- 5.0 During the progress of the work and for a period not less than six (6) years from the final date of payment, the records and accounts pertaining to the work and accounting therefore are to be kept available for inspection and audit by either party and/or the Federal Government and copies of all records, accounts, documents, or other data pertaining to the work will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim, or audit finding has been resolved even though such litigation, claim, or audit continues past the 6-year retention period. Each party will promptly notify the other of any such litigation hold on records.

VI RIGHT OF ENTRY

- 6.0 The parties to this Agreement hereby grant and convey to each other the right of entry upon all land in which the parties have interest, within or adjacent to the right of way of the Yelm-Tenino Trail, road, or street for the purpose of accomplishing all work or services that are part of this Agreement.

VII RELATIONSHIP OF THE PARTIES

- 7.0 The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents of that party and shall not be considered for any purpose to be employees or agents of the other party. This Agreement is for the benefit of the parties, and no third party beneficiary relationship is intended. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

VIII HOLD HARMLESS AND INDEMNIFICATION

- 8.0 County shall hold harmless, indemnify and defend the City, its officers, officials, employees and agents, solely for third party claims relating to bodily injury or death, including costs and attorney's fees in defense thereof, caused by or arising out of the County's negligence in the performance of this Agreement.

- 8.1 Each Party agrees to be responsible for the claims management, resolution, and payment of claims arising out of their own work resulting in real or personal property damage or destruction. "Claim" means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable to damage or destruction of real or personal property, including loss of use, resulting therefrom.
- 8.2 The City shall hold harmless, indemnify and defend the County, its officers, officials, employees and agents, solely for third party claims relating to bodily injury, or death including costs and attorney's fees in defense thereof, caused by or arising out of the City's negligence in performance of this Agreement.
- 8.3 The County's obligations and the City's obligations hereunder shall not extend to bodily injury or death caused by or arising out of the sole negligence of either party, its officers, officials, employees or agents.
- 8.4 In the event of the concurrent negligence of the parties, the County's and the City's obligations hereunder shall apply only to the extent of each party's negligence, and the negligence of, its officers, officials, employees or agents.
- 8.5 The provisions of this Hold Harmless and Indemnification section shall survive the expiration or termination of this Agreement and completion of the request for services.

IX INSURANCE

- 9.0 both parties shall maintain Commercial General Liability or equivalent for bodily injury, personal injury and property damage, subject to limits of not less than \$1,000,000 per loss. The general aggregate limit shall apply separately to this Agreement and be no less than \$2,000,000. Participation in a governmental self-insured risk pool shall fulfill the above stated coverage requirements. An Evidence of Coverage acknowledgement letter from the jurisdictions' risk pools will be provided to each party upon request.
- 9.1 Both parties shall maintain workers' compensation insurance as required by Title 51 RCW, and shall provide evidence of Coverage to the each party's Risk Manager or Risk Management Division upon request.
- 9.2 Both parties shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced with written notice mailed to the other party.

X TERMINATION

- 10.0 Either party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other party. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

XI LEGAL RELATIONS

- 11.0 No liability shall attach to the parties by reason of entering into this Agreement except as expressly provided herein.

XII FORCE MAJEURE

- 12.0 Neither party will be liable to the other or deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure will include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, epidemics, civil or public disturbances, or other similar occurrences. If any party is unable to perform under this Agreement due to a force majeure event, upon giving notice and reasonably full particulars to the other party, such obligation or condition will be suspended only for the time and to the extent commercially practicable to restore normal operations.

XIII ADMINISTRATION

- 13.0 The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. Wherever written notice is required under this Agreement, such notice shall be provided to the representatives designated below. In the event such representatives are changed, the party making the change shall notify the other party.

The County's representative shall be the Public Works Director (9605 Tilley Rd SW, Olympia WA 98512, 360-867-2300).

The City's representative shall be the Public Works Director (PO Box 4019, Tenino WA 98589, 360-264-2368)

XIV CHANGES, MODIFICATIONS, AND AMENDMENTS

- 14.0 This Agreement may be changed, modified, amended or waived only by written agreement executed by each party's authorized governing authority as provided in chapter 39.34 RCW.

XV GOVERNING LAW AND VENUE

- 15.0 This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to its interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in a court of competent jurisdiction in Thurston County, Washington.

XVI WAIVER

- 16.0 A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

XVII SEVERABILITY

- 17.0 If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this

Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Board of County Commissioners
Thurston County, Washington

Bud Blake
Chair

Vol Huth
Vice-Chair

Excused Absence
Commissioner Edwards

ATTEST:

LaBonda J. Boyman
Clerk of the Board

Approved as to form:

JON TUNHEIM
PROSECUTING ATTORNEY

By: [Signature]
Deputy Prosecuting Attorney

City of Tenino, Washington

[Signature]
Authorized Representative

ATTEST:

[Signature]
Clerk for the City of Tenino

Approved as to form:

By: [Signature]
City Attorney

EXHIBIT A

Site Location Map

