

14-0623

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**INTERLOCAL AGREEMENT BETWEEN SPOKANE COUNTY
AND CITY OF MILLWOOD REGARDING MULTI-USE TRAIL ALONG A PORTION OF
FORMER GREAT NORTHERN RAILWAY COMPANY RIGHT-OF WAY**

THIS AGREEMENT, made and entered into by and between **Spokane County**, a political subdivision of the State of Washington, having offices for the transaction of business at 1116 West Broadway Avenue, Spokane, Washington 99260, hereinafter referred to as "COUNTY" and the **City of Millwood**, a municipal corporation of the State of Washington, having offices for the transaction of business at 9103 E. Frederick, Millwood, WA 99206, hereinafter referred to as "CITY," jointly hereinafter referred to as the "PARTIES." The COUNTY and CITY agree as follows.

SECTION NO. 1: RECITALS AND FINDINGS

- (a) Pursuant to RCW 36.32.120(6), the Board of County Commissioners of Spokane County has the care of COUNTY property and the management of COUNTY funds and business.
- (b) Pursuant to RCW 36.68.090, counties acting through its board of county commissioners, are empowered to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, bicycle and bridle paths and other recreational areas.
- (c) Pursuant to RCW 36.34.340, any county or city may acquire by purchase, gift, devise, bequest, grant or exchange title or any interest or rights in real property for park or recreational purposes.
- (d) Pursuant to chapter 39.34 RCW (Interlocal Cooperation Act) counties and cities may contract with each other to perform certain functions which each may legally perform.
- (e) Spokane County acquired a parcel of property by a Quit Claim Deed recorded in Volume 1178 of Deeds, Pages 1634 through 1640 under Auditor's File Number 9103270283, records of Spokane County, commonly referred to as the "Great Northern Right-of-Way".
- (f) Spokane County and City of Millwood desire to enter into an interlocal agreement to use a portion of the Great Northern Right-of-Way located within the City of Millwood, namely from Vista Road in a southeasterly direction to where the Great Northern Right-of-Way intersects Trent Avenue for a multi-use trail and potential linear park, acknowledging and recognizing the County's use of the Great Northern Right-of-Way for the purpose of constructing, operating, repairing and maintaining public utility infrastructure and appurtenances thereto owned or controlled by the County as well as other potential uses of the right-of way.
- (g) Spokane County and City of Millwood both recognize that having a multi-use trail along a portion of the Great Northern Right-of-Way will provide an important regional alternative transportation and recreation amenity to the residents of Spokane County, including City of Millwood. The multi-use trail is included in the CITY's adopted Six-Year Comprehensive Transportation Program and the Pedestrian and Bicycle Component of the CITY's adopted Comprehensive Plan. The multi-use trail would be a major link in providing an alternative transportation network through the central portion of the City of Millwood to the City of Spokane Valley.

SECTION NO. 2: DEFINITIONS

- (a) Agreement: “Agreement” means this Interlocal Agreement between the CITY and COUNTY regarding the joint use of a portion of the Great Northern Right-of-Way for a multi-use trail and other potential linear park.
- (b) City: “CITY” means the City of Millwood.
- (c) County: “COUNTY” means Spokane County.
- (h) Great Northern Right-of-Way or Great Northern ROW. “Great Northern Right-of-Way” also referred to as the or “Great Northern ROW” means that parcel of property owned by Spokane County and acquired by Quit Claim Deed recorded in Volume 1178 of Deeds, Pages 1634 through 1640 under Auditor’s File Number 9103270283 in the County of Spokane, records of Spokane County.
- (i) Portion of Great Northern Right-of-Way. Portion of Great Northern Right-of-Way means that portion of the Great Northern Right-of-Way located within the City of Millwood, namely from Vista Road in a southeasterly direction to where the Great Northern Right-of-Way intersects Trent Avenue as more particularly depicted in Attachment “A”, attached hereto and incorporated herein by reference.
- (j) Multi Use Trail. “Multi Use Trail” means an improved non-motorized thoroughfare designed by mutual agreement of the PARTIES to be used by bicycles, walkers and pedestrians. The PARTIES contemplate that the Multi Use Trail will be a Type 2 Pathway.
- (k) Potential Linear Park. “Potential Linear Park” means that open space concept which the PARTIES will hereinafter mutually agree upon.

SECTION NO. 3: PURPOSE

The purpose of this Agreement is to reduce to writing the PARTIES’ understandings and responsibilities regarding the use of the Portion of Great Northern ROW for a Multi-Use Trail and Potential Linear Park.

SECTION NO. 4: DURATION/WITHDRAWAL

This Agreement shall commence on September 1, 2014, and run through May 31, 2044. This shall be referred to as the “Initial Term.” At the conclusion of the Initial Term, this Agreement shall automatically be renewed for successive ten (10) year terms. All renewals shall be subject to all terms and conditions set forth herein.

This Agreement may not be terminated during the Initial Term except upon mutual agreement of the PARTIES. Subsequent to the Initial Term, either party may terminate this Agreement for any reason whatsoever upon a minimum of one (1) years advance notice as provided for in Section No. 8 to the other party.

SECTION NO. 5: PARTIES RESPONSIBILITIES / COMMITMENTS

A. COUNTY'S RESPONSIBILITIES / COMMITMENTS

1. Allow the use of the Portion of the Great Northern ROW for a Multi-Use Trail and Potential Linear Park for the term of this Agreement. Such use shall be subject to any easements, encumbrances, exceptions and reservations of record on the Great Northern ROW.
2. Consult with the CITY with regard to all future uses of that Portion of Great Northern ROW. Provided, the PARTIES acknowledge and agree that COUNTY owns the Great Northern ROW and that its determination as to any use shall be controlling.
3. Jointly with the CITY submit grant applications and accept awards for the design, construction and/or maintenance of the Multi Use Trail wherein the CITY would be the lead agency jurisdiction. Provided, such obligation does not commit nor prohibit the COUNTY from providing funding and or in-kind services in conjunction with the grant applications or awards.
4. Grant limited non-motorized access through appropriate documents such as license agreements to property owners adjoining the north and south Portions of the Great Northern ROW so they can access the Multi Use Trail once it is constructed.
5. Revoke any licenses previously granted on the Portion of the Great Northern ROW to the extent the COUNTY, at its sole discretion, after consultation with the CITY, determines the licenses would negatively impact the construction, operation or maintenance of the Multi Use Trail.
6. Allow the CITY to adopt and enforce regulations regarding the use of the Multi Use Trail so long as they are not inconsistent with the COUNTY's ownership or use interests.

B. CITY'S RESPONSIBILITIES / COMMITMENTS

1. Assume lead agency jurisdiction in conjunction with all grant applications and grant awards for the design, construction and/or maintenance of the Multi Use Trail. This shall include but not be limited to administration of all grants as well as employment of architects, engineers, planners, preparation of bid specifications, award of public works, and other contracts. Provided, however, this obligation does not prohibit the COUNTY from voluntarily assisting the CITY upon request in meeting these obligations.
2. Work with property owners adjoining the Multi Use Trail to relocate any of their encroachments, including but not limited to landscaping, sprinklers, and fences, that impede the construction and/or maintenance of the Multi Use Trail, which encroachments have not been placed in the Great Northern ROW under a license or permit from the COUNTY. The terminology "work with" shall not require nor preclude the CITY from paying for the costs of relocating or removing such encroachment. It shall require the CITY to give written notice to the property owner of the encroachment and a reasonable time for the property owner to relocate or remove the encroachment.
3. Install removable bollards or other acceptable similarly removable obstructions at all road access points to the Multi Use Trail to protect property owners adjacent to the Multi Use Trail.
4. Assume the sole responsibility and expense for all maintenance and operation of the Multi-Use Trail subsequent to its construction, to include associated landscaping. Upon the commencement date of the Agreement, to be responsible for weed control, garbage abatement, and similar light maintenance of the Portion of the Great Northern Right-of-Way. This responsibility shall continue with regard to the Portion of the Great Northern Right-of-way adjacent to the Multi-Use Trail once the Multi-Use Trail is constructed. The COUNTY grants the express permission for such purpose.

PARTIES recognize the necessity of maintaining not only the Multi-Use Trail but the adjoining right-of-way in good condition so it is an asset to the entire community.

C. PARTIES JOINT RESPONSIBILITIES / COMMITMENTS

1. PARTIES acknowledge that the Great Northern ROW is presently used by the COUNTY for the construction, operation, repair and maintenance of public utility infrastructure and appurtenances thereto owned or controlled by the COUNTY and may be used in the future for the purpose of transmitting reclaimed water. PARTIES also acknowledge that the Great Northern ROW may have other uses during the term of the Agreement including mass transit. The COUNTY's right to use the Great Northern ROW for public utility infrastructure and appurtenances as they may presently exist or as they may be constructed, operated, repaired or maintained in the future to include transmitting reclaimed water as well as mass transit shall be paramount to the use of that Portion of the Great Northern ROW under the terms of this Agreement.
2. PARTIES agree to coordinate the location of the Multi Use Trail and all aspects thereof such as landscaping to best fit with current and future uses of the Portion of the Great Northern ROW. In the event of a disagreement as to the location, COUNTY's determination as to location shall control. All improvements in conjunction with the Multi Use Trail must allow for continuous, uninterrupted equipment access by COUNTY to the sewer manholes for maintenance and cleaning. If the constructed Multi Use Trail needs to be removed or relocated for the COUNTY to operate, repair, or maintain its public utility infrastructure and appurtenances as they presently exist or as they may be expanded or improved in the future to include transmitting reclaimed water, the CITY will be responsible at its sole expense for reconstructing or relocating the Multi Use Trail to include paved pathway, gravel sub grade, and any landscaping disturbed by the COUNTY or its contractors or other public agency. In the event the corridor is needed for location of mass transit facilities, the COUNTY will not be responsible for the cost of relocating the Multi Use Trail. COUNTY commits to working in good faith to attempt to minimize damage to the Multi Use Trail during the COUNTY's operation, repair, or maintenance of its public utility infrastructure and appurtenances as they presently exist or as they may be expanded or improved in the future to include transmitting reclaimed water. CITY shall insure that any grant applications or grant awards acknowledge the obligations of this paragraph.
3. PARTIES agree to continue their commitment to preserve the Great Northern ROW for the full range of public uses, including but not limited to mass transit and public utility infrastructure and appurtenances. The PARTIES will consider appropriate regulatory language to accomplish this commitment.

SECTION NO. 6: LIABILITY WITH RESPECT TO HAZARDOUS WASTE

COUNTY makes no representation whatsoever regarding the condition of the Portion of the Great Northern Right-of Way including but not limited to its environmental condition as that term is defined in any applicable federal, state or local ordinance, code, regulation or court order, without limitation. CITY acknowledges that use of the Portion of the Great Northern Right-of- Way for a Multi Use Trail is on an "as-is" condition, with any and all patent and latent conditions.

It is understood and agreed that the CITY will excavate and perform earth-disturbing activities in conjunction with building the Multi Use Trail. If CITY encounters any hazardous substance defined in

RCW 70.105.010, or any substance that is listed as a hazardous substance under federal law, in conjunction with excavating or performing other earth-disturbing activities while building the Multi Use Trail, CITY shall immediately; (i) secure or isolate such condition; (ii) stop all activity identified in connection with such condition, and (iii) notify County's representative as soon as feasible. CITY shall be solely responsible for performing evaluation and necessary corrective action only in regard to earth-disturbing activities in conjunction with building the Multi Use Trail. COUNTY shall be solely responsible for performing evaluation and necessary corrective action only for the area adjoining the Multi Use Trail located within the Portion of the Great Northern Right-of-Way as required by state or federal law.

CITY shall be responsible for the proper identification (as required by law and applicable federal, state and local regulations) of all chemicals, compounds, or hazardous substances CITY and its subcontractors bring on to the Portion of the Great Northern Right-of-Way. Such identification must include identification of health hazards, flammability, reactivity, and personal protection requirements. Identification labels and documents must be in the English language.

CITY shall indemnify, defend and hold harmless the COUNTY from and against any and all claims, causes of action, demands and liability associated with the existence, removal or remediation of any Hazardous Substances that are located on the Multi Use Trail in conjunction with earth-disturbing activities by CITY when building the Multi Use Trail, but only as to the area encompassed by the Multi Use Trail.

COUNTY shall indemnify, defend and hold harmless the CITY from and against any and all claims, causes of action, demands and liability associated with the existence, removal or remediation of any Hazardous Substances that are located on the Portion of the Great Northern Right-of-Way except in conjunction with earth-disturbing activities by CITY when building the Multi Use Trail which shall be the CITY's sole responsibility as provided for herein above.

SECTION NO. 7 LIABILITY OTHER THAN HAZARDOUS WASTE

NOTE: This provision shall govern all liability other than Hazardous Waste which is addressed in Section No. 6.

The CITY shall indemnify, defend and hold harmless the COUNTY, its officers and employees from all claims, demands, or suits in law or equity arising from the CITY's intentional or negligent acts or breach of its obligations under this Agreement with regard to constructing, operating, and maintaining the Multi Use Trail. The CITY's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the COUNTY, its officers and employees.

The COUNTY shall indemnify, defend and hold harmless the CITY, its officers and employees from all claims, demands, or suits in law or equity arising from the COUNTY's intentional or negligent acts or breach of its obligations under the Agreement including, but not limited to its responsibilities for the area adjacent to the Multi Use Trail within the Portion of the Great Northern Right-of Way. The COUNTY's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the CITY, its officers and employees.

If the comparative negligence of the PARTIES and their officers and employees is a cause of such damage or injury, the liability, loss, cost, or expense shall be shared between the PARTIES in proportion to their relative degree of negligence and the right of indemnity shall apply to such proportion.

Where an officer or employee of a party is acting under the direction and control of the other party, the party directing and controlling the officer or employee in the activity and/or omission giving rise to liability shall accept all liability for the other party's officer or employee's negligence.

Each party's duty to indemnify shall survive the termination or expiration of the Agreement.

Each party waives, with respect to the other party only, its immunity under RCW Title 51, Industrial Insurance and only as necessary to make this indemnity provision enforceable with respect to claims relating to the death or injury of CITY and/or COUNTY employees acting within the scope of this Agreement. The PARTIES have specifically negotiated this provision



COUNTY initials



CITY initials

SECTION NO. 8: NOTICE

All notices or other communications given hereunder shall be deemed given on: (1) the day such notices or other communications are received when sent by personal delivery; or (ii) the third day following the day on which the same have been mailed by first class delivery, postage prepaid addressed to the COUNTY or the CITY at the address set forth below for such party, or at such other address as either Party shall from time-to-time designate by notice in writing to the other party:

COUNTY: Spokane County Chief Executive Officer
or his/her authorized representative
1116 West Broadway Avenue
Spokane, Washington 99260

CITY: City of Millwood Mayor
or his/her authorized representative
9103 E. Frederick,
Millwood, WA 99206

SECTION NO. 9: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

SECTION NO. 10: ASSIGNMENT

No party may assign in whole or part its interest in this Agreement without the written approval of the other party.

SECTION NO. 11: RELATIONSHIP OF THE PARTIES

The PARTIES intend that an independent contractor relationship will be created by this Agreement. No agent, employee, servant or representative of the either party shall be deemed to be an employee, agent, servant or representative of the other party for any purpose.

SECTION NO. 12: MODIFICATION

This Agreement may be modified in writing by mutual written agreement of the PARTIES.

SECTION NO. 13: PROPERTY AND EQUIPMENT

PARTIES acknowledge that COUNTY owns the Great Northern ROW. All improvements made under this Agreement in conjunction with the Multi Use Trail shall remain the property of the CITY until termination of the Agreement. Upon the termination of the Agreement, CITY shall remove all removable fixtures and all other improvements shall revert to the ownership of the COUNTY and the execution of this Agreement shall act as a Bill of Sale for such improvements at such time.

SECTION NO. 14: ALL WRITINGS CONTAINED HEREIN/BINDING EFFECT

This Agreement contains terms and conditions agreed upon by the PARTIES. The PARTIES 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 PARTIES unless such change or addition is in writing, executed by the PARTIES.

This Agreement shall be binding upon the PARTIES hereto, their successors and assigns.

SECTION NO. 15: DISPUTE RESOLUTION

Any dispute between the PARTIES which cannot be resolved between the PARTIES shall be subject to arbitration. Except as provided for to the contrary herein, such dispute shall first be reduced to writing. If the COUNTY CEO and the Mayor for the CITY cannot resolve the dispute it will be submitted to arbitration. The provisions of chapter 7.04A RCW shall be applicable to any arbitration proceeding.

The COUNTY and the CITY shall have the right to designate one person each to act as an arbitrator. The two selected arbitrators shall then jointly select a third arbitrator. The decision of the arbitration panel shall be binding on the PARTIES and shall be subject to judicial review as provided for in chapter 7.04A RCW. The costs of the arbitration panel shall be equally split between the PARTIES.

SECTION NO. 16: VENUE STIPULATION

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. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement, or any provision hereto, shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

SECTION NO. 17: SEVERABILITY

The PARTIES agree that if any parts, terms or provisions of this Agreement 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 in regard to the remainder of the Agreement. If it should appear that any part, term or provision of this Agreement is in conflict 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 shall be deemed to modify to conform to such statutory provision.

SECTION NO. 18: RECORDS

All public records prepared, owned, used or retained by the either party in conjunction with meeting its responsibilities under this Agreement shall be made available to the other party upon written requests subject to the attorney client and attorney work product privileges set forth in statute, court rule or case law.

SECTION NO. 19: HEADINGS

The section headings appearing in this Agreement have been inserted solely for the purpose of 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.

SECTION NO. 20: TIME OF ESSENCE OF AGREEMENT

Time is of the essence of this Agreement and in case either Party fails to perform the obligations on its part to be performed at the time fixed for the performance of the respective obligation by the terms of this Agreement, the other Party may, at its election, hold the other Party liable for all costs and damages caused by such delay.

SECTION NO. 21: UNCONTROLLABLE CIRCUMSTANCES/IMPOSSIBILITY

A delay or interruption in or failure of performance of all or any part of this Agreement resulting from Uncontrollable Circumstances shall be deemed not a default under this Agreement.

A delay or interruption in or failure of performance of all or any part of this Agreement resulting from any change in or new law, order, rule or regulation of any nature which renders either party meeting its obligations under the terms of this Agreement legally impossible, and any other circumstances beyond the control of the either party which render legally impossible the performance by that party its obligations under this Agreement, shall be deemed not a default under this Agreement.

SECTION NO. 22: EXECUTION AND APPROVAL

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.

SECTION NO. 23: COMPLIANCE WITH LAWS

The PARTIES shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.

SECTION NO. 24: DISCLAIMER

Except as otherwise provided, this Agreement shall not be construed in any manner that would limit either party's authority or powers under law.

SECTION NO. 25: ANTI-KICKBACK

No officer or employee of the CITY, having the power or duty to perform an official act or action related to this Agreement shall have or acquire any interest in the Agreement, or have solicited, accepted or granted a present or future gift, favor, service or other thing of value from or to any person involved in the Agreement.

SECTION NO. 26: NON-DISCRIMINATION

No individual shall be excluded from participation in, denied the benefit of, subjected to discrimination under, or denied employment in the administration of or in connection with this Agreement in violation of local, state or federal law.

SECTION NO. 27: 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.

SECTION NO. 28: THIRD PARTY CLAIMS

CITY and COUNTY agree to support each other in defending their respective rights with regard to this Agreement. Neither party shall file a claim against the other party for damages pertaining to the rights granted herein that may arise from alleged defects of title, provided that claims based on eminent domain, adverse possession or prescription asserted by either Party against third parties may be made.

SECTION NO. 29: WAIVER

No officer, employee, agent or otherwise of either party, has the power, right or authority to waive any of the conditions or provisions to this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or at law shall be taken and constructed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of either party to hereafter enforce each and every such provision.

SECTION NO. 30: RCW 39.34 REQUIRED CLAUSES

A. **PURPOSE:** See Section No. 3 above.

- B. **DURATION:** See Section No. 4 above.
- C. **ORGANIZATION OF SEPARATE ENTITY AND ITS POWERS:** No new or separate legal or administrative entity is created to administer the provisions of this Agreement.
- D. **RESPONSIBILITIES OF THE PARTIES:** See provisions above.
- E. **AGREEMENT TO BE FILED:** The CITY shall file this Agreement with its City Clerk or place it on its website. The COUNTY shall file this Agreement with its County Auditor or place it on its web site or other electronically retrievable public source.
- F. **FINANCING:** Each Party shall be responsible for the financing of its contractual obligations under its normal budgetary process.
- G. **TERMINATION:** See Section No. 4 above.
- H. **PROPERTY UPON TERMINATION:** See provisions above.
- I. **REPRESENTATIVES:** The PARTIES hereby appoint those individuals set forth in Section No. 8 as their respective representatives for the purpose of administering this Agreement.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed on date and year opposite their respective signatures.

DATED: 8/26/11



**BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON**

Al French
AL FRENCH, Chair

ATTEST:

Daniela Erickson
Daniela Erickson
Clerk of the Board

Todd Mielke
TODD MIELKE, Vice Chair

Shelly O'Quinn
SHELLY O'QUINN, Commissioner

DATED: Aug 12, 2014

CITY OF MILLWOOD

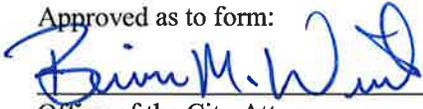
By: 

Attest:

Title: Mayor


City Clerk

Approved as to form:


Office of the City Attorney

ATTACHMENT "A"

(Map depicting Portion of Great Northern Right-of-Way is on the following page)

