

**INTERLOCAL AGREEMENT BETWEEN CITY OF MILLWOOD
AND ORCHARD AVENUE IRRIGATION DISTRICT**

THIS AGREEMENT, made and entered into by and between **City of Millwood**, hereinafter referred to as “**CITY**” and **Orchard Avenue Irrigation District**, hereinafter referred to as “**DISTRICT**,” jointly hereinafter referred to as the “**PARTIES**.” The **CITY** and **DISTRICT** agree as follows.

SECTION 1. RECITALS AND FINDINGS

- (A) Pursuant to chapter 39.34 RCW (Interlocal Cooperation Act), the **CITY** and **DISTRICT** may contract with each other to perform certain functions which each may legally perform.
- (B) The **CITY** and **DISTRICT** each provide water service to the property and customers in their respective, adjacent water services areas, with the **CITY** serving property and customers east of Bessie Road in the **CITY** and the **DISTRICT** serving property and customers west of Bessie Road in the City of Spokane Valley.
- (C) The **CITY** replaced certain portions of the **CITY**'s water main, including but not limited to a portion of such water main that is located underground in the Bessie Road right-of-way (hereinafter referred to as “**CITY PROJECT**.”).
- (D) The **DISTRICT** arranged to have installed a 350-foot dry waterline in the same trench located in the Bessie Road right-of-way that was constructed for the **CITY PROJECT** (hereinafter referred to as “**DISTRICT PROJECT**,” and together with the “**CITY PROJECT**,” hereinafter referred to as the “**PROJECT**.”). Attached as Exhibit “A” is a depiction of the **PROJECT**.
- (E) The **CITY** and **DISTRICT** desire to enter into an interlocal agreement regarding each **PARTIES**' respective ongoing obligations as to the **PROJECT**.
- (F) The **CITY** and **DISTRICT** expressly acknowledge that this Agreement and the **PROJECT** shall not, in any way, be construed as an invitation or attempt to otherwise revise the **PARTIES**' respective water service areas as set forth in the Spokane County Coordinated Water System Plan, as amended.

SECTION 2. PURPOSE

The purpose of this Agreement is to reduce to writing the **PARTIES**' understandings and responsibilities regarding the **PROJECT**.

SECTION 3. DURATION

This Agreement shall commence upon mutual approval of the **PARTIES** and, except as otherwise stated herein, shall be perpetual.

SECTION 4. PARTIES RESPONSIBILITIES REGARDING THE PROJECT

(A) CITY'S RESPONSIBILITIES REGARDING THE PROJECT

(i) The **CITY** shall maintain and operate the **CITY PROJECT** in a reasonable manner to avoid interfering with the **DISTRICT PROJECT**.

(ii) The **CITY** shall not take any effort to revise or transfer the **PARTIES**' respective water service areas as set forth in the Spokane County Coordinated Water System Plan, as amended, as a result

of this Agreement or the Project. The parties expressly agree that the commitment set forth in this Section 4(A)(4) shall survive termination of this Agreement.

(B) DISTRICT'S RESPONSIBILITIES REGARDING THE PROJECT

(i) The DISTRICT shall maintain and operate the DISTRICT PROJECT in a reasonable manner to avoid interfering with the CITY PROJECT.

SECTION 5. NOTICE

All notices shall be in writing and served on either of the PARTIES either personally or by certified mail, return receipt requested, at their respective addresses. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid to:

CITY:

City of Millwood
Mayor
9103 E. Frederick Avenue
Millwood, Washington 99206

DISTRICT:

Orchard Avenue Irrigation District
Manager
8101 E. Buckeye
Spokane, Washington 99212

SECTION 6. 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 7. INDEMNIFICATION AND HOLD HARMLESS

The CITY shall indemnify, defend and hold harmless the DISTRICT, 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. The CITY's duty to indemnify shall not apply to loss or liability caused by the intentional or negligent acts of the DISTRICT, its officers and employees.

The DISTRICT 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 DISTRICT's intentional or negligent acts or breach of its obligations under the Agreement. The DISTRICT'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.

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

SECTION 8. ASSIGNMENT

No PARTY may assign its interest in this Agreement without the written consent of the other PARTY.

SECTION 9. 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 10. MODIFICATION

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

SECTION 11. PROPERTY AND EQUIPMENT

All improvements made under this Agreement in conjunction with the PROJECT shall remain the property of each respective PARTY as set forth herein.

SECTION 12. 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 CITY and DISTRICT 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 CITY and the DISTRICT 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 13. 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 14. SEVERABILITY

In the event any portion of this agreement should become invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

SECTION 15. RECORDS

All public records prepared, owned, used or retained by 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 16. 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 17. 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..

SECTION 18. RCW 39.34 REQUIRED CLAUSES

- A. **PURPOSE:** See Section No. 2 above.
- B. **DURATION:** See Section No. 3 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 DISTRICT shall file this Agreement with its Clerk or place it on its website. The CITY shall file this Agreement with its City Clerk or place it on its website 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 as set forth herein
- G. **TERMINATION:** See Section No. 3 above.
- H. **PROPERTY UPON TERMINATION:** See provisions above.
- I. **REPRESENTATIVES:** The PARTIES hereby appoint those individuals set forth in Section No. 5 as their respective representatives for the purpose of administering this Agreement.

DATED: August 21, 2014

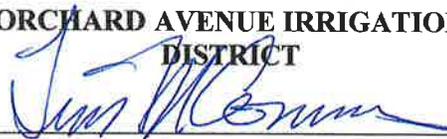
CITY OF MILLWOOD, WASHINGTON



KEVIN FREEMAN, Mayor

DATED: August 19, 2014

ORCHARD AVENUE IRRIGATION
DISTRICT

By: 

Title: PRESIDENT

ATTACHMENT "A"
(Depiction of the Project)

