

20-089

Joint Resolution Nos'. ____ and 20-1239

A Joint Resolution of the Board of County Commissioners of Cowlitz County and the City Council of the City of Kelso in Support of the Joint Cooperation and an Interlocal Agreement for the Construction of the South Kelso Railroad Crossing Project to be Constructed on Property within the Jurisdictions of Both the County and the City

RECITALS

- A. Cowlitz County and the City of Kelso (the Parties) wish to formally agree to jointly and cooperatively to complete the construction of the South Kelso Railroad Crossing Project ("Project"). The Project involves construction of an overpass vehicle bridge and bridge approach for the BNSF railway tracks and South Pacific Avenue, to contain roadway, bicycle lanes, sidewalks. The west side of the bridge and approach will be within the City of Kelso; the east side approach will be within the County. The Project also includes utility relocations, underground storm drainage, extensions of 3rd Avenue and Hazel Street, improvements to Douglas Street, and modifications to the alignment of existing S. Pacific and Hazel Street for bridge access, and the closure of two existing at-grade crossings to through traffic.
- B. Pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may enter into an interagency agreement with one another to perform government functions or services which each is by law authorized to perform. City, pursuant to RCW 35A.11.020 and RCWs 35.68 through 35.79, and 35.68, and County, pursuant to RCWs 36.32, and 36.75 through 36.87, have the authority to enter into such an Agreement for the collaborative and coordinated construction of transportation infrastructure. The Parties wish to enter into such an Agreement to cooperate in joint bidding, contracting and construction of roadway and bridge public works on both incorporated and unincorporated lands as improving traffic circulation and public safety.
- C. The City has received funding from the Washington State Department of Transportation Connecting Washington Projects package (2ESSB 5988) in the amount of \$25 million to fund the design, bidding, contracting and construction of the Project. The County and the City are proposing an interlocal, interagency agreement to allow for this joint public works and with the City acting as lead agency on design, bidding, contracting and construction.
- D. A portion of the Project, namely the eastern approach of the overpass bridge, will be constructed within an island of unincorporated Cowlitz County, with the remaining portions within the City of Kelso constructed as interconnecting city streets. The Project will require acquisition of private property and both County and City have previously committed to acquisition of such land as necessary for construction of the Project within their respective jurisdictions.
- E. Because this joint project requires legislative actions of both the County and the City which must be separately undertaken, both legislative bodies formally resolve their support for the construction of the Project and resolve to pursue respective governance actions to facilitate completion of the Project.

- F. It is in the best interest of the citizens of Cowlitz County and the residents of City of Kelso to construct the Project to improve railroad crossing safety, improve traffic circulation, reduce traffic delays, and otherwise protect the public health and safety within both jurisdictions.

NOW THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF COWLITZ COUNTY AND THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY JOINTLY RESOLVE AS FOLLOWS:

Section 1. Findings. The Board of County Commissioners of Cowlitz County ("County") and the City Council of the City of Kelso ("City") hereby adopts each and every recital contained within the preamble to this Resolution as findings in support of their adoption of an Interlocal Agreement for the Project; and the Parties further find that it is in the best interests of the citizens of Cowlitz County and residents of the City of Kelso to adopt the Interlocal Agreement and to pursue joint and cooperative governance actions in furtherance of the Project.

Section 2. County Support. The County hereby supports and authorizes participation in the Project as in the best public interest in order to improve traffic circulation and increase traffic and railroad crossing safety and improve the public health and safety. The County hereby reaffirms and confirms its intent to pursue statutory and governance actions to facilitate completion of the Project, as set forth in the Interlocal Agreement.

Section 3. City Support. The Kelso City Council hereby supports and authorizes the City to design, bid, contract and construct the Project in order to improve railroad crossing safety, improve traffic circulation and public safety, and reduce traffic delays to and from a portion of the City bounded by the BNSF Railway and the Cowlitz River. The City hereby confirms its intent to take such actions as may be necessary to complete the Project, as set forth in the Interlocal Agreement.

Section 4. Interlocal Agreement. The County and City hereby approve of the *Interlocal Agreement Between the City of Kelso and Cowlitz County for the Design and Construction of the South Kelso Railroad Crossing Project* attached hereto as Exhibit A and incorporated fully by this reference and authorize the City and County to enter into this Agreement to govern the roles and responsibilities of the County and City in the construction of the Project

Section 5. Transfer of Responsibility at Completion. The County and City hereby agree that it is the intent of both jurisdictions the City ultimately own and obtain jurisdiction over those portions of the project constructed that are within the County, to include all facilities and property. The City and County intend that at or before completion of construction of the Project that they will coordinate efforts to accomplish the transfer of jurisdiction, ownership, control, and all responsibility for future maintenance of the unincorporated portion of the Project, including all facilities and road rights-of-way of the unincorporated portion of the Project.

Section 6. Right of Way Acquisition. The County and City hereby reaffirm their commitments to acquire the necessary rights-of-way for the construction of the Project, including acquisition of private property under respective statutory authority, in accordance with an 'Approved Plan' and under the terms of Interlocal Agreement.

Section 7. City as Lead Agency. The County and City agree that the City will be the party responsible for funding the Project and shall be the lead agency for purposes of design, acquisition, bidding, contracting and construction in accordance with the terms of the Interlocal Agreement. The City and County intend

to cooperate on all jointly executed portions of the Agreement necessary to diligently pursue completion of the Project.


Section 8. Severability. Any provision of this Resolution or its application to any person, legal entity, or circumstance is held invalid, the remainder of the ordinance or its application to other persons, legal entities, or circumstances is not affected.

Section 8 Ratification. Any act consistent with the authority and prior to the effective date of this Resolution is hereby ratified and confirmed.

Section 9 Effective Date. This Resolution shall take effect and be in force immediately upon passage, and the accompanying Interlocal Agreement upon compliance with RCW 39.34.040.

ADOPTED IN OPEN SESSION by the Board of County Commissioners of Cowlitz County at its regularly scheduled public meeting on November 3, 2020.

Attest:

Lisa Huckleberry
Tiffany Ostreim, Clerk of Board
Lisa Huckleberry
11-3-20


Joe Gardner
Joe Gardner, Chairman

Dennis P. Weber
Dennis P. Weber, Commissioner

Arne Mortensen
Arne Mortensen, Commissioner

Cowlitz County Prosecuting Attorney
Approved as to form, only:

Douglas Jensen
Douglas Jensen, Chief Civil Deputy

ADOPTED by the City Council at its regular session of the City Council of the City of Kelso, Washington on this 3rd day of NOVEMBER, 2020

CITY OF KELSO

Attest:

Rina Butler
City Clerk

Nancy Malone
Nancy Malone, Mayor

Approved as to form:

Jameson Parker
City Attorney

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF KELSO
AND COWLITZ COUNTY FOR DESIGN AND CONSTRUCTION OF THE
SOUTH KELSO RAILROAD CROSSING PROJECT**

This Interlocal Agreement (“Agreement”) is made this 3 day of November, 2020 by and between the City of Kelso (“CITY”), a Washington municipal corporation, and Cowlitz County (“COUNTY”), a Washington political subdivision, individually referred to as ‘Party’ and collectively referred to as ‘Parties’ where applicable.

RECITALS

1. Pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), one or more public entities may contract with one another to perform government functions or services which each is by law authorized to perform. CITY, pursuant to RCW 35A.11.020 and RCWs 35.68 through 35.79, and 35.68, and COUNTY, pursuant to RCWs 36.75 through 36.87, have the authority to enter into an Agreement for the collaborative and coordinated construction of transportation infrastructure and wish to enter into such an Agreement to cooperate in the construction of a roadway and bridge project in both incorporated and unincorporated lands to improve traffic circulation and public safety.
2. The Kelso City Council has authorized the design and construction of the South Kelso Railroad Crossing Project (“PROJECT”) in order to improve railroad crossing safety, improve traffic circulation and public safety, and reduce traffic delays to and from a portion of the CITY bounded by the BNSF Railway and the Cowlitz River.
3. The Board of County Commissioners has authorized participation in the PROJECT as in the best public interest in order to improve traffic circulation and increase traffic and railroad crossing safety and improve the public health and safety.
4. CITY and COUNTY propose to work cooperatively to complete the PROJECT, which includes construction of an overpass crossing bridge that spans South Pacific Avenue and the BNSF railway tracks, to contain roadway, bicycle lanes, sidewalks. The west side of the overpass will be within the City of Kelso; the east side of the overpass will be within the County. The PROJECT also includes utility relocations, underground storm drainage, extensions of 3rd Avenue and Hazel Street, improvements to Douglas Street, and modifications to the alignment of existing S. Pacific and Hazel Street for bridge access, and the closure of two existing at-grade crossings to through traffic.
5. The CITY has received funding from the Washington State Department of Transportation Connecting Washington Projects package (2ESSB 5988) in the amount of \$25 million for the design and construction of the PROJECT
6. A portion of the PROJECT, namely one side of the overpass bridge, will be constructed within an island of unincorporated Cowlitz County that is wholly bounded by the City of Kelso, and the location of the PROJECT will affect private property within the jurisdictions of and under the authority of both CITY and COUNTY.
7. CITY and COUNTY wish to enter into this Agreement to set forth the processes, funding and responsibilities of CITY and COUNTY in coordinating and cooperating in the design, construction, ownership, operation and maintenance of the PROJECT.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the Parties agree as follows:

I. Purpose.

The purpose of this Agreement is to set forth the terms and conditions regarding the coordination and respective responsibilities between the CITY and COUNTY related to planning, design, construction, review, permitting, annexation or condemnation of property, and administration of the PROJECT.

II. Recitals Adopted.

The recitals set forth above are hereby adopted as the factual basis for this Agreement.

III. Definitions.

1. Approved Plans means the acquisition, environmental, and construction plans and provisions that evidence CITY's and COUNTY's determinations in implementing the PROJECT, made through the processes and procedures, described or referenced below, that conform to the purposes and intent of this Agreement for the PROJECT.
2. Business Days means Monday through Friday, inclusive, except for official state holidays.
3. CITY means the City of Kelso, a Washington municipal corporation, and its officials, employees, agents, assign, and its contractors, subcontractors.
4. City Project Manager means the person designated by CITY to act as CITY's coordinator and primary representative, both legal and contractual, in all matters arising during the course of construction as set forth in this Agreement.
5. City Facilities means City of Kelso owned or regulated facilities, including city streets, utilities, infrastructure and public works improvements, and including facilities impacted by, or constructed as part of, the PROJECT that are owned or will be owned or are controlled by CITY as set forth in this Agreement.
6. City Interest Property means any CITY Street right-of-way plus all other real property that CITY owns or in which CITY has a real property or statutory property interest on the effective date of this Agreement, or in connection with the Project, including acquiring ownership of private property interests or an interest in real property or a different roadway or utility-related rights from COUNTY as set forth in this Agreement. CITY Interest Property does not include real property acquired or to be acquired by COUNTY for county road purposes under RCW 36.75, except as set forth in this Agreement.
7. City Standards means all City of Kelso laws, rules, regulations and standards and all applicable federal and state laws, rules, regulations and standards, including but not limited to the following, except as otherwise provided in this Agreement: Kelso Municipal Code; City of Kelso standard specifications for road, bridge and municipal Construction, including the Kelso right of way improvement standards
8. City Street means a public, incorporated municipal street, bridge and right-of-way, or any part thereof, pursuant to RCW 46.04.120 and RCW 47.04.010(6), and acquired, established, constructed, maintained, used or vacated as provided in RCW 35A.47.020, and RCWs 35.68 through 35.79, and 35.68, and under the jurisdiction of City of Kelso.

9. Contract Award means COUNTY's and CITY's written decision accepting a bid(s) for construction of a Project.
10. County Engineer means the licensed professional civil engineer empowered and obligated under RCW 36.80 to supervise the establishing, laying out, constructing, altering, improving, repairing, and maintaining all county roads of Cowlitz County.
11. County Road means a public, unincorporated, county roadway and bridge, and right-of-way, improved or unimproved, or any part thereof, pursuant to RCW 46.04.150 and RCW 47.04.010(9), and acquired, established, constructed, maintained, used or vacated as provided in RCWs 36.75 through 36.87, and under the jurisdiction of Cowlitz County.
12. Designated Representative means the legal and binding representative of a Party, lawfully empowered by statute or official designation to sign Task Orders, MOU's or contracts or to receive official communications, as set forth below.
13. Environmental Law(s) means any environmentally related local, state or federal law, regulation, ordinance or order (including without limitation any final order of any court of competent jurisdiction of which the STATE has knowledge), now or hereafter in effect including, but not limited to: the Federal Clean Air Act; the Federal Water Pollution Control Act; the Federal Safe Drinking Water Act; the Federal Comprehensive Environmental Response Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986; the Federal Resource Conservation and Recovery Act, as amended by the Solid and Hazardous Waste Amendments of 1984; the Federal Occupational Safety and Health Act; the Federal Emergency Planning and Right-to-Know Act of 1986; the Federal Hazardous Materials Transportation Control Act of 1980; the Federal Clean Water Act of 1977; the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Waste Management Recovery and Recycling Act; the Washington Hazardous Waste Management Act; the Washington Hazardous Waste Fees Act; Washington Model Toxics Control Act; the Washington Nuclear Energy and Radiation Act; the Washington Radioactive Waste Storage and Transportation Act; the Washington Underground Petroleum Storage Tanks Act; and any regulations promulgated thereunder from time to time.
14. Letter of Acceptance means the written document that signifies the Parties' acceptance of PROJECT infrastructure under this Agreement, and shall also initiate COUNTY's transfer of interests in PROJECT infrastructure to CITY to be owned by CITY. The Letter of Acceptance does not transfer any interest in real property, but directs the parties to expeditiously initiate proceedings for such transfer. The Letter of Acceptance shall be jointly executed by the Parties.
15. Letter of Plan Approval means the letter provided to CITY by COUNTY, or by COUNTY to CITY following the completion of the PROJECT design and plan review process, but before public bid proceedings, signifying that the plans and specifications identified in the letter are the Approved Plans
16. PROJECT means the coordinated and cooperative funding and construction of an overpass crossing bridge and approaches spanning South Pacific Avenue and BNSF railway tracks, with vehicle roadway, bicycle lanes, and pedestrian sidewalks sited in both CITY and COUNTY. The construction also includes utility relocations, underground storm drainage, extensions of 3rd Avenue and Hazel Street, improvements to Douglas Street, and modifications to the alignment of existing S. Pacific and Hazel Street for bridge access, and the closure of two existing at-grade crossings to through traffic.

17. PROJECT Property means all real property interests, public or private, acquired or to be acquired, and established, developed, used and maintained for PROJECT by CITY and COUNTY.
18. Task Order means a document executed by the Parties under this Agreement authorizing work by one Party to be done on behalf of the other Party and that defines the scope and the obligations of the Parties for the given element of work. All terms and conditions of the Agreement shall apply to each Task Order.

IV. Term and Termination

- A. This Agreement will become effective on the date a statutorily authorized representative of the last party signs the Agreement and the Agreement is recorded or posted pursuant to RCW 39.34.040.
- B. The Agreement shall remain in effect until the completion of PROJECT, unless terminated earlier as provided below. Any early termination shall be in writing and shall be based upon the following:
 1. Necessity. In the event that CITY determines that termination of this Agreement is necessary due to lack of funding or any other reason CITY determines, in its sole discretion, justifies termination, CITY shall give COUNTY thirty (30) days' notice of termination of this Agreement. Upon CITY's termination of the Agreement, CITY be released from any future funding or other obligations to complete the PROJECT.
 2. Default. By reason of a breach of this Agreement by a Party, the other Party may terminate this Agreement; provided that written notice specifying the breach, and thirty (30) days to cure the breach is given, and thereafter, in the absence of a substantial cure, the dispute resolution procedures set forth below are followed. The notice and dispute resolution requirements do not apply where protection of the public's health, welfare, or safety requires immediate termination.
 - a. Dispute resolution: In the event that a dispute arises under this Agreement, it will be resolved in the following manner: CITY and COUNTY will each individually appoint one member to a Dispute Board and jointly appoint a third member. The Dispute Board will evaluate the dispute and make a determination of the dispute. The decision of the Dispute Board may be appealed to the Superior Court for *de novo* review.
 3. Lack of Appropriation. Any Party's obligation under this Agreement that may extend beyond the current appropriation year is expressly conditioned upon that Party's legislative appropriation of sufficient funds to support the activities described in this Agreement. If the Party's legislative body does not appropriate sufficient funds and resources for those purposes, then that Party's participation under this Agreement shall terminate automatically at the end of the current appropriation year.
 4. Account Close-Out If Project Abandoned. If, for any reason, the PROJECT is abandoned or otherwise terminated before the PROJECT is completed, then

CITY will expeditiously settle up all remaining obligations, close out the project account, liquidate or return COUNTY property consistent with applicable surplus requirements, provide a final account summary to COUNTY, and return any unspent funds in accordance with its agreement with the State.

- C. Survival of Obligations. Upon termination of the Agreement and excepting matters involving breach County's responsibilities under this Agreement, to the extent CITY has obligated itself to provide funding to COUNTY for ongoing property acquisition proceedings, development of preliminary engineering and final design, and contracting for construction of the PROJECT, those portions of CITY's funding obligations shall survive the termination of the Agreement and funding shall continue to be provided to COUNTY to close-out COUNTY's reimbursements, financial obligations, and claims and liabilities incurred under the Agreement, after which CITY shall have no further funding obligation to the PROJECT.

V. General Responsibilities of the Parties.

- A. The Parties shall manage risk, produce design and conduct construction in a manner that maximizes cumulative public benefits and minimizes cumulative public costs as mutually agreed to by the Parties.
- B. The Parties shall work collaboratively to resolve issues in a manner that endeavors to complete the PROJECT on schedule and within budget.
- C. Each Party shall timely and fully provide the funding and resources necessary to fulfill their respective responsibilities as established in this Agreement.
- D. The Parties agree to work cooperatively with each other and make reasonable, good faith efforts to timely and expeditiously complete the PROJECT, as provided in this Agreement, including, but not limited to, support for CITY's preferred PROJECT initiation of property acquisition proceedings, development of preliminary engineering and final design and construction. In order to optimize design and minimize conflicts, CITY's public works department shall coordinate design and construction in the various contracts making up the PROJECT. CITY shall be prepared to timely modify designs in the contracts making up the PROJECT, if both Parties determine modifications are necessary and reasonable to minimize either construction conflicts or completion delays.
- E. The Parties agree that it is in the public interest for one Party to initiate and implement portions of the other Party's statutory and jurisdictional PROJECT responsibilities. Therefore, this Agreement is intended to establish a tasking order process for use by a Party to authorize the other Party to conduct work on its behalf and, as may be documented through each tasking order, and to fund such work and services as set forth under this Agreement.

- F. CITY is responsible for the coordination and collaboration of property acquisition, designing and constructing the PROJECT, except as required under COUNTY's express statutory responsibilities. CITY is responsible for taking measures to minimize, limit, and mitigate damage to private property, public or private utilities, and existing public works that may result from the PROJECT construction, including damage that may result from design, and is responsible for remedying at its cost such damage should it occur.
- G. In addition to the individual responsibilities of CITY and COUNTY as set forth herein, the Parties agree that it is in the public interest for the Parties to initiate the PROJECT in phases, and for one Party to be able implement portions of the other Party's jurisdictional responsibilities. Therefore, Agreement establishes a Task Order process and memoranda of understanding (MOUs) for use by the Parties to develop and implement specific portions of the PROJECT, and to authorize one Party to conduct work on the other Party's behalf, as may be documented through each Task Order.
- H. The Parties agree that CITY is responsible for funding of the acquisition of property, design and construction necessary for the PROJECT under the Task Order process and for performing these tasks. Acquisitions, rights-of-way, bridge, city streets and county roads intended to serve the purposes of the PROJECT are subject to future agreement as Task Orders. The Parties agree that the City shall not be responsible for any expenditure of funds by the County in furtherance of the separate responsibilities of County under this Agreement, unless approved by a mutually agreed Task Order or otherwise approved in writing by the City's Designated Representative.

VI. Task Orders, Payment and Administration

- A. Task Orders. Some or all of the work undertaken pursuant to this Agreement may be governed by Task Orders. Task Orders shall be subject to the provisions of this Agreement.
 - 1. Either Party may initiate a Task Order which will be jointly executed by the Parties. The Parties will prepare and execute Task Orders as required for this Agreement, Project contracts or as otherwise agreed. All Task Orders shall be signed by the Designated Representative of the initiating Party and deemed executed when counter-signed by the Designated Representative of the other Party.
 - 2. Task Orders regarding CITY shall address, but not be limited to, the following and as more fully addressed in Exhibit A: a) design, planning, permitting and construction of the PROJECT improvements, including work within both CITY and COUNTY; b) acquisition of property necessary for the construction of the PROJECT improvements within both CITY and COUNTY; c) relocation of persons or businesses related to property acquisition within both CITY and COUNTY; d) payment options related to any acquisition and relocation costs incurred by either CITY or COUNTY on such acquisitions for the PROJECT; e) conducting environmental reviews, and obtaining any permits or approvals

necessary for the construction of the PROJECT from the federal or state government, CITY or COUNTY, or public or private entities; and f) conducting or facilitating public works bidding and contracting necessary for the PROJECT.

3. Task Orders regarding COUNTY shall address, but not be limited to, the following and as more fully addressed in Exhibit A: a) facilitating timely design, planning, permitting and construction reviews for unincorporated portions of the PROJECT improvements; b) facilitating acquisition or initiating condemnation of private property within unincorporated portions of the PROJECT necessary for construction; c) facilitating relocation of any persons or business related to the property acquisition or condemnation; and d) assisting CITY with transfer of unincorporated portions of the PROJECT improvements to CITY via annexation, condemnation or other statutory method.
4. The Designated Representatives for the Parties shall meet regularly to evaluate the Project and review status of Task Orders.
5. CITY's acquisition of property and construction of PROJECT is contingent upon receipt of funding from the Washington State Department of Transportation, and receipt of all required regulatory approvals and permits. CITY not obligated to proceed with PROJECT unless and until funding is received, and permits, approvals and contracts are secured.
6. COUNTY's acquisition of property and construction of PROJECT is contingent upon on-going receipt of reimbursement or funding from CITY, and receipt of any required regulatory approvals and permits necessary for a given Phase of the Project. COUNTY is not obligated to proceed or to continue to proceed with its obligations under the PROJECT unless and until such funding is received, and permits, approvals and contracts are secured.
7. Either Party may initiate a Task Order, which will be jointly approved and executed by the Parties' Designated Representatives. The general terms and conditions of this Agreement shall be applicable to all Task Orders issued under this Agreement. The Parties agree that in the event of a disagreement, they will attempt to resolve the matter by the highest level of decision makers for the City and County and that they will use the alternative dispute resolution provisions at IV.B.2.a. in the event they cannot reach agreement on a task order.

B. Payment.

1. CITY shall reimburse any expenditure in each Task Order, unless the Parties have agreed to limit reimbursements and the Task Order has been amended to reflect a limitation of the budgeted scope of work and expenditure.
2. The Party initiating a Task Order shall promptly notify the other Party in writing as soon as it becomes known that a Task Order on a specific scope of work or on an expenditure for the PROJECT is necessary.
3. The PROJECT, PROJECT Property, and Task Orders, including all design, construction, acquisition, and relocation related to the PROJECT shall be solely financed by CITY, primarily through grants from the Washington Department of Transportation. CITY shall be responsible for establishing and maintaining its budget for financing the PROJECT.

4. By entering into this Agreement, COUNTY is not waiving its position that the COUNTY and/or its citizens and property owners cannot be held responsible for any or all cost overruns related to the portions of the PROJECT for which COUNTY is the responsible jurisdiction for PROJECT.

C. Administration.

1. No separate legal entity is created under this Agreement. The Agreement represents a collaborative, multiagency public works improvement that includes a component for funding by CITY of COUNTY, and which requires coordination of the exercise of respective, legal authority to complete the PROJECT.
2. CITY through its designated CITY project manager shall be lead agency for environmental reviews, and for securing or facilitating federal, state, and local permits and approval, and contract Award on PROJECT.

VII. Project Design.

- A. The Parties agree that the location of the road improvements to be constructed will be as substantially depicted in Exhibit A. Actual design, planning, acquisition, permitting, bidding and construction, and funding will be implemented through Task Orders and MOU's, incorporating and supplementing this Agreement and Exhibit A, attached hereto and incorporated fully by this reference.
- B. The Parties agree that right-of-way, roadway and frontage improvements of the PROJECT will be designed and constructed to urban standards in accordance with CITY standards including Kelso Engineering Design Manual, and including improvements within the jurisdiction of the COUNTY with the approval of the County Engineer. CITY portions of the PROJECT will be routed through the City Engineer pursuant to city policy. COUNTY portions of the PROJECT will be routed through the County Engineer pursuant to statute.
- C. Respective reviews will occur in a timely and coordinated manner. Variances and specification amendments, if required, will be determined by the COUNTY and/or CITY on a case-by-case basis through Task Orders or MOU's. Following review, the Parties will formalize their respective design approval(s) by Letter of Plan Approval. Such approvals by Task Order or MOU shall become part of the Approved Plans of the PROJECT.

VIII. Property Right of Way Acquisition and Transfer.

A. Acquisition

1. The PROJECT will primarily involve CITY facilities and CITY interest property, with the establishment and realignment city streets and county road.
2. CITY will acquire or will assist COUNTY to acquire, at CITY's expense, the PROJECT Property, including responsibility for acquisition of real property interests or other utility-related property rights by litigation, if any.

3. CITY is responsible, at its expense, for performance of all appraisals, appraisal review, title review, surveys, property investigation, relocation assistance and all other investigations and services in connection with either CITY or COUNTY acquisition of the PROJECT Property. For each parcel of private property to be acquired, CITY shall deliver to COUNTY, as soon as practicable all documents created, commissioned or received in connection with CITY's responsibilities in assisting COUNTY in acquisition of such parcel, as well as design, construction and maintenance of the PROJECT Property. Such documents shall include, to the extent applicable, appraisals, appraisal reviews, title reports and all documentation concerning title encumbrances, title policies, surveys, geotechnical reports, purchase agreements, term sheets, options, leases, deeds, indemnities, and all other documents and information created, commissioned or received by CITY in performance of its obligations under this Agreement. CITY is also responsible for identification and investigation of Hazardous Substances on PROJECT Property.
- B. The CITY agrees to take or to facilitate all actions necessary, including eminent domain action, to acquire such real property within its jurisdiction as necessary to construct the PROJECT, as set forth in Exhibit A.
- C. The COUNTY agrees to take or to facilitate all actions necessary, including eminent domain action, to acquire such real property within its jurisdiction as necessary to construct the PROJECT, as set forth in Exhibit A. The City must ratify any property settlement agreement for a property owner within County jurisdiction, prior to being responsible for payment of the settlement amount.
- D. The CITY and COUNTY agree that all acquisition of real property for PROJECT shall be in accordance with federal and state condemnation and relocation standards, as applicable to the Project, and is reliant on CITY funding of all acquisition and relocation actions and expenditures.
- E. Transfer. Prior to the start of PROJECT construction, COUNTY and CITY agree to enter into an MOU governing transfer of PROJECT Property within unincorporated COUNTY to CITY. The MOU shall identify the PROJECT Property and provide that any transfer to CITY by title shall be by quit claim deed, and provide for mutual facilitation by the Parties for incorporation through annexation or eminent domain. This MOU shall also provide the following: timing of transfer, title as intended for public right-of-way, accommodation of existing utilities. The following release and indemnification provision shall be included for any property transferred other than by statutory annexation or condemnation: "CITY hereby releases and indemnifies, protects and holds harmless COUNTY and its officers, officials, employees, and agents working within the scope of their employment from all liability and claims (including but not limited to liability and claims for response and remediation costs, administrative costs, fines, charges, penalties, attorney fees and cost recovery or similar actions brought by a governmental or private party, including third party tort liability) arising, directly

or indirectly, from any presence or release of any Hazardous Substance remaining within or transported from the real property, in which an interest is transferred.”

IX. Insurance.

- A. The CITY and the COUNTY will each maintain for the duration of this Agreement its membership in an insurance pool offering or otherwise maintain insurance with a minimum liability limit of \$1,000,000 per occurrence and \$3,000,000 annual aggregate to insure against claims for injuries to persons or damage to property that may arise from or in connection with this Agreement.
- B. COUNTY and CITY will require any contractor(s) performing work on the PROJECT to maintain, at minimum, the following insurance, written on an occurrence basis, during the period of any work on the PROJECT: broad-form Commercial General Liability (CGL) insurance with limits of \$1 million per occurrence and \$2 million annual aggregate; automobile liability insurance covering vehicles owned or used combined single limit of \$1 million per occurrence and \$2 million annual aggregate; and employer's liability insurance with at least \$1 million each occurrence. All such CGL and automobile liability policies maintained by contractor(s) will name the COUNTY and its directors, officers, and employees as additional insureds.

X. Indemnification and hold harmless.

- A. No COUNTY Liability for Assistance, Inspection, Review, or Approvals. COUNTY participation in the review or approval of any of PROJECT plans or specifications, or the inspection of PROJECT work, or any assistance provided to CITY by COUNTY is for COUNTY's sole benefit and shall not constitute an opinion or representation by COUNTY as to any compliance with any law, ordinance, rule, or regulation or any adequacy for other than COUNTY's own purposes; and such assistance, inspection, review or approval shall not create or form the basis of any liability on the part of COUNTY or any of its officials, officers, employees, or agents for any injury, damage, or other liability resulting from, or relating to, any inadequacy, error, or omission therein or any failure to comply with applicable law, ordinance, rule, or regulation; and such assistance, inspection, review, or approval shall not relieve CITY of any of its obligations under this Agreement, Task Orders, MOU's or under applicable law.
- B. No COUNTY Liability for Delay, Consequential, or Liquidated Damages. Excepting failures to act or other delays which are required under this Agreement or any agreed Task Order on COUNTY's responsibilities under this Agreement, COUNTY shall not be liable in damages for any failure to act within any time limits established by law or for any other delay to CITY or CITY's contractors, nor shall COUNTY have any liability for liquidated damages for such failures to act or for such delays, and, to the maximum extent allowed by law, CITY shall protect,

defend, indemnify, and save harmless COUNTY, and its officials, officers, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to delays. The Parties agree that this Agreement, Task Orders or MOU's, are not to be construed as being construction agreements.

- C. No COUNTY Liability for Third Party Claims of Diminution in Value of Property. COUNTY shall not be liable in damages for any third party claims alleging diminution in value of property, including, but not limited to, claims of elimination or impairment of rights to light and air and quiet enjoyment, or alleging a taking of property rights, nor shall COUNTY have any liability for related consequential or liquidated damages, and, to the maximum extent allowed by law, CITY shall protect, defend, indemnify, and save harmless COUNTY, and its officials, officers, agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to the third party claims of diminution in value of property arising out of the PROJECT.
- D. CITY Indemnification. Except as provided above, and to the extent permitted by law, CITY shall protect, defend, indemnify, and save harmless COUNTY and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of CITY or CITY's contractors, consultants, or agents including any and all claims and litigation arising out of, or resulting from, any state or federal environmental review process in any way relating to the PROJECT, and including any private utility relocations required for the PROJECT work. CITY's obligations under this paragraph also extend to claims asserted by third parties against COUNTY arising out of, or in any way resulting from SEPA compliance related to portions of the PROJECT.

CITY further agrees that COUNTY shall have no liability to CITY that in any way arises out of COUNTY's decision making processes in agreeing to go forward with the PROJECT,. CITY shall not be required to indemnify, defend, or save harmless COUNTY excepting any claim, suit, or action for injuries, death, or damages caused by the sole negligence of COUNTY. Where such claims, suits, or actions result from the concurrent negligence of the Parties the indemnity provisions provided herein shall be valid and enforceable only to the extent of CITY's own negligence. In the event of any claims, demands, actions, or lawsuits, CITY upon notice from COUNTY, shall assume all costs of defense thereof, including legal fees incurred by COUNTY, and of all resulting judgments that may be obtained against COUNTY, to the extent of CITY's liability. In the event that COUNTY incurs attorneys' fees, costs, or other legal expenses to enforce the indemnity, acquisition or CITY funding provisions of this Agreement, all such fees, costs, and expenses shall be recoverable by COUNTY. Environmental protection and

compliance, as provided elsewhere in this Agreement, Task Orders or MOU's shall be in addition to the foregoing general indemnification.

- E. COUNTY Indemnification. Except as provided above, and to the extent permitted by law, COUNTY shall protect, defend, indemnify, and save harmless CITY and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind, including injuries to persons or damages to property, that arise out of, or in any way result from, or are connected to, or are due to any acts or omissions, or intentional misconduct, of COUNTY or COUNTY's contractors, consultants, or agents. COUNTY shall not be required to indemnify, defend, or save harmless CITY if the claim, suit, or action for injuries, death, or damages is caused by the sole negligence of CITY. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of COUNTY's own negligence. In the event of any claims, demands, actions, or lawsuits, COUNTY upon notice from CITY, shall assume all costs of defense thereof, including legal fees incurred by CITY, and of all resulting judgments that may be obtained against CITY, to the extent of COUNTY's liability.

- F. Title 51 RCW. This indemnity and hold harmless provision shall include any claim made against either Party by an employee, officer, contractor, subcontractor or agent of the other Party, even if the other Party is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the first Party. Both Parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the Parties and it is the intent of the Parties that each party provide the other Party with the broadest scope of indemnity permitted by RCW 4.24.115.

- G. Independent Contractor. Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party. Nothing in this Agreement shall make any employee of the COUNTY an employee of the CITY or any employee of the CITY an employee of the COUNTY for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges accorded their respective employees by virtue of their employment.

XI. Miscellaneous provisions.

- A. Integrated Agreement. This Agreement is the full and complete understanding of the parties on the subjects covered herein. This Agreement may be modified or amended only by mutual written agreement approved by the governing bodies of the parties.

- B. Assignment. Neither party will have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.
- C. Successors in Interest. Subject to the foregoing subsection, the rights and obligations of the parties will inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.
- D. Governing Law and Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Washington. Any action or suit brought in connection with this Agreement will be filed in Cowlitz County Superior Court.
- E. Successors. If any section of this Agreement is adjudicated to be invalid, such action will not affect the validity of any section not so adjudicated.
- F. Waiver. The failure of any party to this Agreement to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option or right conferred by this Agreement, in any one or more instances will not be construed to be a waiver or relinquishment of any such option or right or of any other covenants or agreements which will remain in full force and effect.
- G. Notice. All communications regarding this Agreement will be sent to the Designated Representative of each Party at the following addresses or such other address as may be hereafter specified in writing. Any written notice hereunder will become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and will be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

To the CITY:
Michael Kardas
203 South Pacific Avenue
P.O. Box 819
Kelso, WA 98626

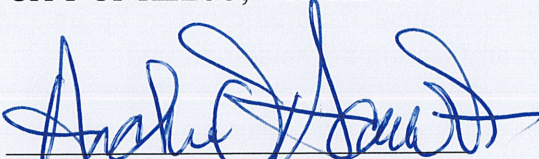
To the COUNTY:
Susan Eugenis, PE, Cowlitz County Engineer
1600 13th Ave. S.
Kelso, WA 98626

- H. No Third-Party Beneficiaries. This Agreement is made and entered into for the sole benefit of COUNTY and CITY. No third party will be deemed to have any rights under this Agreement, and there are no third-party beneficiaries to this Agreement.

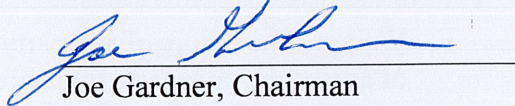
I. Execution and Posting. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same document. The parties additionally acknowledge and agree that this Agreement may be executed and delivered by facsimile or email. Pursuant to RCW 39.34.040, the Parties will cause a copy of this Agreement to either be filed or to be posted on their respective websites.

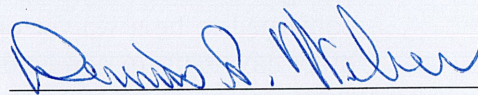
IN WITNESS WHEREOF, the authorized signatories of CITY and of COUNTY have caused this Agreement to be executed in their respective names by their duly authorized officers and have caused this Agreement to be dated as of the 3 day of November 2020.

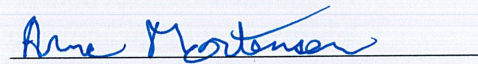
CITY OF KELSO, WASHINGTON


Andrew Hamilton, City Manager

COWLITZ COUNTY, WASHINGTON
BOARD OF COMMISSIONERS


Joe Gardner, Chairman

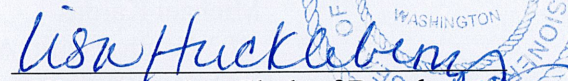
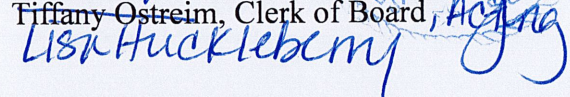
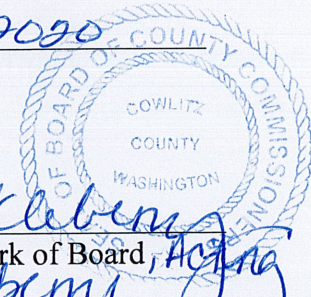

Dennis P. Weber, Commissioner


Arne Mortensen, Commissioner

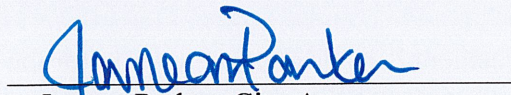
Dated: 11/3/2020

Dated: 11-3-2020

ATTEST:


Tiffany Ostreim, Clerk of Board, Acting



Approved as to form:


Janean Parker, City Attorney
Law Office of Janean Parker
For City of Kelso

Approved as to form:
Cowlitz County Prosecuting Attorney

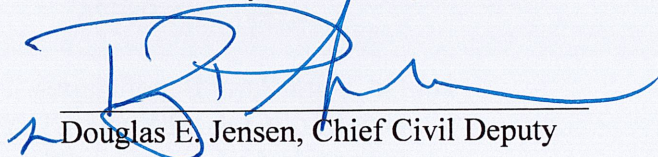

Douglas E. Jensen, Chief Civil Deputy

EXHIBIT A – INTERLOCAL AGREEMENT BETWEEN CITY OF KELSO AND COWLITZ COUNTY

Unless specifically defined otherwise in this document, the definitions and provisions set forth in the Interlocal Agreement apply to the terms and provisions of this document.

The PROJECT means the coordinated and cooperative funding and construction of an overpass crossing bridge and approaches spanning South Pacific Avenue and BNSF railway tracks, with vehicle roadway, bicycle lanes, and pedestrian sidewalks sited in both CITY and COUNTY; utility relocations, underground storm drainage, extensions of 3rd Avenue and Hazel Street, improvements to Douglas Street; and modifications to the alignment of existing S. Pacific and Hazel Street for bridge access, and closure of two existing at-grade crossings to through traffic.

The PROJECT consists of the following features to be addressed for lead agency responsibility of the CITY and by coordination with the COUNTY:

Utility Work:

- Construction of the overpass crossing bridge and approaches will require either the installation of new or the removal, relocation or replacement of existing utilities, which may include both new and existing public electrical, communications, water, drainage and wastewater utilities, and privately owned utilities that directly conflict with the bridge and bridge approach, and any realignment of city streets and county roadway.

Overpass Crossing Bridge and Approaches:

- Approximately 2876 lineal feet of city street and approximately 1858 lineal feet of county roads comprise the overpass crossing bridge and approaches.
- The PROJECT will require acquisition of private lands for city street right-of-way (ROW) for the overpass and approach, and for county road ROW for an approach, and potential relocation of residences and businesses located on private lands.
- Public and private property that is disturbed or damaged as a result of the PROJECT must be repaired or restored.
- Those portions of the PROJECT which are acquired as county ROW for approach will be transferred to CITY as a city street by CITY initiation of annexation or other legal means.

Procedures for Coordinated Acquisition of Project Property:

- The City will determine, based on the project scope and given design, the extent of the property to be acquired for the Project.
- The City will notify and consult with the County Engineer to evaluate whether the amount of private property within the County necessary for the Project may be minimized through the agreed adjustment of Project road or design standards.

- The County and City agree to coordinate the acquisition process through a right of way agent (Property Agent) retained by City to facilitate land acquisitions for Project Property.
- In the event the Property Agent is unable to obtain entry to the private property within the City or County to conduct an appraisal necessary to begin the negotiation process, or in the event that steps above, including mediation, have failed to reach an agreed price within the Parties' agreed parameters, the Party with jurisdiction over the property will expeditiously bring before Party's legislative body the proceedings on condemnation, including express findings on public use and necessity.
- The County and City agree to coordinate the legal representation on acquisition by condemnation through designated legal counsel retained by City, and approved by County and its Prosecuting Attorney, to facilitate land acquisitions for Project Property.
- In the event the Board of County Commissioners withdraws its prior commitment to pursue condemnation proceedings after all reasonable efforts at negotiated acquisition of rights-of-way have been exhausted by the Property Agent, City may potentially incur damages subject to recovery under Paragraph X of the Interlocal Agreement.

Procedures for Coordinated Design, Bid and Award:

- CITY will determine the project scope and a given design and bid for both jurisdictional sections, with COUNTY review, input and sign-off on the county road section. CITY design and construction will apply CITY standards for both jurisdictional sections, by consent of COUNTY and County Engineer.
- CITY staff agree to seek and incorporate input from COUNTY staff and County Engineer in the early stages of preliminary engineering, in the preparation of design submittals, and thereafter throughout PROJECT design, permitting, bidding and contracting. CITY will notify COUNTY in good faith when CITY becomes aware of issues that may delay or provide grounds for challenges of joint agency permitting, bidding and contracting.
- CITY will prepare and submit complete plans and supporting documentation to COUNTY, and provide corrections and additional information as needed by the COUNTY and County Engineer to allow for permitting and approvals on the county road section of the PROJECT. COUNTY will endeavor to expedite its reviews and approvals to address CITY scheduling and deadlines on the PROJECT.
- COUNTY will direct the County Engineer or his/her designee to be its Designated Representative and work with COUNTY staff and departments on PROJECT reviews and approvals. COUNTY will assist CITY in determining appropriate responses and assist in resolution of concerns during bidding, contracting and construction,
- CITY will prepare and advertise and process a joint bidding on all construction contracts as interagency public works construction, for both the city street section and for the county road section. The call for bids, opening of bids and bid awards shall be conducted by CITY under CITY proceedings, with reviews and approvals by COUNTY provided to CITY as required by statute, for CITY bid award(s) for both city street and county road portions of the Project.
- Prior to award of a bid and contractor(s) approval, CITY is responsible for determining that budgeted funds are available for CITY to cover the costs of the Project.

Procedures for Construction Management, Inspection and Acceptance:

- CITY agrees it will be the contracting party for both city street and county road portions under the Approved Plans. COUNTY agrees it is responsible for ensuring any COUNTY standard or requirement, not supplanted by specifications and standards for CITY streets, are set forth in the Approve Plans for purposes of CITY contracting.
- CITY and COUNTY agree to work cooperatively with each other and in good faith to implement procedures to facilitate the following: 1) timely and expeditious progress on the PROJECT in accordance with CITY scheduling and deadlines; 2) coordination of construction management, inspection and contract administration, including designating communications in the field, roles and responsibilities, review or proposed changes, and acceptance of PROJECT infrastructure, and 3) compliance by both CITY and COUNTY with all laws and procedures governing their actions.
- COUNTY, through its County Engineer, will provide qualified staff to fulfill its duties of inspection, construction and administration on the county road section, deferring to CITY guidance on specifications and standards for CITY streets. COUNTY will notify CITY (24) hours in advance of any arrival of its inspection staff on the construction site, except in the case of emergency. COUNTY staff will immediately notify CITY staff of any construction or plan compliance issues requiring discussion.
- CITY will provide timely notice to COUNTY prior to commencement and prior to completion of all material stages of the county road infrastructure work, and COUNTY is invited to inspect such work upon completion of any material stage of construction, deferring to CITY guidance on specifications and standards for CITY streets. CITY will also invite COUNTY to request a construction meeting prior to the start of work on county road facilities. COUNTY will submit a complete list of any concerns or deficiencies to CITY within ten (10) calendar days following a county road facilities inspection, and CITY will timely address each concern. If COUNTY does not inspect and respond within (10) calendar days, the work will be deemed accepted by COUNTY.
- Throughout the construction of the PROJECT, COUNTY, through its County Engineer, will assist CITY with contract compliance on county road infrastructure built by CITY's contractors under Approve Plans and to specifications and standards for CITY streets. COUNTY reserves the right to exercise statutory duties in approving or rejecting construction or materials in county road infrastructure that are deficient, do not meet the requirements of the Approved Plans, are not constructed in accordance with County-issued permits, have defects in material or workmanship, and/or have defects in design. Except as required at law, all deficiencies will be reported to CITY's Designated Representative to address with the respective contractor's representative for resolution. COUNTY staff will not directly communicate with CITY contractors without express authorization of the CITY, except when public or worker safety is in question on county road sections.
- Both parties shall be deemed independent contractors for all purposes, and the employees of each party, and any of its contractors, subcontractors, consultants or agents shall not in any manner be deemed to employees of the other party. Nothing in the Agreement shall make any employee, contractors, subcontractors, consultants or agents of CITY an employee of the COUNTY or of COUNTY an employee of CITY for any purpose, including but not limited to payment of wages, withholding of taxes, payment of benefits,

workers' compensation under Title 51 RCW, or any other rights or privileges of their respective employees by virtue of respective employment or agreement.

Acceptance:

- CITY will notify COUNTY upon completion of the construction of county road infrastructure and will invite COUNTY to participate in a joint pre-final inspection of the completed work for purposes of COUNTY's statutory acceptance of a county road built to specifications and standards for CITY streets.
- CITY will address each concern or deficiency identified by COUNTY on compliance with the Approved Plans, or compliance on any approved revisions to the plans. COUNTY will defer to CITY guidance on specifications and standards for CITY streets when identifying concerns and deficiencies.
- If disagreements arise between CITY and COUNTY on what constitutes a deficiency or work which does not comply with the Approve Plans, the disagreements will attempt to be resolved by the highest level of decision makers for CITY and COUNTY, and if unsuccessful, to be resolved using the dispute resolution provisions in the Agreement.
- Acceptance of county road infrastructure may be executed in stages, if so provided under the terms of the contract documents. Letters of acceptance will be executed in accordance with such contracting, and in accordance with statute.