

**INTERLOCAL AGREEMENT BY AND BETWEEN
THE CITY OF BATTLE GROUND AND
CLARK PUBLIC UTILITIES

STREET LIGHT MAINTENANCE**

This Interlocal Agreement, hereinafter referred to as the "Agreement", is made and entered into by and between Clark Public Utilities, a public utility district of the State of Washington, hereinafter referred to as "Clark," and the City of Battle Ground, a municipal corporation of the State of Washington, hereinafter referred to as the "City," for the purpose of providing street light maintenance and other street-light related work as requested by the City.

WHEREAS, the City possesses the power and legal authority to provide street light services within its boundaries; and

WHEREAS, Clark has the authority to provide street light services within the unincorporated portions of Clark County and within the geographical area of the City; and

WHEREAS, the City desires to enter into an agreement with Clark whereby Clark will provide certain street light maintenance and other street-light related services within the boundaries of the City; and

WHEREAS, Clark is agreeable to providing such services to the City on the terms and conditions as set for herein; and

WHEREAS, this Agreement is entered into under the Interlocal Cooperation Act, Chapter 39.34, RCW;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows.

AGREEMENT

I. SCOPE OF SERVICES

Clark will furnish all labor, equipment, materials and supplies (except as provided below) for the performance of the following street light maintenance and other street-light related services:

- a. Clark will perform general maintenance services on City-owned Utility Standard Street Light Equipment (as defined in Section II) located on public streets,

highways, and thoroughfares within the City of Battle Ground. These services include: (1) like-kind fixture replacement (limited to LED street lights) due to mechanical failure; (2) photo cell replacement; (3) refractor maintenance and (4) the repair of Clark-owned overhead and underground wires.

- b. Clark will also provide other street light services at an additional time and material based charge, which includes, but is not limited to, street light replacement (except for like-kind mechanical failure), street light relocation, installation of additional street lights (on CPU wood poles only), work on Non-Utility Standard Street Light Equipment (as defined in Section II below), repair of damaged fixtures, pole bases, and foundations due to vandalism or other causes.
- c. Any new street light installations (new development, road projects, additions/changes to existing street light circuits) that may be subject to service under this Agreement, must be approved and energized by Clark before Clark will assume maintenance responsibilities.
- d. Clark will not perform any work on street lights located on the customer-side of any electrical meter/disconnect, street lights connected to electrical wires not owned by Clark, or street lights connected to electrical sources that serve other City facilities.
- e. The installation of Non-Utility Standard Street Light Equipment will require advance approval by Clark. Lights that are not approved by Clark, will be installed by the City behind a meter or disconnect. These lights will be maintained by the City and billed for electric service under a general service rate schedule. Existing and future black cobra head light fixtures are approved as non-utility Standard lights and will be maintained pursuant to Section I(b)
- f. Clark reserves the right to discontinue service of any specific City street light or refuse to accept any street light. If Clark decides to discontinue service for an existing street light, Clark shall provide written notice to the City and identify the specific reason(s) for discontinuing service. If Clark agrees and the City is able to correct the reason(s) for which Clark intends to discontinue service, within thirty (30) days of the notice, Clark may continue to provide service for that specific City street light at its discretion.

II. LIGHT STANDARDS

The following types of street lights and poles shall be considered current utility standards and specifications ("Utility Standard Street Lights"):

Decorative Acorn fixture:

- Acorn-shaped, with acrylic globe, black housing

Decorative Acorn direct bury light pole:

- Fiberglass, black, fluted shaft with clamshell base, 14.5' mounting height

Cobra Head fixture:

- Elliptical or rectangular shaped, downward facing, gray housing.

Cobra Head direct bury light poles:

- Aluminum, 6' upsweep mast arm, 25' mounting height
- Aluminum, 6' upsweep mast arm, 32' mounting height

The standards for Utility Standard Street Lights may be amended by Clark, at its discretion. Any change in Utility Standard Street Lights standards will be documented by Clark in writing.

Any City street lights maintained under this Agreement, that are not designated as Utility Standard Street Lights, shall be referred to as "Non-Utility Standard Street Light Equipment." The City shall be responsible for purchasing, storing, and providing to Clark all materials needed to complete maintenance, repair, or replacement of Non-Utility Standard Street Light Equipment. Any costs associated with picking up materials, installing lights, and/or maintaining lights for Non-Utility Standard Street Light Equipment is the responsibility of the City.

All non-LED street lights shall be considered Non-Utility Standard Street Light Equipment. Upon receiving a maintenance request for a non-LED City street light, Clark may (at its discretion) choose to maintain the light if it can be initially repaired by changing out the photo cell and/or repairing Clark owned wires. If the fixture cannot be repaired using these methods, or subsequent repairs are required on the same street light, the Utility will convert the existing light fixture to an LED fixture, on a time and materials basis. Clark shall notify the City whenever this conversion is required. After such a conversion occurs, that street light shall then be considered a City-owned Utility Standard Street Light that shall then be maintained pursuant to Section I(a) herein and all other terms and conditions of this Agreement that apply to Utility Standard Street Lights.

III. COST OF SERVICES

Clark will perform general maintenance services on the City's Utility Standard Street Lights and the City will pay for such services in accordance with Clark's current Rate Schedule 94-LED (which is subject to revision by Clark's Board of Commissioners). *See attached Exhibit 1.* These services include: (1) like-kind fixture replacement (limited to LED street lights) due to mechanical failure; (2) photo cell replacement; (3) refractor maintenance; and (4) repair of Clark-owned overhead and underground wires. The City will be billed monthly pursuant to Clark's Schedule 94-LED for each City-owned street light.

All other street light services as described in Section I(b), will be performed by Clark on a time and materials basis. Electric service for non-LED lights shall be charged in accordance with Clark's then current Rate Schedule 94.

IV. AUDIT AND RECORDKEEPING

Clark shall retain records documenting all direct and indirect costs associated with individually billed services provided under this Agreement. However, no specific records shall be required for any service that is provided and billed pursuant to an approved rate schedule (including, but not limited to Clark's Rate Schedule 94-LED). Records shall be subject to inspection, review, or audit by each Party and the Office of the Washington State Auditor. All records shall be retained in accordance with the State of Washington records retention schedule.

Clark will periodically audit the City's street lights to verify the number of units serviced under this Agreement. These audits shall not be performed any more frequently than every five years. The City will be responsible for the costs of these audits in proportion to the number of City street lights within the area audited (i.e. the City would only be responsible for its proportionate share of a county-wide audit, but would be responsible for the entire cost of a City-only audit).

V. FACILITY OWNERSHIP

The City shall retain ownership of its street lights and any City infrastructure supporting this system. None of the work performed by Clark shall transfer any ownership interest from the City to Clark. Once street light equipment is installed and energized within the City's infrastructure, any property interest held by Clark in the equipment shall transfer to the City. The City will be responsible for transferring ownership of any newly installed street lights installed by other parties to the City. Nothing herein shall be construed to in any way divest the City of its powers with respect to the supervision and management of the streets and street lights within its boundaries.

VI. EQUIPMENT STORAGE

Clark shall be responsible for storing Utility Standard Street Light equipment as described in Section II. The City shall store, at its expense, all other custom or Non-Utility Standard Street Light Equipment. The equipment stored by the City shall be, at a minimum, available to Clark during normal business hours or as mutually agreed upon between the City and Clark to best meet the needs of customers.

VII. MAINTENANCE REQUEST

The City shall notify Clark when it becomes aware that any of its street lights require maintenance or repair. Clark requires a streetlight number for all maintenance requests. If no tag is present, the City shall provide the light location address. The City shall also encourage and direct its residents to contact Clark and report a street light in need of maintenance.

Clark will attempt to respond to any maintenance request within five business days (actual repairs may take longer).

Emergency response (e.g. car hit street light) will be addressed as soon as possible after notification from emergency services or the general public. In the event of an emergency, Clark will disconnect equipment at Clark's source and notify the City. The City will provide emergency/afterhours contact information.

The City shall not perform any maintenance or repair work on facilities serviced by Clark under this Agreement. This provision shall not preclude the City from taking any action as needed to ensure the facilities serviced by Clark under this Agreement are returned to a safe condition in the event of any emergent circumstances.

For the purpose of facilitating the performance of the services under this Agreement, the City will allow the temporary closing to traffic of any street, or portions thereof, necessary to be closed for Clark to perform its services herein.

Clark shall not be required to obtain a right-of-way permit or any other authorization from the City for street light maintenance work performed under this Agreement. The City will be responsible for the cost of any permits required by other entities.

Clark will provide the City with 24-hours' notice before it works on individual City street lights located on main streets and arterials that may block a lane of traffic for an extended period of time.

VIII. NEW CONSTRUCTION

Requests for additional street lights (road frontage improvement projects/subdivisions located within City limits) must be submitted upon plans approved by the City. The developer/installer will be required by the City to provide all new street light materials meeting Clark's street light utility standards and specifications. If the installed facilities meet Clark's requirements, Clark will be responsible for inspecting these installations, energizing the facilities, and maintaining the new lights under this Agreement.

The City will be responsible for approving all street light designs and layouts. Clark is responsible for approving the electrical source for street light systems and service wire layout.

The City will be responsible for any permitting costs associated with the installation of any new streetlights under this Agreement.

IX. TERM AND TERMINATION

This Agreement shall be effective upon execution by all the Parties and shall remain in effect unless otherwise terminated as provided herein. This Agreement may be terminated for any reason by either Party upon not less than six (6) months written notice to the other Party.

X. ADDITIONAL TERMS

1. **Dispute Resolution.** The principal executive or their designee of each Party shall attempt to resolve all disputes regarding the terms of this Agreement in good faith. In the event the dispute is not resolved by the Parties, the matter will be referred to the Superior Court of the State of Washington in and for Clark County.

Parties shall bear their own legal fees, costs, and expenses related to enforcing rights and responsibilities of this Agreement.

2. **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 a Party an employee of the other Party for any purpose, including but not limited to, for 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.

3. **Indemnification/Hold Harmless.** Each Party agrees to indemnify, defend, and hold harmless the other Party, its employees, agents, and elected and appointed officials from any and all claims, demands or damages of whatever kind or nature, which may be made against them arising out of the performance of the activities described in this Agreement, to the extent the claims, demands or damages arise from the acts or omissions of the indemnifying Party, its employees, agents or elected or appointed officials.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Parties, their officers, employees, and volunteers, each party's liability hereunder shall be only to the extent of the Party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Clark's and the City's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for purposes of this indemnification. This waiver has been mutually negotiated by the Parties. The provisions of this section shall survive the expiration or termination of this Agreement.

4. **Amendments.** This Agreement shall not be modified or amended in any manner except by an instrument in writing executed by the Parties hereto.

5. **Assignment.** No Party hereto shall assign its rights or obligations under this Agreement without the prior written consent of the other Party hereto.

6. **Notices.** All communications, notices and demands of any kind which are required by this Agreement shall be in writing and shall be deemed given three (3) days after it has been deposited

in the U.S. mail, first class postage prepaid, to the following addresses or to such other addresses as the Parties shall from time to time give notice to the other Parties:

If to the Clark:

Clark Public Utilities
Attn: Director of Engineering
P.O. Box 8900
Vancouver, WA 98668

If to the City:

City of Battle Ground
Attn: Mark Herceg, Public Works Director
109 SE 1st Street
Battle Ground, WA 98604

7. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

8. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

9. Filing. Executed copies of this Agreement shall be filed as required by RCW 39.34.040 or alternatively listed on the Party's respective web sites or other electronically retrievable public source.

10. Administration. No new or separate legal or administrative entity is created to administer the provisions of this Agreement. The Parties hereto shall be jointly responsible for administering the performance herein. The Parties will not acquire any jointly-owned real or personal property in connection with performance of this Agreement.

11. Severability. Any provision of this Agreement, which is prohibited or unenforceable, shall be ineffective to the extent of such prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforcement of such provisions.

12. Ratification. Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and confirmed.

13. Governing Law/Venue. This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

14. Waiver. Failure by any Party to this Agreement to exercise rights under this Agreement shall not preclude that Party from subsequent exercise of those rights and shall not constitute a waiver of those rights or any other right under this Agreement. Waiver of any rights under this Agreement requires a written statement signed by an authorized representative of the Party waiving such rights.

15. Indirect or Third-Party Beneficiaries. The Parties do not intend, by this Agreement, to assume contractual obligations to any other party than the Parties named in this Agreement. There are no indirect or third-party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement on the dates indicated below.

CLARK PUBLIC UTILITIES

The City of Battle Ground

DocuSigned by:
By: *Lena Wittler*
B954A3862E8849F
Lena Wittler, General Manager

By: *Erin Erdman*
Erin Erdman, City Manager

DATED: March 9, 2023

DATED: 6/16/22

Approved as to Form:

Approved as to Form:

DocuSigned by:
By: *John Eldridge*
7F643C7B4B14441
John Eldridge
General Counsel

By: *Kirk Ehlis*
Kirk Ehlis, Menke, Jackson, Beyer