

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works, Engineering & Construction Division

DATE: July 7, 2020

REQUESTED ACTION: Authorize the County Manager to sign an Interlocal Agreement with Clark Public Utilities – Water Department for coordination of capital construction projects.

Consent Hearing County Manager

BACKGROUND

Clark County Public Works and Clark Public Utilities – Water Department have historically worked together to coordinate, plan, and construct public works infrastructure. This interlocal agreement has been prepared so that Public Works and CPU can continue to cooperatively work together for efficiency and cost effectiveness. This agreement authorizes Public Works to include CPU work, typically new water service infrastructure, in county construction projects, on a case-by-case basis. This has the benefit of having one contractor coordinate the construction of both the roadway and utility work, saving time and money.

COUNCIL POLICY IMPLICATIONS

None. This action is consistent with county policy to leverage partnerships for more effective use of public funds.

ADMINISTRATIVE POLICY IMPLICATIONS

None. This agreement conforms to RCW Chapter 39.34 – Interlocal Cooperation Act.

COMMUNITY OUTREACH

Public Works routinely sends updates (“Heads Up” mailers) to the public during the development of projects. When the utility work is combined with county work, we will include the benefits of this agency cooperation in our updates.

BUDGET IMPLICATIONS

YES	NO	
✓		Action falls within existing budget capacity.
	✓	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	✓	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	N/A
Grant Fund Dollar Amount	N/A
Account	N/A
Company Name	N/A

DISTRIBUTION:

Council staff will post all staff reports to the web. <https://www.clark.wa.gov/council-meetings>

ATTACHMENTS: (1) Interlocal Agreement; (2) PowerPoint

Tom Grange

Tom Grange, PE
Engineering & Construction Division Manager

Ahmad Qayoumi

Ahmad Qayoumi, PE
Public Works Director/County Engineer

Eva Haney

Eva Haney, CGFM
Finance Division Manager

Primary Staff Contact: Matt Hall, Ext. 4225

APPROVED: *[Signature]*
CLARK COUNTY, WASHINGTON
CLARK COUNTY COUNCIL

DATE: 7-7-2020

SR# 095-20

Kathleen Ott



**INTERLOCAL AGREEMENT
BETWEEN CLARK COUNTY
AND
PUBLIC UTILITY DISTRICT NO. 1 OF CLARK COUNTY
FOR PUBLIC WORKS CONSTRUCTION**

THIS IS AN INTERLOCAL AGREEMENT entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark County, a political subdivision of the State of Washington (County), and Public Utility District No. 1 of Clark County (Utility), a municipal corporation providing electric and water services within Clark County, Washington, (each individually identified as the Party or collectively as the Parties).

WHEREAS, 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; and

WHEREAS, the County and the Utility are each authorized to construct water systems and facilities pursuant to the statutes relating to counties and public utility districts and to construct public works pursuant to Chapter 39.04 RCW; and

WHEREAS, on occasion the inclusion of public work by one Party in the public work project of the other Party will be cost effective and efficient;

NOW, THEREFORE, pursuant to Chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein.

THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE. The purpose of this Agreement is to authorize one Party to include in its public works project a public work of the other Party, on a case-by-case basis, in order to facilitate efficiency and cost effectiveness.
2. DEFINITIONS. Unless otherwise indicated in the text of this Agreement, the following terms are defined as set forth below:

“Contracting Party” means the Party that constructs a Project, and includes in the Project the Work of the User.

“Project” means a public work as defined by RCW 39.04.010(4), which is all work, construction, alteration, repair, or improvement other than ordinary maintenance, that is executed by the Contracting Party, and if accepted, includes the Work requested by the User.

“Substantial Completion” means when the Contracting Party has full and unrestricted use and benefit of the Project facilities, both from an operation and a safety standpoint, and all the Work is completed except for minor incidental work or minor corrections/repairs.

“User” means the Party that requests Work in the Contracting Party’s Project.

“Work” means all survey, materials, equipment, labor, construction, construction inspection and contract administration requested by the User to be included in the Contracting Party’s Project, and after approval, all such items actually included in the Contracting Party’s Project.

“Working days” means Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

3. REQUEST FOR WORK.

3.1. Communication. The County and the Utility have historically worked together to coordinate, plan, construct, and maintain public works projects. The Parties agree to use their best efforts to keep each other informed of their respective public works projects, particularly those that could include a Public Work of the other Party.

3.2. Request for Work.

3.2.1. If the User desires to include Work in a Project of the Contracting Party, the User shall provide to the Contracting Party a written request (electronic or paper format) for inclusion of the Work in the Contracting Party's Project.

The written request for Work shall specify the type, scope, extent, location and estimated cost of the Work, including but not limited to the elements and information described in the definition of "Work" in Section 2 of this Agreement.

3.2.2. Within seven (7) days of receipt of a request for Work, the Contracting Party shall advise the User in writing of its willingness and ability to include the Work in its Project. The Parties shall as expeditiously as possible discuss the request for Work and its possible inclusion in the Project. The discussion shall include, but not be limited to, the specifications, plans and provisions for the Work and its relationship to and inclusion in the Project. The Parties recognize and agree that the workload of the Contracting Party may prevent or delay inclusion of the Work in the Project. The Contracting Party shall have sole discretion to accept, accept as modified, or reject the other Party's request for inclusion of the Work.

3.2.3. If the Parties agree upon the specifications, plans and provisions for the Work, the Administrators, as identified in Section 10, shall confirm the inclusion of the Work in the Project, and the terms and conditions thereof, in writing, and shall include therein a date for issuance of the bid advertisement. Thereafter, the Administrator for the Contracting Party may change the date for issuance of the bid advertisement by giving notice to the Administrator of the User. The Contracting Party shall include the Work as agreed to by the Administrators in the bid package for the Project. Unless agreed otherwise by the Administrators, the Work shall be in a separate schedule of work on the Project proposal form in the bid package. The Administrator for the Contracting Party shall deliver to the Administrator for the User a copy of the bid package prior to issuance of the bid advertisement.

3.2.4. Either Party may exclude for its convenience the Work from the bid package for the Contracting Party's Project after acceptance by notifying the other Party of the exclusion by at least the 90% design stage of the Project, or after that if mutually agreed upon by the Parties.

3.2.5. The Party responsible for exclusion of the Work under Section 3.2.4 of this Agreement shall reimburse the other Party for all actual direct expenses and costs, including design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs associated with inclusion of the Work, that are incurred up to the date of exclusion, as well as the cost of non-cancelable obligations, including any redesign, re-engineering or re-estimating, if necessary, to delete the Work.

4. BID ADVERTISEMENT AND AWARD.

4.1. Responsibilities during Bid Process. The Contracting Party will be the User's representative during the bid advertisement and award period. When requested by the Contracting Party, the User shall timely assist the Contracting Party in answering bid questions and resolving any design issues related to the Work. All comments and clarifications related to the bidding process must go through the Contracting Party. The Contracting Party shall provide the User with written notification of the bid price for the Work specifically and the Project generally within twenty-four (24) hours after the bid opening.

4.2. Bid Consideration and Award. The Parties acknowledge and agree that the Contracting Party will review, accept/reject, and award the bids for the Project in accordance with applicable competitive bidding requirements and the plans, specifications and provisions of the bid package. The Parties further acknowledge and agree that the User's Work will be considered an integral part of the Project and will not be treated differently or separately for competitive bidding purposes, unless agreed otherwise by the Party's Administrators.

5. CONSTRUCTION, INSPECTION, AND ACCEPTANCE.

5.1. Construction and Administration Responsibility. The Contracting Party shall construct and administer the Work on behalf of the User as specified in the bid package.

5.2. Communication during Project. All formal communications between the User and the Contracting Party's contractor shall be through the Contracting Party's representatives; provided that the User may have informal communications with the Contracting Party's contractor if approved by the Contracting Party.

5.3. Construction Observation. Any employee of the User, upon prior notice to the

Contracting Party, may observe construction of the Work.

5.4. Documentation. Upon the request of the User, the Contracting Party shall provide to the User all available inspection documentation, including but not limited to inspection reports, backfill test results, closed circuit TV reports, pre-paving record drawings, and submittals of a material and substantial nature.

5.5. Completion and Acceptance. Upon Substantial Completion of the Work, the Contracting Party shall provide notice of Substantial Completion to the User. The User shall, within fourteen (14) calendar days of being notified that the Work is substantially complete, perform any necessary walk-through or inspection of the Work and either (a) deliver to the Contracting Party a written letter of acceptance, or (b) deliver to the Contracting Party a written explanation of rejection, in punch list format, detailing the reasons why the Work does not comply with the approved specifications and plans. The User and the Contracting Party will work diligently and in good faith to resolve any issues relating to the Work so as not to delay the Contracting Party's acceptance of the Project. Once issues raised by the User are resolved, the User shall immediately deliver to the Contracting Party a letter of acceptance.

5.6. Future Costs. Upon completion and acceptance of the Work pursuant to Section 3 the User agrees that it shall be solely responsible for all future ownership, operation and maintenance costs of any facilities constructed by the Work, without expense to the Contracting Party.

5.7. As-Built Plans. The Contracting Party will prepare the final construction documentation in general conformance with the Contracting Party's construction practices. The Contracting Party shall maintain one set of plans as the official "as-built" set, then make

notations of all plan revisions typically recorded per standard practice of the Contracting Party. Once the User has accepted the Work per Section 5.5, the Contracting Party will provide one copy of the as-built plans to the User upon request.

6. BILLING METHOD AND PROCESS.

6.1. User Payment Requirement. The User shall pay for the Contracting Party's actual direct and related indirect cost of the Work, including any design, survey, engineering work, mobilization, construction engineering, contract administration and overhead costs for the Work. The Contracting Party shall send invoices to the User, providing with each invoice sufficient documentation and information to justify the costs. If requested by the User, the Contracting Party shall send any information or records in its possession that relate to and support any invoice. The User shall pay the invoice within thirty (30) calendar days of receipt; provided that if the User disagrees with all or part of the invoice, the User shall notify the Contracting Party in writing of the disagreement within twenty (20) calendar days of receipt of the invoice. The notice shall include an explanation of the disagreement and shall be supported by documentation and information, if any. The User shall pay all parts of an invoice that are not contested within the thirty-day period. The User shall pay a contested portion of an invoice within thirty (30) calendar days after the Parties resolve the disagreement.

6.2. Billing and Payments. Billing for services will be monthly until the Project is complete. Payments shall be remitted to the person identified in the request for Work.

6.3. Delinquent Payments. Costs that are not paid within the applicable periods in Section 6.1 shall be delinquent. Delinquent charges shall accrue interest from the date of delinquency until paid, at an interest rate of one percent (1%) per month.

6.4. Termination Right for Nonpayment. If the User fails to pay an invoice pursuant to Section 6.1, the Contracting Party shall have the right to terminate this Agreement, charging the User for the Contracting Party's associated costs of termination, including but not limited to non-cancellable items, delay costs, and unpaid contractor charges for the Work.

7. CHANGE IN WORK OR COST INCREASE.

7.1. Increase in Cost. Upon learning that the cost of the Work will exceed the contract amount or a change order approved amount (including sales tax, engineering, and contingencies) by more than ten percent (10%), the Contracting Party shall notify the User of such increase within five (5) working days of the date the Contracting Party learns of such cost increase.

7.2. Notice of Change in Work. If the Contracting Party desires to add to or change the Work, it shall give advance notice of such proposed addition or change to the User, except as provided in Section 7.3 for emergencies or safety threats. The User shall respond to the Contracting Party's request within five (5) working days. The Contracting Party cannot proceed with the addition or change to the Work unless the User approves the addition or change in writing. If the User fails to respond to the Contracting Party's request, the User shall be deemed to have denied the request. The User agrees to pay all costs associated with any User-approved addition or change to the Work, as well as the costs of project or Work delays and/or Contracting Party-approved contractor claims associated with the User's failure to respond timely.

7.3. Change in Work for Emergency. When the Contracting Party determines that a change

in the Work is required to respond to or mitigate a Project emergency or safety threat, the Contracting Party has authority to implement the change without the User's prior approval. The Contracting Party shall notify the User of such change and the basis for the emergency or safety threat as soon as possible thereafter. The User agrees to pay all costs associated with emergency or safety threat changes to the Work.

7.4. Changes or Additions to Work. The User may request in writing changes or additions to the Work, providing the necessary plans and specifications for the change or addition. The Contracting Party shall implement the requested change or addition, as requested by the User or as agreed to by the Contracting Party and the User, as long as the change or addition does not negatively impact the Contracting Party's Project and does not materially delay the Project Schedule, and the Contracting Party's Contractor agrees to carry out the change or addition. The Contracting Party shall respond to the request within five (5) working days, and if the change or addition is approved (as requested or amended by agreement), shall include in the response the terms and conditions of the approved change or addition, including the cost, if any. The User agrees to pay for the increases in Project cost, if any, for the approved changes or additions in accordance with Section 6 (Billing Method and Process).

7.5. Change Order Documentation. The Contracting Party shall make available to the User all change order documentation related to the changed Work.

7.6. Different Materials or Structures. The Contracting Party shall provide to the User within twenty-four (24) hours any request of the Project contractor to use different materials or structures for the Work. The User shall within five (5) working days advise the Contracting Party as to whether it accepts the different material or structure. If the User

fails to respond within five (5) working days, the Contracting Party's construction engineer will make a determination on the User's behalf.

8. PERMITS AND APPROVALS. The User shall be responsible to apply for and obtain all required permits and approvals for the Work. The User shall provide a copy of all permits and approvals to the Contracting Party at least forty-five (45) calendar days prior to the bid advertisement date for the Project or as agreed to by the Contracting Party.
9. RIGHT OF ENTRY. If necessary to carry out the Work, the User shall obtain rights of entry for the Contracting Party and its contractors upon all privately owned lands. The rights of entry may include reasonable entry and use restrictions. The User shall provide copies of the rights of entry to the Contracting Party within five (5) working days prior to the date of Notice to Proceed to the Contracting Party's contractor.
10. ADMINISTRATORS OF AGREEMENT. The County Manager and the Utility's General Manager, or their respective designees (individually, "Administrator," and collectively "Administrators"), shall administer this Agreement. Any and all such designations must be provided to the other party via notice. Unless provided otherwise in this Agreement, all notices shall be delivered to the Administrators as provided in Section 16.
11. DISPUTE RESOLUTION. The Administrators shall attempt to resolve any dispute informally.
 - 11.1. Mediation. Any dispute that cannot be resolved by the Administrators may be submitted to mediation at the request of either party.
 - 11.2. Legal Actions or Proceedings. In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this

Agreement, the Parties agree that any such action or proceedings shall be commenced in the Clark County Superior Court. Each Party shall be responsible for its own attorneys' fees and costs.

12. 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. Each Party shall retain all authority for provision of services, standards of performance, discipline and control of employees, and other matters incident to its performance of services pursuant to this Agreement. Nothing in this Agreement shall make any employee of the County an employee of the Utility or any employee of the Utility 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 to the employees by virtue of their employment.

13. HOLD HARMLESS/INDEMNIFICATION.

13.1. Indemnification. To the extent authorized by law, each Party shall indemnify and hold harmless the other Party and its employees, officers, contractors and agents, from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or cost, of whatsoever kind or nature to the extent such claim arises from that Party's negligence or its failure to perform any of its obligations under this Agreement. The terms of this section shall survive the termination of this Agreement.

13.2. Participation in Legal Action. In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against either Party, each Party retains the right to participate in said suit if any principle of public law is involved.

13.3. Worker's Compensation. 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 negligence of the first Party. Both Parties specifically acknowledge that the provisions contained herein have been mutually negotiated by the Parties.

14. ATTORNEYS FEES AND COSTS. The Parties shall bear their own costs of enforcing the rights and responsibilities under this Agreement.

15. NO THIRD PARTY BENEFICIARY. The County does not intend by this Agreement to assume any contractual obligations to anyone other than the Utility. The Utility does not intend by this Agreement to assume any contractual obligations to anyone other than the County. The County and Utility do not intend that there be any third-party beneficiary to this Agreement.

16. NOTICE. Unless provided otherwise in this Agreement, any notices to be given under this Agreement shall be delivered, postage prepaid and addressed to:

Clark Public Utilities
P.O. BOX 8900
Vancouver WA 98668
Attention: General Manager

Clark County
P.O BOX 9810
Vancouver WA 98666
Attention: County Manager

The name and address to which notices shall be directed may be changed by either Party by giving the other notice of such change as provided in this section.

17. WAIVER. No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or different provision.
18. TERM. The term of this Agreement is for a period of five (5) years, from the date set forth at the end of the Agreement.
19. EXTENSIONS. The term of this Agreement shall automatically be extended in one (1) year increments, up to a maximum of ten (10) additional years, without further authorization of the legislative bodies of the Parties.
20. TERMINATION. Either Party may choose to terminate this Agreement by notifying the other Party in writing ninety (90) days prior to termination.
21. INTERLOCAL COOPERATION ACT COMPLIANCE. This is an Agreement entered into pursuant to Chapter 39.34 RCW. Its purpose is as set forth in Section 1. Its duration is as specified in Sections 18 (Term) and 19 (Extensions). Its method of termination is set forth in Section 20 (Termination). Its manner of financing and of establishing and maintaining a budget therefore is described in Sections 6 (Billing Method and Process) and 7 (Change in Work or Cost Increase). No separate entity shall be created with this Agreement. No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.
22. 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.

23. AMENDMENT. The provisions of this Agreement may be amended with the mutual consent of the Parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized legislative bodies of both Parties, except as provided in previous Sections.

24. AUDIT AND RECORDS. During the progress of the Work and for a period of not less than three (3) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, the State of Washington, or the Federal Government, and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit has been resolved even though such litigation, claim or audit continues past the three-year retention period.

25. DOCUMENT EXECUTION AND FILING. The County and the Utility agree that there shall be two (2) duplicate originals of this Agreement procured and distributed for signature by the necessary officials of the County and the Utility. Upon execution, the County Administrator shall record a copy of the Agreement with the Clark County Auditor's Office. The Utility shall post a copy of this Agreement on the Utility's website pursuant to RCW 39.34.040. This Agreement shall become effective upon the execution of the originals and the recording of a copy of the Agreement with the Auditor's Office or the posting of a copy

on the Utility's website. Each duplicate original of the Agreement shall constitute an agreement binding upon both Parties.

26. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

27. SEVERABILITY. If any section or part of this Agreement is held by a court to be invalid, such action shall not affect the validity of any other part of this Agreement.

IN WITNESS WHEREOF, the County and the Utility have caused this Agreement to be executed by their duly authorized officers on 7th day of July, 2020.

CLARK COUNTY

By: Kathleen Otto
Kathleen Otto
Interim County Manager

Approved as to form:

Anthony F. Golik, Prosecuting Attorney

By: Bill Richardson
Bill Richardson
Deputy Prosecuting Attorney

CLARK PUBLIC UTILITIES

By: Lena Wittler
Lena Wittler
General Manager/Chief Executive Officer

Approved as to form:

By: John R. Eldridge
John R. Eldridge
Senior Legal Counsel

Interlocal Agreement with Clark Public Utilities

Clark County Public Works



Interlocal Agreement with Clark Public Utilities

- Clark County Public Works and Clark Public Utilities have historically worked together to coordinate, plan, and construct public works infrastructure.
- This agreement authorizes Public Works to include CPU work, typically new water service infrastructure, in county construction projects, on a case-by-case basis.
- This has the benefit of having the utility design integrated with the roadway design and having one contractor coordinate the construction of both the roadway and utility work, saving time and money.
- This agreement conforms to the Revised Code of Washington (RCW) Chapter 39.34 – Interlocal Cooperation Act

