

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF VANCOUVER AND
CLARK COMMUNITY COLLEGE**

THIS IS AN INTERLOCAL AGREEMENT, entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, between Clark Community College, a municipal corporation of the State of Washington (“the College”), and The City of Vancouver, a municipal corporation and charter city of the first class of the State of Washington, (the “City”).

WHEREAS, pursuant to Chapter 39.34 RCW (Interlocal Cooperation Act), any powers, privileges or authority exercised or capable of exercise by a public agency of this state may be enjoyed jointly with an other public agency of this state having the same or similar powers, privileges and authority; and

WHEREAS, the College buildings and parking lots are located on both sides of the Fort Vancouver Way which results in frequent pedestrian crossing of the public way, and

WHEREAS, the College wishes to accommodate students, visitors and faculty with pedestrian crossing facilities at entrances to the campus on Fort Vancouver way; and

WHEREAS, the existing marked pedestrian crossings on said street are enhanced with flashing beacons; and

WHEREAS, despite the existence of traffic control devices, some drivers fail to stop when pedestrians are present at crosswalks; and

WHEREAS, a high-intensity activated crosswalk signal (HAWK) is an additional traffic control device that operates similarly to a red traffic light and which has been demonstrated to cause greater driver compliance when pedestrians enter a crosswalk; and

WHEREAS, the City of Vancouver has funded a project that would replace existing traffic control devices at one of the pedestrian crossings on Fort Vancouver Way and replace it with a more restricted system (HAWK signal); and

WHEREAS, during the design of the said project it was realized that the nearest Clark Public Utility (CPU) transformer to power the HAWK signal is located at the intersection of McLoughlin and Fort Vancouver Way, and

WHEREAS, the cost of bringing electrical power from such transformer is prohibitively high and the City would not be able to complete the project within existing budget if that source is used; and

WHEREAS, a transformer College-owned is located near the subject HAWK project; and

WHEREAS, through the initial meetings between the City and the College, both parties showed interest in solving the problem in a mutually beneficial manner, including allowing the City to connect to such transformer to power the proposed HAWK.

NOW, THEREFORE,

The College AND the City agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is for the College to grant the City an easement, as described in Exhibits A and B, and to allow the City to use the College's electrical transformer identified in Exhibit C, in order for the City to construct a new electrical conduit through a portion of the college's parking lot to serve a high-intensity activated

crosswalk signal (HAWK) control device at one of the pedestrian crossings adjacent to the College on Fort Vancouver Way..

A. The College agrees to the following:

1. Allow the City of Vancouver to use 120V service from the College's transformer identified in Exhibit C and located on Clark College property approximately 150 feet NE of the proposed HAWK signal site for the purpose of operating the HAWK signal and any safety light that is required.
2. Grant an easement to the City for access to the electrical conduit and the transformer located on the portion of the parking lot owned by the College, said easement to be in the form attached and as described in Exhibits A and B.

B. The City agrees to do the following:

1. Design and build conduit run and wiring for electrical service between the said transformer and the City's right of way and the HAWK signal controller cabinet, in accordance with specifications that are approved by the College.
2. Install an electrical meter attached to the transformer enclosure or nearby to measure the HAWK signal electrical usage.
3. Comply with all Washington State prevailing wage laws and regulations.
4. Reimburse the College for all costs occurred during the construction and incidental to the operation of the signal HAWK.
5. Reimburse the College for all electrical usage by the HAWK signal system and the safety lights installed by the project. The College will read the electrical meter attached to the HAWK signal annually and submit an invoice to the City based on

the amount of electricity used and the average cost per KwHr as determined by PUD invoices

6. Invite College representatives to the pre-construction meetings and coordinate with the College during the construction and installation of the service line and the meter.

7. Grant permission for the College to inspect the construction of the service line and the meter usage.

SECTION 2. TERM. The term of this Agreement is for the period from November 1st, 2009 and shall continue unless or until either party terminates the Agreement pursuant to Section 3 of this Agreement.

SECTION 3. TERMINATION. Either party may choose to terminate this Agreement by notifying the other party in writing (90) days prior to termination. When either party determines that such termination is in its best interest, termination will become effective ninety (90) days after receipt of the letter of intent to terminate.

SECTION 4. COSTS. The City shall pay all costs associated with the design, installation, repair, expansion, and/or removal of any and all City owned utility lines and signal equipments installed on both the City owned and College owned portions of the project.

SECTION 5. ADMINISTRATION/COMMUNICATIONS. Managers designated by the Clark Community College President and the City Manager shall administer this Agreement. The respective managers shall monitor all activities described in this Agreement, and shall communicate via telephone or e-mail to relay information, answer questions, or raise concerns.

SECTION 6. DISPUTE RESOLUTION. In the event of a dispute between the College and the City of Vancouver regarding any matter pertaining to this Agreement which cannot be

resolved by their respective designated managers, the Clark Community College President and the Vancouver City Manager or their designated representatives shall review such dispute and options for resolution. Any dispute not resolved by the representatives shall be referred to the Clark Community College President and City Manager. The decision of the Clark Community College President and the City Manager regarding the dispute shall be final as between the parties.

SECTION 7. NO EMPLOYER/EMPLOYEE RELATIONSHIP ESTABLISHED.

Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the College and the City, or between any of the College's or the City's employees. Vancouver shall retain all authority for provision of services, standards of performance, discipline and control of personnel, and other matters incident to the performance of any utility services by Vancouver pursuant to this Agreement. Nothing in this Agreement shall make any employee of the College an employee of the City or any employee of the City an employee of the College for any purpose, including but not limited to, for withholding taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges according to their respective employees by virtue of their employment.

SECTION 8. CIVIL RIGHTS ACT. In accordance with Title VI of the Civil Rights Act, the College and the City agree that they will not discriminate against any employee because of race, color, creed, national origin, sex, age, or disability.

SECTION 9. HOLD HARMLESS/INDEMNIFICATION

A. COLLEGE RESPONSIBILITY. The College agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and

expenses incurred in connection, or whatsoever kind or nature, arising out of, or in connection with, or incident to, any act undertaken by the College pursuant to this Agreement.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, the City retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the City by any employee of the College or subcontractor or agent of the College, even if the College is thus otherwise immune from liability pursuant to workers' compensation statute, Title 51 RCW.

B. CITY RESPONSIBILITY. The City agrees to indemnify, defend, save and hold harmless the College, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, any act undertaken by the City pursuant to this Agreement.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the City, the College retains the right to participate in said suit if any principal of public law is involved.

This indemnity and hold harmless shall include any claim made against the College by an employee of the City or subcontractor or agent of the City, even if the City is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW.

C. ATTORNEYS FEES AND COSTS. Except as provided in Sections A and B of this Section 9, all parties shall bear their own costs enforcing the rights and responsibilities under the contract.

SECTION 10. ADHERENCE TO LAW. The City and the College will be required to comply with all applicable Federal, State, and local laws and requirements.

SECTION 11. PROHIBITED INTEREST. The City's and the College's officers, employees, or agents shall neither solicit nor accept gratuities, favor, or anything of monetary value.

SECTION 12. ASSIGNMENT/SUBCONTRACTION. Neither party shall transfer or assign, in whole or in part, any or all of its respective rights or obligations under this Agreement without the prior written consent of the other party.

SECTION 13. NO THIRD PARTY BENEFICIARY. The College does not intend by this Agreement to assume any contractual obligations to anyone other than the City. The City does not intend by this agreement to assume any contractual obligations to anyone other than the College. The College and City do no intend there be any third-party beneficiary to this Agreement.

SECTION 14. NOTICE. Any notices to be given under this Agreement shall at minimum be delivered, postage prepaid and address to:

To the City:

CITY OF VANCOUVER
P.O. Box 1995
Vancouver, Washington 98668-1995
Attention: Manager, City Transportation Department

To Clark Community College:

CLARK COLLEGE
1800 E. McLoughlin BLVD.
Vancouver, Washington 98663-3598
Attention: Jim Green, Director of Facilities Services

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

SECTION 15. 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 Section 2 (Term). Its method of termination is set forth in Section 3. Its manner of financing and of establishing and maintaining a budget therefore is described in Section 4 (Costs). No property shall be acquired pursuant to this Agreement which will need to be disposed of upon partial or complete termination of this Agreement.

SECTION 16. 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 contrary.

SECTION 17. 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 agents of both parties, provided that pursuant to this Agreement.

SECTION 18. ADMINISTRATION, AUDITS, INSPECTIONS, AND RETENTION OF RECORDS. This Agreement shall be administered jointly by the City Engineer and the Clark Community College President. Both the City and the College and any of its representatives shall have full access to and the right to examine, during normal business hours with at least twenty-four (24) consecutive hours advance notice, all of each others records with respect to all matters covered by this Agreement. All documents, papers, accounting records, and other materials pertaining to this Agreement shall be retained by the City and the College for at least six (6) years from the date of completion of any activity conducted covered by this Agreement.

SECTION 19. DOCUMENT EXECUTION AND FILING. The College and the City agree that there shall be four (4) signed originals of this Agreement procured and distributed for signature by the necessary officials of the College and the City. Upon execution, executed originals of this Agreement shall be retained by the Vancouver City Clerk and by the College. The Vancouver City Clerk shall cause a copy of this Agreement to be posted on the City website pursuant to Chapter 32, Laws of Washington 2006 (RCW 39.34.040). Upon execution of the originals and posting of a copy on the City's website, each such duplicate original shall constitute an agreement binding upon the parties.

SECTION 20. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

SECTION 21. 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 College and the City 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 ____ day of _____, 2009.

FOR CLARK COLLEGE
A Community College organized
under Chapter 28B RCW

CITY OF VANCOUVER
A Washington Municipal Corporation

Robert K. Knight, President

Pat McDonnell, City Manager

Attest:

Attest:

For Clark College

R. Lloyd Tyler, City Clerk
By: Carrie Lewellen, Deputy City Clerk

Date: _____

Approved as to form:

Clark College Attorney

Date: _____

Approved as to form

Ted H. Gathe, City Attorney

Date: _____

