

SECOND AMENDMENT
TO AGREEMENT CC-100004
BETWEEN PIERCE COUNTY AND THE CITY OF MILTON

THIS SECOND AMENDMENT is entered into by and between PIERCE COUNTY, a political subdivision of the State of Washington, hereinafter referred to as "COUNTY," and the undersigned, CITY OF MILTON, a municipal corporation of the State of Washington, hereinafter referred to as "CITY".

WHEREAS, the parties have previously entered into an Agreement dated December 21, 2010, regarding traffic maintenance services; and

WHEREAS, the parties executed a First Amendment on September 26, 2013 to modify Section 2 and Section 3; and

WHEREAS, the parties desire to execute a Second Amendment to modify Section 2 County Obligations, Section 3 City Obligations and replace Section 5 Compensation and Billing Procedure,

NOW THEREFORE, in consideration of the mutual benefits and advantages to be derived by each of the parties,

IS IT HEREBY AGREED as follows:

1. The AGREEMENT number CC-100004 shall be amended to modify Section 2 and Section 3 and replace Section 5, as shown in Attachment 1.
2. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL AGREEMENT AND ALL SUPPLEMENTS, MODIFICATIONS, AND AMENDMENTS THERETO SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 9th day of August, 2019.

CITY OF MILTON

PIERCE COUNTY:

Approved as to form only:

By: [Signature] 8-23-19
Mayor Date

By: [Signature] 9-3-19
Deputy Prosecuting Attorney Date

Approved:

By: [Signature] 9/3/19
Department Director Date

By: [Signature] 9/10/19
Finance Director Date

Attachment 1

The terms and conditions of the original agreement and amendment 1 shall remain in full force and effect.

Section 2 of the original agreement is modified to add the following:

De-icing/Anti-icing products will be available at the COUNTY's discretion.

Section 3 of the original agreement is modified as follows:

SECTION 3. CITY OBLIGATIONS. It is the responsibility of the CITY to contract the COUNTY Traffic Operations Center to request the services described in Section 2 of this Agreement as needed. The CITY shall provide the COUNTY with a list of CITY personnel who are authorized to request these services. The CITY is obligated to pay for these services pursuant to Section 5 of the Agreement.

~~— The CITY shall cause this Agreement to be recorded with the Pierce County Auditor or, alternatively, to be listed on a public agency's web site of other electronically retrievable public source.~~

Section 5 of the original agreement is replaced in its entirety with the section below.

SECTION 5. COMPENSATION AND BILLING PROCEDURE. In consideration for the provision described herein, the CITY agrees to pay the COUNTY up to \$85,000.00 per calendar year to complete assigned maintenance services. The CITY certifies that sufficient budgeted funds are available to cover the costs of the requested services and agrees to make payment to the COUNTY.

In consideration for the provision of maintenance services described herein, the CITY agrees to pay the COUNTY for the actual work completed based on monthly billings and in accordance with the provisions of Section 2 and 3 above. Monthly billings will be calculated as indicated below:

- A. Labor cost rates will be calculated based on the County's labor cost rates in effect during the period of service performance. Labor cost rates will be calculated based on the hours worked (in .1 increments) for in a specific job class and billed the CITY. The labor cost rates will include all Maintenance and Department Administration costs, as well as material and supply markup costs. No office costs related to management or maintenance will be charged directly.
- B. Equipment cost rates will be calculated based on the County's equipment rental rate in effect during the period of service performance. Equipment charges will be

calculated based on the hours in use (in .1 increments) for each type of equipment and billed to the CITY.

- C. Materials and supplies will be billed at cost.
- D. The costs of services as outlined will be calculated and invoiced based on the services or supplies provided in a previous month. The County will make every effort to bill the monthly charges by the thirtieth (30th) day of the following month. Payments by the CITY will be due within thirty days of receipt of the invoice. Monthly payments that are not paid within the allotted time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (.5%) per month.
- E. The billing rates for labor and equipment related to providing the functions and services each year shall be adjusted annually, effective January 1st of each year to reflect current costs. Increases in the costs that are the results of changes in regulatory requirements will also be included in any increases to billing rates. A list of labor and/or equipment cost rates can be provided upon request.

**FIRST AMENDMENT TO THE
AGREEMENT BETWEEN
PIERCE COUNTY AND CITY OF MILTON
REGARDING TRAFFIC SIGNAL MAINTENANCE SERVICES**

THIS FIRST AMENDMENT is made and entered into this day by and between PIERCE COUNTY, a political subdivision of the State of Washington (herein referred to as "COUNTY") and CITY OF MILTON, a municipal corporation of the State of Washington (herein referred to as "CITY").

WHEREAS, the parties previously entered into an Agreement dated December 21, 2010 for the COUNTY to provide emergency, back-up, routine and preventative traffic signal maintenance and repair services on an on-call, as needed basis; and

WHEREAS, the CITY has now identified a need for additional traffic maintenance services on an on-call, as-needed basis as requested by the CITY which the COUNTY has determined it can provide; and

WHEREAS, the parties desire to execute a first amendment to the Agreement to add additional traffic and maintenance services on an on-call, as needed basis;

NOW, THEREFORE, it is hereby agreed to as follows:

1. SECTION 2. **COUNTY OBLIGATIONS** and SECTION 3. **CITY OBLIGATIONS** of the Agreement shall be amended to add additional traffic maintenance services as shown in Exhibit 1 to this amendment.

2. ALL OTHER TERMS AND CONDITIONS OF THE ORIGINAL AGREEMENT AND ALL SUPPLEMENTS, MODIFICATIONS, AND AMENDMENTS THERETO SHALL REMAIN IN FULL FORCE AND EFFECT.

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IN WITNESS WHEREOF, the parties hereto have caused this amendment to be duly executed, such parties acting by their representatives being thereunto duly authorized.

DATED this 26TH day of SEPT., 2013.

CITY OF MILTON

By: [Signature] 9/26/2013
Date

Title: MAYOR

PIERCE COUNTY:

Approved as to Legal Form Only:

By: [Signature] 9/13/2013
Prosecuting Attorney Date

Recommended:

By: [Signature] 8/20/13
Budget and Finance Date

Approved:

By: [Signature] 8/9/13
Department Director Date
(less than \$250,000)

By: [Signature]
County Executive (over \$250,000) Date

Exhibit I

SECTION 2. COUNTY OBLIGATIONS. The COUNTY shall provide the personnel, equipment, and materials deemed by the COUNTY as necessary to provide ~~the emergency and routine preventative services for traffic signal maintenance and repair to the CITY when requested by the CITY on an on-call, as needed basis~~ the following services for the CITY under the direction and control of the CITY on an on-call, as needed basis:

Traffic maintenance and operations services, including but not limited to, traffic signals, street lighting, traffic signs, roadway markings, raised pavement markers, and minor engineering projects

The COUNTY represents that it has the necessary personnel, equipment, materials, supplies, knowledge, skill and experience to provide the services described in this section and required by this Agreement. The COUNTY and any persons employed by it shall use their best efforts to perform the work in a professional manner consistent with sound practices, in accordance with the usual and customary professional care required for services of the type described herein.

The COUNTY is responsible for the direct supervision of its employees. The COUNTY shall be reasonably available to confer with the CITY in regards to services. The COUNTY commits that its services will be performed by careful and efficient employees trained in the best practice and highest standards imposed by the COUNTY.

The COUNTY in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

SECTION 3. CITY OBLIGATIONS. It is the responsibility of the CITY to contract the COUNTY Traffic Operations Center to request the services described in Section 2 of this Agreement as needed. The CITY shall provide the COUNTY with a list of CITY personnel who are authorized to request these services. The CITY is obligated to pay for these services pursuant to Section 5 of the Agreement.

The CITY shall cause this Agreement to be recorded with the Pierce County Auditor or, alternatively, to be listed on a public agency's web site of other electronically retrievable public source.

**AGREEMENT BETWEEN
PIERCE COUNTY AND CITY OF MILTON
REGARDING TRAFFIC SIGNAL MAINTENANCE SERVICES**

THIS AGREEMENT is entered into this day by and between **PIERCE COUNTY**, a political subdivision of the State of Washington (herein referred to as "COUNTY") and the **CITY OF MILTON**, a municipal corporation of the State of Washington (herein referred to as "CITY").

WHEREAS, the CITY has determined that it is in the CITY'S interest to contract with the COUNTY for traffic signal maintenance and repair services at certain intersections;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the COUNTY and CITY as follows:

SECTION 1. PURPOSE. The purpose of this agreement is to provide for emergency, back-up, routine, and preventative traffic signal maintenance and repair services on an on-call, as needed basis for the CITY as directed by the CITY and to memorialize the agreement between the parties relating to these traffic signal maintenance and repair services.

SECTION 2. COUNTY OBLIGATIONS. The COUNTY shall provide the personnel, equipment, and materials deemed by the COUNTY as necessary to provide the emergency and routine preventative services for traffic signal maintenance and repair to the CITY when requested by the CITY on an on-call, as needed basis.

The COUNTY represents that it has the necessary personnel, equipment, materials, supplies, knowledge, skill and experience to provide the services described in this section and required by this Agreement. The COUNTY and any persons employed by it shall use their best efforts to perform the work in a professional manner consistent with sound practices, in accordance with the usual and customary professional care required for services of the type described herein.

The COUNTY is responsible for the direct supervision of its employees. The COUNTY shall be reasonably available to confer with the CITY in regards to services. The COUNTY commits that its services will be performed by careful and efficient employees trained in the best practice and highest standards imposed by the COUNTY.

The COUNTY in the performance of this Agreement shall comply with all applicable Federal, State or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in the Agreement to assure quality of services.

SECTION 3. CITY OBLIGATIONS. It is the responsibility of the CITY to contact the COUNTY Traffic Operations Center to request the services described in Section 2 of this Agreement as needed. The CITY shall provide the COUNTY with a list of CITY personnel who

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City of Milton
Public Works

are authorized to request these services.

The CITY shall cause this Agreement to be recorded with the Pierce County Auditor or, alternatively, to be listed by subject on a public agency's web site or other electronically retrievable public source.

SECTION 4. TERM OF THE AGREEMENT. Unless sooner terminated as provided elsewhere in the Agreement, this Agreement shall have an initial term commencing on the date of execution of this Agreement and ending on December 31, 2011. After which, the contract shall be automatically renewed annually on January 1 of each year for an additional one year term, unless either party gives notice of non-renewal not less than 60 days prior to the expiration of the then current term.

SECTION 5. COMPENSATION AND BILLING PROCEDURE

5.1. **Costs.** In consideration for the provision of services described herein, the CITY agrees to pay the COUNTY for the actual work completed. All services provided by the COUNTY will be billed based on a labor, equipment, and materials basis at the prices then in effect, as described below.

- 5.1.1 The labor rate, inclusive of wages and benefits, billed to the CITY shall be the rate in effect when the labor is provided increased by thirty percent (30%) to account for administrative overhead. The rate of overhead includes Maintenance Administration costs and Department Administration costs. No supervision or maintenance office costs will be charged directly. Labor performed on an overtime basis shall be billed at the applicable overtime rate when the labor is provided, currently 150% (or 200% for work performed on Sundays) of the base hourly rate, inclusive of wages and benefits, and shall be increased by thirty percent (30%) to account for administrative overhead.
- 5.1.2 Equipment use will be charged to the CITY based upon the hours used and at the Pierce County Equipment Services Division (ESD) rental rate. A five percent (5%) administrative fee will be assessed for processing.
- 5.1.3 Materials and supplies, including inventory stocked items, will be billed at cost plus a ten percent (10%) administrative processing fee.

Upon request, the COUNTY shall timely provide the then current rates for labor, overtime and Pierce County Equipment Services Division rentals, and the cost of materials and supplies referenced in Section 5, and supporting documentation of bills submitted for payment under this Agreement.

5.2. **Billings.** The costs of services as outlined will be billed on a monthly basis or upon completion of the work by the COUNTY. Billing shall be itemized to describe the services provided including but not limited to quantities and unit costs for labor, equipment, materials and supplies, and shall be sufficiently detailed to verify the validity thereof. Payments by the CITY will be due within thirty days of receipt of billing. Payments that are not paid within the allotted

time period shall be considered delinquent. Delinquent charges shall accrue interest on the unpaid balance, from the date of delinquency until paid, at an interest rate of one half of one percent (0.5%) per month.

The COUNTY shall maintain all records, receipts and invoices, including payroll records, necessary to sufficiently and properly reflect the billings associated with this Agreement. The aforementioned documents shall be subject to reasonable inspection and audit by representatives of CITY or the State Auditor upon request.

SECTION 6. INDEMNIFICATION AND DEFENSE. The COUNTY shall defend, indemnify, and save harmless the CITY, its elected and appointed officials, representatives, employees, and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the COUNTY, its officers, employees, or agents associated with this Agreement. In executing this Agreement, the COUNTY does not assume liability or responsibility for or in any way releases the CITY from any liability or responsibility which arises in whole or in part from the existence or effect of CITY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such CITY ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the CITY shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the CITY, the COUNTY, or both, the CITY shall satisfy the same, including all chargeable costs and attorney's service charges.

The COUNTY specifically promises to indemnify the CITY against claims or suits brought under Title 51 RCW by its agent, employees, representatives or subcontractors and waives any immunity that the COUNTY may have under that title with respect to, but only to, the CITY.

The CITY shall defend, indemnify and save harmless the COUNTY, its elected and appointed officials, representatives, employees and agents from any and all costs, claims, judgments, or awards of damages, resulting from the acts or omissions of the CITY, its officers, employees or agents associated with this Agreement. In executing this Agreement, the CITY does not assume liability or responsibility for or in any way release the COUNTY from any liability or responsibility which arises in whole or in part from the existence or effect of COUNTY ordinances, rules, regulations, resolutions, customs, policies, or practices. If any cause, claim, suit, action, or administrative proceeding is commenced in which the enforceability and/or validity of any such COUNTY ordinance, rule, regulation, resolution, custom, policy, or practice is at issue, the COUNTY shall defend the same at its sole expense, and if judgment is entered or damages are awarded against the COUNTY, the CITY, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's service charges.

The CITY specifically promises to indemnify the COUNTY against claims or suits brought under Title 51 RCW by its agent, employees, representatives or subcontractors and waives any immunity that the CITY may have under that title with respect to, but only to, the COUNTY.

This section shall survive the termination of this Agreement.

SECTION 7. NO THIRD-PARTY BENEFICIARY. The COUNTY does not intend by this Agreement to assume any contractual obligations to anyone other than the CITY, and the CITY does not intend by this Agreement to assume any contractual obligations to anyone other than the COUNTY. The COUNTY and the CITY do not intend that there be any third-party beneficiary to this Agreement.

SECTION 8. INSURANCE COVERAGE. The COUNTY and the CITY shall maintain at all times during the course of this Agreement a general liability insurance policy or other comparable coverage with a self-insured retention of no more than \$2,000,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

SECTION 9. NON-DISCRIMINATION. The COUNTY and the CITY certify that they are Equal Opportunity Employers.

SECTION 10. DEBARMENT AND SUSPENSION CERTIFICATION. Both the County and the municipal corporation certifies to the best of their respective knowledge and belief, that they and their principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the County and/or the municipal corporation are unable to certify to any of the statements in this certification, they shall attach an explanation to this agreement.

SECTION 11. ASSIGNMENT. Neither the COUNTY nor the CITY shall 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.

SECTION 12. NOTICE. Any formal notice or communication to be given by the COUNTY to the CITY under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF MILTON
Public Works Director

1000 Laurel Street
Milton, WA 98354

Any formal notice or communication to be given by the CITY to the COUNTY under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

Pierce County Public Works and Utilities Department
2702 South 42nd Street, Suite 201
Tacoma, WA 98409-7322
Attention: County Traffic Engineer

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the CITY or the COUNTY giving notice thereof to the other as herein provided.

SECTION 13. COUNTY AS INDEPENDENT CONTRACTOR. COUNTY is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between CITY and COUNTY or any of the COUNTY's agents or employees. The COUNTY shall retain all authority for rendition of services, standards of performance, control of personnel, and other matters incident to the performance of services by COUNTY pursuant to this Agreement.

No agent, employee or representative of the COUNTY shall be deemed to be an agent, employee or representative of the CITY for any purpose. COUNTY shall be solely responsible for all acts of its agents, employees, representatives and subcontractors during the performance of this Agreement. Notwithstanding the COUNTY's status as an independent contractor, results of the work performed pursuant to this agreement must meet the approval of the CITY.

Nothing in this Agreement shall make any employee of the CITY a COUNTY employee or any employee of the COUNTY a CITY employee for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded COUNTY or CITY employees by virtue of their employment.

SECTION 14. 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 a different provision of this Agreement.

SECTION 15. ENTIRE AGREEMENT. This Agreement contains all of the Agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

SECTION 16. AMENDMENT. Provisions within this Agreement may be amended with the mutual consent of the parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly

authorized agents of both parties.

SECTION 17. NO REAL PROPERTY ACQUISITION OR JOINT FINANCING.

This Agreement does not provide for the acquisition, holding or disposal of real property. Nor does this Agreement contemplate the financing of any joint or cooperative undertaking. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement.

SECTION 18. SEVERABILITY.

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect; except for Section 13, which if held illegal, invalid or unenforceable, this Agreement shall terminate immediately.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 21st day of December, 2010.

CITY OF MILTON

Katrina Asay
Title: Mayor

Date: 11/20/2010

Approved as to Form:

David Park
Bio F. Park, City Attorney

PIERCE COUNTY

Tom Park 12/3/10
DEPARTMENT DIRECTOR Date

J. Z...
DEP. PROSECUTING ATTY Date
(as to legal form only)

P. Kemmer 12-21
BUDGET AND FINANCE Date

/
RISK MANAGER Date

N/A
COUNTY EXECUTIVE Date
(if over \$250,000)