

RESOLUTION NO. 275

A RESOLUTION OF THE TOWN OF SOUTH PRAIRIE, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN PIERCE COUNTY AND THE TOWN OF SOUTH PRAIRIE REGARDING ROAD MAINTENANCE SERVICES.

Whereas, the Town is in need of road maintenance services, and

Whereas, Pierce County is willing to provide such services, and

Whereas, the maintenance of the Town's roads are essential for the delivery of public health, safety and welfare to the citizens of the Town, and

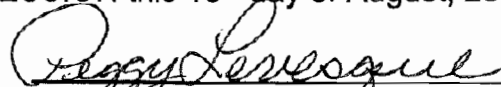
Whereas, the agreement attached hereto and the maintenance of roads is consistent with the Comprehensive Plan and the Capital Facilities Plan.

Now, therefore, the Town Council of the Town of South Prairie, Pierce County, Washington do hereby resolve as follows:

Section 1: That the Mayor is authorized to enter into the Memorandum of Agreement between Pierce County and the Town of South Prairie Regarding Road Maintenance Services attached hereto and incorporated by reference as Exhibit "1" as if set out in full.

Section 2: If any provision of the exhibit attached hereto, or this resolution, is determined to be invalid or unenforceable for any reason, the remaining provisions of the attached agreement and/or this resolution shall remain in force and affect.

PASSED IN REGULAR AND OPEN SESSION this 15th day of August, 2006.


Mayor Peggy Levesque
INTRODUCED 8-15-06
PASSED 8-15-06
APPROVED 8-15-06
PUBLISHED 8-30-06

Attested:

Marla Nevill
Marla Nevill
Town Clerk

Approved as to form:

Michael J. Reynolds
Michael J. Reynolds
Town Attorney

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Draft No.: 1
Draft Date: 8-14-06
Resolution Requested By:
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**MEMORANDUM OF AGREEMENT
BETWEEN PIERCE COUNTY AND THE TOWN OF SOUTH PRAIRIE
REGARDING ROAD 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 undersigned, **SOUTH PRAIRIE**, Town of the State of Washington (herein referred to as TOWN).

WHEREAS, the TOWN has a need for specific road maintenance services and has requested said services as described below to be performed by the Pierce County Public Works and Utilities, Road Operations Division.

WHEREAS, the County agrees to perform the work described below at the convenience of the Pierce County Public Works Department and that the TOWN will reimburse the County for all costs incurred.

WHEREAS, the parties are authorized to enter into such agreements by virtue of RCW Chapter 39.34;

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

SECTION 1. PURPOSE. The purpose of this agreement is to establish the rights, duties and responsibilities of the parties with regards to the road maintenance services requested by the City and any costs associated with this work.

SECTION 2. COUNTY'S RESPONSIBILITY. The COUNTY will perform the following services for the TOWN, on an as needed basis during 2006.

The COUNTY will perform miscellaneous road maintenance tasks for the TOWN on an as needed basis during 2006: Typical work activities consist of mowing, brush cutting, street sweeping, drainage system cleaning, crack sealing, hot mix asphalt pre-level patching, pavement repair, etc.

SECTION 3. TOWN'S RESPONSIBILITY. the TOWN has agreed to pay up to the estimated amount of **\$3,000.00** to complete the above described work or services and has agreed to an estimated completion date of **December 31st, 2006**. The TOWN certifies that sufficient budgeted funds are available to cover the costs of the requested work or services, and agrees to make payment to the Pierce County Road Fund.

SECTION 4. COMPENSATION AND BILLING PROCEDURE. In consideration for the provision of repair services described herein, the TOWN 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. The labor rate billed to the Town shall be increased by thirty percent (30%) to account for administration overhead. The rate of overhead includes Maintenance Administration costs and Department Administration costs. No supervision or maintenance office costs will be charged directly.
- B. Equipment use will be charged to the Town based upon the hours used times the Pierce County Equipment Services Division (ESD) rental rate. A five percent (5%) administration charge will be assessed for processing.
- C. Materials and supplies will be billed at cost plus a ten percent (10%) administration processing fee. ESD inventory stocked items will be billed at the Pierce County ESD materials rate.
- D. The costs of services as outlined will be billed no later than the thirtieth (30th) day of the month by the County based on services provided in the previous month. Payments by the Town will be due within thirty days of receipt of the billing. 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 after 1998 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 be included in any increases to billing rates after 1998.

SECTION 5. DURATION. This Agreement shall remain in full force and effect upon the date that the last signature is affixed hereto until midnight December 31, 2006, unless otherwise renewed in writing by both parties.

SECTION 6. INDEMNITY AND HOLD HARMLESS. The COUNTY shall defend, indemnify and save harmless the TOWN, its officers, 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 release the TOWN from any liability or responsibility to the extent that such liability or responsibility arises from the existence or effect of TOWN 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 TOWN ordinance, rule, regulation, resolution, custom, policy or practice is at issue, the TOWN shall defend the same at its sole expense and if judgment is entered or damages are awarded against the TOWN, the COUNTY, or both, the TOWN shall satisfy the same, including all chargeable costs and attorney's fees.

The TOWN shall defend, indemnify and save harmless the COUNTY, its officers, employees and agents from any and all costs, claims, judgments or awards of damages, resulting from the acts or omissions of the TOWN, its officers, employees or agents associated with this agreement. In executing this agreement, the TOWN does not assume liability or responsibility for or release the COUNTY from any liability or responsibility to the extent that such liability or responsibility arises 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 TOWN, or both, the COUNTY shall satisfy the same, including all chargeable costs and attorney's fees.

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

SECTION 8. INSURANCE COVERAGE. The TOWN 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 \$500,000.00 and a policy limit of no less than \$5,000,000.00 dollars.

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

SECTION 10. ASSIGNMENT. Neither the COUNTY nor the TOWN 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 11. NOTICE. Any formal notice or communication to be given by the COUNTY to the TOWN under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

121 NW Washington St
P.O. Box F
South Prairie, WA 98385

Any formal notice or communication to be given by the TOWN 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
Road Operations Administration
3619 Pacific Ave
Tacoma, WA 98418
Attention: Road Maintenance Manager

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 TOWN or the COUNTY giving notice thereof to the other as herein provided.

SECTION 12. 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 13. 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 14. 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 15. 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.

SECTION 16. TERMINATION FOR CESSATION OF USE. In the event that City ceases continuous use of its culvert and barrier for one year this agreement and all rights hereunder shall terminate and revert to County's. Upon expiration of the continuous use of its easement as set forth herein, City shall immediately execute a written release of this easement in favor of County's.

SECTION 17. CHOICE OF LAW, JURISDICTION AND VENUE. This agreement shall be governed by, construed, and enforced in accordance with the laws and regulations of the United States, the State of Washington, and the ordinances of the Pierce County

SECTION 18. ATTORNEY FEES AND COSTS. In the event of any controversy, claim, or dispute arising out of or in any way relating to this agreement or its breach, the prevailing party shall be entitled to recover its cost and reasonable attorney fees.

IN WITNESS WHERE OF, the parties have caused this Agreement to be executed on this 15th day of AUGUST, 2006.

TOWN OF SOUTH PRAIRIE

Peggy Levesque 8/15/06
Mayor Date

Marla Nevill 8/24/06
ATTEST: Date

Marla Nevill 8/24/06
City Clerk Date

[Signature] 8/29/06
Approved as to Form: Date

[Signature] 8/29/06
South Prairie Town Attorney Date

PIERCE COUNTY

DEPARTMENT DIRECTOR Date

DEP. PROSECUTING ATTY Date
(as to form only)

BUDGET AND FINANCE Date

EXECUTIVE DIRECTOR Date
(if applicable)

RISK MANAGER Date

COUNTY EXECUTIVE Date
(if over \$50,000)