

AGREEMENT  
between the  
CITY OF COLLEGE PLACE  
and the  
CITY OF WALLA WALLA  
re: MYRA ROAD EXTENSION BETWEEN  
DALLES MILITARY ROAD/SE 12<sup>TH</sup> STREET & SR 125

This agreement is entered into this 13<sup>th</sup> day of June, 2007, between the City of College Place (hereafter "College Place") and the City of Walla Walla (hereafter "Walla Walla"), both which are municipal corporations established under the laws of the State of Washington.

RECITALS

1. Walla Walla is a non-chartered code city located in Walla Walla County, Washington, and is authorized by RCW Ch. 39.34 to enter into intergovernmental agreements.
2. College Place is a non-chartered code city located in Walla Walla County, Washington, immediately adjacent to Walla Walla, and is authorized by RCW Ch. 39.34 to enter into intergovernmental agreements.
3. The City of Walla Walla is the owner of the following described property:

Commencing at the point of intersection of the southerly right of way line of the Dalles Military Road with the west line of Section 31, Township 7 north, Range 36 east of the Willamette Meridian; thence north 61°43'00" east, along said southerly right of way line, a distance of 1,006.21 feet to the POINT OF BEGINNING of this description; thence continue north 61°43'00" east, along said southerly right of way line, a distance of 61.15 feet; thence leaving said right of way line south 28°17'00" east, a distance of 170.00 feet; thence south 26°33'15" east, a distance of 288.08 feet; thence south 37°36'08" east, a distance of 141.50 feet to a point on the northerly right of way line of Primary State Highway No. 3, now known as State Route 125; thence south 52°23'52" west, along said northerly right of way line, a distance of 140.00 feet; thence leaving said right of way line north 37°22'41" west, a distance of 147.75 feet; thence north 17°59'30" west, a distance of 482.12 feet to the point

of beginning. AND

Commencing at the point of intersection of the southerly right of way line of the Dalles Military Road with the west line of Section 31, Township 7 north, Range 36 east of the Willamette Meridian; thence north  $61^{\circ}43'00''$  east, along said southerly right of way line, a distance of 946.21 feet to the POINT OF BEGINNING of this description; thence continue north  $61^{\circ}43'00''$  east, along said right of way line, a distance of 60.00 feet; thence leaving said right of way line south  $17^{\circ}59'30''$  east, a distance of 482.12 feet; thence north  $37^{\circ}22'41''$  west, a distance of 206.96 feet; thence north  $30^{\circ}11'33''$  west, a distance of 150.08 feet; thence north  $10^{\circ}12'14''$  west, a distance of 97.20 feet; thence north  $44^{\circ}01'00''$  east, a distance of 35.00 feet; thence north  $27^{\circ}08'00''$  west, a distance of 16.96 feet to the point of beginning.

Situated in the City and County of Walla Walla, Washington.

4. The property described in paragraph 3 of the recitals herein was annexed to Walla Walla on March 9, 1988 by Walla Walla Municipal Ordinance A-3553.

5. A roadway was built on the property described in paragraph 3 of the recitals herein during 1988 which extended Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125. This extension of Myra Road intersects with State Route 125 at approximately mile post 3.42. For purposes of this agreement, the extension of Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125 is referred to as the 1988 Myra Road extension.

6. College Place annexed property immediately to the west of the property described in paragraph 3 of the recitals herein on February 9, 2004 by College Place Municipal Ordinance No. 918.

7. College Place requested on February 14, 2005 that the Washington State Department of Transportation grant a break in access for a public road at approximately mile post 3.01 on State Route 125. College Place informed the Washington State Department of Transportation on March 8, 2005 that this proposed roadway would extend to Myra Road due to existing land uses and extreme topography.

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8. Walla Walla and College Place jointly applied on August 31, 2005 for funding through the Washington State Transportation Improvement Board arterial improvement and transportation partnership programs to reduce the grade of Myra Road at the intersection of Dalles-Military Road/SE 12th Street and to improve the 1988 Myra Road extension.

9. College Place desires permission to connect a public roadway to the 1988 Myra Road extension. Such public roadway would cross property owned by Walla Walla described in paragraph 3 of the recitals herein and connect to Myra Road in the Walla Walla City limits at an alignment directly opposite to Twin Creek Plaza at approximately the location of a private drive identified as SE Brookforest Drive on a short plat recorded on May 8, 2002 in Volume 4, page 54 of plats of the land records of Walla Walla County. Such public roadway is referred to herein as Commercial Drive.

NOW, THEREFORE, the parties agree as follows:

A. College Place and Walla Walla shall equally fund the costs to design and construct improvements reasonably required to reduce the grade of Myra Road at its intersection with Dalles Military Road/SE 12<sup>th</sup> Street by 8-10 feet from its present grade, to provide four vehicle travel lanes with 2 foot side shoulders on Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125, to add left turn lanes at all four legs of the intersection of Myra Road with Dalles Military Road/SE 12<sup>th</sup> Street, to place concrete curb on both sides of Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125, to construct 6 foot wide sidewalks on both sides of Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125, and to construct a 10 foot wide shared pedestrian-bicycle path on Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and State Route 125. The costs shared under this paragraph shall not include the costs to design and construct Commercial Drive, the costs to design and construct improvements necessary to intersect Commercial Drive with Myra Road, or the costs to design and construct improvements identified in paragraph B herein.

1. The parties agree that improvements, for which costs are shared under paragraph A herein, shall be designed and constructed at the earliest possible date, and that such design and construction must be approved by Walla Walla, in its sole discretion. If either party is unable or unwilling to pay its share of design or

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construction costs at the time that the other party is ready to proceed, the other party may advance funds necessary to undertake and complete the project, and such advances shall be deemed to be a loan to the party that is unable or unwilling to pay its share. Unless otherwise mutually agreed in writing by the parties, such loan shall be for a period of five (5) years commencing on the date of substantial completion of the project, with interest accruing thereon from the date of substantial completion at a rate of ten percent (10%) per annum, simple interest; such loan shall be payable in equal annual installments upon each anniversary of the substantial completion date; and all payments upon such loan shall be applied first to accrued interest before being applied to principal. If a party fails to timely make a payment, the other party may declare all remaining owed amounts immediately due and payable and commence a collection action.

2. The parties agree that they shall cooperate to pursue and receive grant funding to reduce the amount of local funding required to construct such improvements, and that any such grant funding shall be applied to equally reduce College Place and Walla Walla's respective project costs shared hereunder. All shared project costs that are not paid by grant funding shall be borne equally by College Place and Walla Walla.

3. The parties agree that each may pay its respective project costs shared hereunder from impact or other fees, local improvement districts, or other funding mechanisms employed by such party within its jurisdiction at its sole discretion. Costs paid from amounts imposed upon applicants, property owners, or taxpayers within a jurisdiction shall benefit that jurisdiction and reduce only its respective share of project costs.

4. All improvements shall be constructed to meet Walla Walla standards. Engineered fill shall be used in the construction of all improvements required by paragraph A herein to prevent side slope collapse or deterioration.

B. College Place will be allowed to construct Commercial Drive and intersect it with the 1988 Myra Road extension prior to the construction of the improvements for which costs are shared under paragraph A herein, upon the following conditions:

1. Commercial Drive shall have a roadway width of 32 feet at its intersection with the 1988 Myra Road extension, with the following improvements

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constructed upon each side of the roadway: (i) concrete curbs, (ii) 6 foot wide sidewalks adjacent to the roadway, (iii) landscaping within reasonable proximity to each sidewalk required by Walla Walla, (iv) a cross walk on Commercial drive near its intersection with Myra Road, and (v) traffic control devices required by Walla Walla.

2. Commercial Drive shall allow only right turn in and right turn out traffic movements at its intersection with the 1988 Myra Road extension. College Place shall construct a median or other barrier on Commercial Drive of a type and design approved by Walla Walla which prevents left turn movements from Myra Road onto Commercial Drive and left turn movements from Commercial Drive onto Myra Road. College Place shall construct a median barrier on Myra Road of a type and design approved by Walla Walla preventing left turn movements in or out of Commercial Drive.

3. The intersection of Commercial Drive and Myra Road shall operate at no less than a level of service "C" as defined by the Highway Capacity Manual (HCM 2000) prepared by the Transportation Research Board (TRB) Committee on Highway Capacity and Quality of Service. College Place shall at its sole expense provide to Walla Walla traffic and design studies which demonstrate to satisfaction of Walla Walla that the intersection of Commercial Drive and Myra Road will operate at no less than a level of service "C."

4. The parties recognize that certain improvements are required for construction of Commercial Drive which the parties agree may be temporarily delayed. Neither the delay nor construction of such delayed improvements shall relieve College Place of its other obligations under this agreement.

a. If a bid award has not been made before December 31, 2013 for construction of the improvements for which costs are shared under paragraph A herein, the following improvements shall be constructed by College Place by no later than December 31, 2014: (i) a 14 foot wide right turn in pocket of at least 150 feet in length on Myra Road, in addition to those lanes presently existing, and a concrete curb, extending from Commercial Drive toward the direction of Dalles Military Road/SE 12<sup>th</sup> Street, and (ii) a sidewalk, along Myra Road between Dalles Military Road/SE 12<sup>th</sup> Street and Commercial Drive, with a either a pedestrian buffer between the curb and sidewalk or alternative landscaping within reasonable proximity to the

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sidewalk required by Walla Walla.

b. At the time Myra Road is extended to the East of State Route 125, College Place shall construct: (i) a 14 foot wide lane on Myra Road, in addition to those lanes presently existing, and a concrete curb, which extend from Commercial Drive to State Route 125 to accommodate right turn movements out of Commercial Drive onto Myra Road, together with (ii) a sidewalk, which extends from Commercial Drive to State Route 125, with a either a pedestrian buffer between the curb and sidewalk or alternative landscaping within reasonable proximity to the sidewalk required by Walla Walla.

(1) The cost of improvements required by paragraph B(4)(b) shall be reduced by the extent to which such costs are borne by the owner(s) or developer(s) of the following described property:

Beginning at a point in the South line of Block 2 Highland according to the Official Plat thereof of record in the Office of the Auditor of Walla Walla County, Washington, which point is 992.00 feet East, measured along the said South line, from the point of intersection of the extended South line of said Block 2, with the West line of Section 31 Township 7 North, Range 36, East of the Willamette Meridian, and run thence East, along the South line of said Block 2, a distance of 1,326.68 feet to a point therein which is 142.32 feet West, measured along the said South line, from the Southeast corner of Lot 3 in said Block 2; thence North, parallel to the East line of said Lot 3, a distance of 769.53 feet; thence East, parallel to the North line of said Block 2, a distance of 326.32 feet to a point in a line parallel to and 38.60 feet West of the extended East line of Lot 2 of the aforesaid Block 2; thence north parallel to the East line of said Lot 2, a distance of 538.70 feet more or less to a point in the South line of the property owned by Harrison Ward Gardner; thence South 89°41' West, along the South line of the Gardner Tract, 76.40 feet to an angle point therein; thence North 3°00' East 601.1 feet; thence South 75°16' West 196.0 feet; thence South 17°30' West 70.3 feet; thence South 35°00' East 152.50 feet; thence South 3°00' West 183.00 feet; thence North 89°41' West 881.00 feet; thence South 75°16' West 438.00 feet, more or less, to a point in the Southerly line of the right of way of Primary State Highway No. 3; thence Southwesterly, along the Southerly line of said right of way, 250.0 feet, more or less to a point therein which is 960.0 feet East, measured at right angles,

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from the West line of said Section 31; thence Southerly, in a straight line, 1,255.00 feet, more or less to THE POINT OF BEGINNING.

All situated in the County of Walla Walla, State of Washington.

5. Commercial Drive shall replace the existing driveway and planned private drive serving properties identified on a short plat recorded on May 8, 2002 in Volume 4, page 54 of plats of the land records of Walla Walla County. Those properties shall be permitted access only onto Commercial Drive and shall not be permitted direct access onto the 1988 Myra Road extension. College Place shall be solely responsible to pay compensation, if any, which may be owed to property owners arising out of access alteration or restriction hereunder.

6. All improvements shall be constructed to meet Walla Walla standards. Engineered fill shall be used in the construction of all improvements required by paragraph B herein to prevent side slope collapse or deterioration.

7. All improvements shall be designed and constructed in a manner which to the extent practicable minimizes the need to reconstruct such improvements at the time of construction of the improvements for which costs are shared under paragraph A herein.

8. All improvements required by paragraph B herein shall be designed and constructed at the sole cost of College Place; provided, however, that College Place may pay its project costs hereunder from impact or other fees, local improvement districts, or other funding mechanisms employed by College Place within its jurisdiction at its sole discretion.

9. College Place shall apply for a right-of-way permit for construction of improvements described in paragraph B herein that must be taken through the formal approval process; and as with other applications, the Walla Walla reserves the right, as a condition of permit approval, to require the applicant to construct additional improvements and/or make dedications reasonably necessary to mitigate development impacts or pay impact fees in the manner provided by law; provided however, the formal approval process may not be used by either party to overcome the terms and conditions of this agreement.

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10. College Place shall be required to obtain and Walla Walla will grant a terminable easement over the property described in paragraph 3 of the recitals herein solely for construction and maintenance of Commercial Drive and improvements constructed in the Commercial Drive right of way. Such easement shall be immediately and automatically terminate upon termination of this agreement by either party prior to its expiration for any reason whatsoever. In the event that such easement is terminated, barricades will be immediately erected at the sole cost of College Place which prohibit vehicle traffic from entering upon that portion of Commercial Drive constructed upon the property described in paragraph 3 of the recitals herein, and College Place shall be solely responsible to pay compensation, if any, which may be owed to property owners arising out of access alteration or restriction hereunder. In addition, in the event that such easement is terminated, College Place shall at its sole expense, and at the sole option of Walla Walla, immediately remove improvements, or any part thereof as determined by Walla Walla, which were constructed upon the property described in paragraph 3 of the recitals herein.

11. Commercial Drive and improvements constructed in the Commercial Drive right of way upon the property described in paragraph 3 of the recitals herein shall be maintained at the sole cost of College Place.

C College Place acknowledges and agrees that Walla Walla possesses police power authority to regulate the volume and flow of traffic on Myra Road and all roadways, or portions thereof located in Walla Walla's City limits, that such authority is reserved to Walla Walla and may be exercised as provided by law in Walla Walla's sole discretion, and that nothing herein shall be construed to impair such authority.

D. All roadway and pedestrian right of way improvements constructed upon the property described in paragraph 3 of the recitals herein shall become solely the property of Walla Walla upon their acceptance by Walla Walla.

E. College Place will hold harmless, defend, and indemnify Walla Walla against any claims, of any kind whatsoever, arising out of accidents involving any vehicle entering or leaving Commercial Drive from or to Myra Road, including without limitation roadway design claims

F. College Place shall be required to obtain an easement from Walla Walla for the

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construction and maintenance of utilities upon the property described in paragraph 3 of the recitals herein, and nothing herein shall be construed as approval for construction or maintenance of such utilities. Walla Walla may grant or deny such additional easement or easements in its sole discretion which shall be reasonably exercised. Any such utilities shall be designed and constructed at the sole cost of College Place and must be constructed to meet Walla Walla standards and in a manner which to the extent practicable minimizes the need to reconstruct such improvements at the time of construction of the improvements for which costs are shared under paragraph A herein.

G. Term of Agreement

The term of this agreement begins on the effective date of this agreement, namely, July 1, 2007, and shall expire on December 31, 2057, unless terminated prior to this latter date pursuant to the provisions of section H, hereof. The easement described in paragraph B(10) herein shall become permanent upon December 31, 2057 if this agreement has not been terminated prior to that date.

H. Termination

Either party may terminate this agreement prior to its expiration for material breach of its terms or conditions by the other party; provided that the party claiming breach notifies the other party that a default has occurred by written notice sent by United States Postage Service registered mail, and the other party fails to cure the default within sixty (60) days of its receipt of said notice.

Neither party shall be considered to be in breach or default in respect to any obligation hereunder, if prevented from fulfilling such obligation by reason of uncontrollable forces. The term "uncontrollable forces" is defined for the purposes of this agreement, to mean any cause beyond the control of the party affected, including, but not limited to, drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, or restraint by court or public authority which by exercise of due diligence and foresight, such party could not reasonably have been expected to avoid; provided, however, that financial embarrassment and inability to pay shall not be considered uncontrollable forces under any circumstances. Either party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such

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inability.

Termination of this agreement shall not impair ownership of property as provided in paragraph D herein.

I. Resolution of Disputes

Should any dispute arise concerning any provisions of this Agreement, or the parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute. Prior to commencement of any legal action by either party, the party proposing such action shall provide to the other party thirty (30) days written notice of the intent to take such action: provided, that such notice shall not be required where a delay in commencing an action would prejudice the interests of the party that intends to file suit. During the thirty (30) day notice period, the parties shall meet and confer in an attempt to resolve the dispute.

Except as specifically provided, nothing herein is intended to waive or abridge any right or remedy that Walla Walla or College Place may have. All remedies, including without limitation those provided by this agreement, shall be considered cumulative and non-exclusive.

The Superior Court for the State of Washington for Walla Walla County shall be the venue for any judicial proceedings arising out of this agreement. The agreement shall be construed in accordance with the laws of the State of Washington.

J. Notices

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given, on behalf of Walla Walla, when mailed, postage prepaid, or delivered to the City Manager, City of Walla Walla, 15 N. Third Avenue, Walla Walla, Washington 99362, and on behalf of College Place, when mailed, postage prepaid, or delivered to the City Administrator, 625 S. College Avenue, College Place, Washington 99324. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

K. No Separate Entity Created

No separate legal or administrative entity is hereby created. Each party is responsible for establishing and maintaining its own budget for any obligations arising hereunder. The Walla Walla Public Works Director shall be the administrator for any joint projects which are undertaken through this agreement.

L. Entire Agreement

There are no agreements, promises, assurances, representations, warranties, undertakings, or understandings, either written or oral, between College Place and Walla Walla concerning the subject matter of this agreement other than those expressly set forth in this document. Any amendment of this agreement must be in writing and signed by both Walla Walla and College Place. Forbearance by a party shall not be deemed waiver or prejudice that party's right to enforce the terms and conditions of this agreement.

This agreement shall not relieve either party from any obligation or responsibility imposed upon it by law.

Dated as of the day and year first above written.

City of Walla Walla

By   
Mayor

Approved as to form:

By   
City Attorney

City of College Place

By   
Mayor

Approved as to form:

By   
City Attorney

RESOLUTION NO. 2007-57

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF WALLA WALLA TO ENTER INTO AN INTERLOCAL COOPERATION AGREEMENT WITH THE CITY OF COLLEGE PLACE REGARDING CONSTRUCTION OF COMMERCIAL DRIVE AND OTHER ROADWAY IMPROVEMENTS ON MYRA ROAD BETWEEN DALLES MILITARY ROAD/SE 12<sup>TH</sup> STREET AND STATE ROUTE 125 AND TAKING SUCH FURTHER ACTION NEEDED THEREWITH

WHEREAS, chapter 39.34 of the Revised Code of Washington authorizes political subdivisions to enter into intergovernmental agreements; and

WHEREAS, Myra Road was extended in 1988 from Dalles Military Road/SE 12<sup>th</sup> Street to State Route 125 upon property owned by the City of Walla Walla; and

WHEREAS, the cities of College Place and Walla Walla jointly wish to undertake a project to lower the grade of the Myra Road extension to improve its suitability as a transit corridor; and

WHEREAS, the City of College Place additionally wishes to connect a roadway to the Myra Road extension; and

WHEREAS, the cities of College Place and Walla Walla have cooperatively negotiated an intergovernmental agreement by which the parties will achieve both purposes; and

WHEREAS, the College Place City Council unanimously approved the intergovernmental agreement at its May 29, 2007 meeting, and the agreement has been executed by the Mayor of the City of College Place; and

WHEREAS, the Walla Walla City Council has considered this matter during a regularly and duly called public meeting of said Council, has given careful review and consideration to the matter, and finds that the common benefit of the citizens of Walla Walla and the best interests of the City of Walla Walla and good government of the City of Walla Walla will be served by passage of this resolution;

**NOW THEREFORE, the City Council of the City of Walla Walla do resolve as follows:**

**Section 1:** The terms of a certain "AGREEMENT between the CITY OF COLLEGE PLACE and the CITY OF WALLA WALLA re: MYRA ROAD EXTENSION BETWEEN DALLES MILITARY ROAD/SE 12<sup>TH</sup> STREET & SR 125" between the City of Walla Walla and City of College Place are hereby accepted and the Mayor of the City of Walla Walla is hereby authorized, empowered, and directed to execute said interlocal agreement on behalf of the City of Walla Walla.

**Section 2:** The Mayor of the City of Walla Walla is hereby authorized and empowered

to execute amendments to the interlocal agreement authorized by section 1 of this resolution on the following conditions: (a) the content of any amendment executed by the Walla Walla Mayor shall comply with the Washington Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington, (b) no amendment executed by the Mayor shall relieve the City of Walla Walla from compliance with enactments of the Walla Walla City Council or any other obligation or responsibility imposed by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an interlocal agreement, such performance may be offered in satisfaction of the obligation or responsibility, (c) any amendment executed by the Mayor shall be reported to the Walla Walla City Council at the first meeting of the Walla Walla City Council following execution of the amendment, and (d) any amendment executed by the Mayor must provide that it may be revoked and terminated by the Walla Walla City Council at the meeting that it is first reported to the Walla Walla City Council.

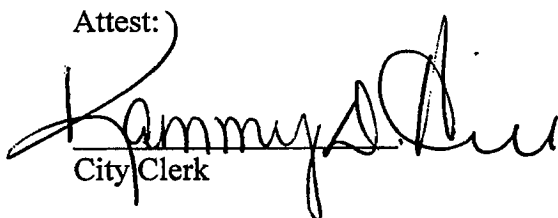
**Section 3:** The Walla Walla City Clerk is hereby authorized and directed to attest and file a copy of the interlocal agreement executed in accordance with section 1 of this resolution, and, unless revoked and terminated by the Walla Walla City Council at the meeting that it is first reported to the Walla Walla City Council, any amendment to the interlocal agreement executed and reported in accordance with section 2 of this resolution as required by Section 39.34.040 of the Revised Code of Washington and prior to its entry in force.

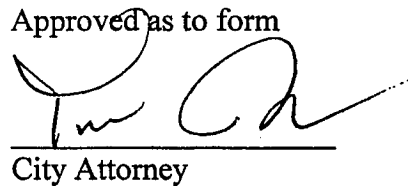
**Section 4:** If any portion of this resolution shall be determined to be invalid or ineffective by a court of competent jurisdiction, it shall be severable from the remainder, the validity and effectiveness of which shall be unaffected.

**Section 5:** This resolution shall become effective in the manner provided by law.

**PASSED** by the City Council of the City of Walla Walla, Washington, this 13<sup>th</sup> day of June, 2007.

  
Mayor

Attest:  
  
City Clerk

Approved as to form  
  
City Attorney