

INTERLOCAL AGREEMENT

CITY OF SAMMAMISH AND NORTHEAST SAMMAMISH WATER AND SEWER DISTRICT

2011 Pavement Program – Overlays

THIS INTERLOCAL AGREEMENT ("Agreement") made and entered into by and between the City of Sammamish, Washington, a Municipal Corporation, hereinafter called the "City," and Northeast Sammamish Sewer and Water District, hereinafter called the "Utility." The Interlocal Cooperation Act, as codified in Chapter 39.34 of the Revised Code of Washington, provides for interlocal cooperation between governmental agencies.

WHEREAS, the City proposes to proceed with the 2011 Pavement Program - Overlays, hereinafter referred to as the "Project;" and

WHEREAS, the Utility provides sewer service in the general area of the Project in accord with applicable Washington State and City laws, regulations, and franchises.

WHEREAS, the City and the Utility can achieve cost savings and benefits in the public's interest by performing certain work for the Utility during construction of the Project, manhole raising, hereinafter referred to as the "Utility Work". The Scope of Work and Cost Estimate for the Utility Work are attached as Exhibit "A".

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties hereto as follows:

II. BIDDING

- A. The City shall incorporate a complete and final set of the Utility's Plans and Specifications for the Utility Work into the Contract Bid Documents for the Project as a deductive alternate in such manner as to allow, to the extent possible, identification of cost allocations between the parties.
- B. The City shall furnish the Utility with the bid prices for the Utility Work for the Utility's approval. Within two weeks of receiving the bid prices, the Utility shall notify the City in writing that the Utility either approves or rejects their portion of the contract. The City shall not proceed with the Utility Work until the City has received approval from the Utility. If bids are received which, in the estimation of the Utility, are not acceptable for the Utility's portion, all or a portion of the Utility Work shall be deleted from the contract. Bid awards shall be made to the lowest responsible bidder for the total project, subject to applicable laws and regulations.
- C. If the Utility rejects the City's lowest responsible bid, the Utility may select its own contractor to do the Utility Work deemed necessary. In this case, the Utility shall require its contractor to coordinate all utility work located at the project site with the City's contractor, without unreasonably interfering with or delaying the City's contractor. The Utility shall notify its contractor of such requirement, and shall provide written notice to the City and the City's contractor ten days prior to beginning Utility Work on site. If the contractor selected by the Utility unreasonably delays or impacts the City's contractor, the Utility agrees to defend, indemnify, and hold City harmless from and against any such unreasonable delay or impact if a claim is presented by the City's contractor, provided the City shall give the Utility prompt notice of any potential claim as soon as the City has received knowledge thereof.

III. CONTRACT ADMINISTRATION

- A. The City shall provide the engineering, administrative, inspection, and clerical services necessary for the execution of the Utility Work.
 - B. The Utility shall furnish an inspector to verify proper compliance with requirements in the contract Plans and Specifications while the Contractor is doing the Utility Work.
 - C. The Utility shall notify the City, in writing, of any changes it wishes to make in the Plans and Specifications that affect the Utility Work, which changes shall be made, if feasible. The Utility shall promptly provide the City with written documentation describing the requested change(s). The City will notify the Utility of any changes required by the City,
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which substantially change the nature of the Utility Work and shall obtain the Utility's approval of such changes, with such approval not being unreasonably withheld by the Utility. Written notification by the City shall be given to the Utility prior to the commencement of the work. This Agreement shall be amended in writing to incorporate changes in the Scope of Work or Cost Estimate. Any and all costs related to the change(s) in Utility Work.

- D. The City shall provide the Utility with written notice of physical completion of the Utility Work. Upon such notice the Utility's inspector shall perform final inspection of the Utility Work, including but not limited to, the County's internal administrative costs and the costs associated with any delays or impacts to the County's contractor, shall be borne by the party proposing the change(s). The Utility shall, within seventy-two (72) hours of its final inspection, provide to the City acceptance of the Utility Work, or alternatively, provide an itemized and detailed response as to why acceptance of the Utility Work cannot be given.
- E. The Utility shall prepare its own set of records drawings for the Utility Work performed on the Project. The Utility may also request in writing a copy of the record drawings prepared by or for the City on the Project.

IV. PAYMENT

- A. The Utility shall reimburse the City for the bid amount of the Utility Work, plus any change orders approved by the Utility.
- B. In the event the City's contractor uncovers any materials while doing work solely related to completion of the Utility Work agreed upon requiring special handling and/or disposal under any local, state or federal laws or regulations (including, but not limited to, hazardous waste, dangerous waste, toxic waste or contaminated soil) the Utility will be responsible for all costs incurred in handling and/or disposing of such materials.
- C. All payments shall be due within 30 days from the date the City invoices the Utility for Utility Work performed on the Project, and when due shall accrue simple interest at the rate of one percent per month.

V. INDEMNIFICATION AND HOLD HARMLESS

- A. Each party hereto agrees to protect, defend and indemnify the other Party, its officers, officials, employees and agents from any and all costs, claims, claims for delay, judgments and/or awards of damages, arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this Agreement, by the Party, its employees, subcontractors or agents.
- B. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, but only as respects the other Party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- C. In the event either Party incurs any costs including attorney fees to enforce the provisions of this article and prevails in such enforcement action all such costs and fees shall be recoverable from the losing Party.
- D. The provisions of this section shall survive the expiration or earlier termination of this Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

VI. TERMINATION

- A. If a party fails to comply with any material provision(s) of this Agreement the other party may terminate this Agreement, in whole or in part, for default upon thirty (30) days written notice to the defaulting party. Any extra costs, expenses or damages incurred by the non-defaulting as a result of the termination for default shall be borne exclusively by the party in default. The rights and remedies of this provision are in addition to any other rights or remedies provide to the non-defaulting party by law or under this Agreement. Any termination of this Agreement for default shall not relieve the defaulting party of any obligation, which may arise out of work already performed prior to such termination.
 - B. If construction under this agreement is not commenced within 2 years of the date this agreement is approved by the legislative body of the last party executing this agreement, it shall automatically terminate without notice.
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VII. OTHER PROVISIONS

- A. The City shall retain ownership and usual maintenance responsibility for the road and sidewalk. The Utility shall retain the rights of exclusive use, regulation, and control of the completed "Utility Work" and full ownership of such Utility Work.
- B. This Agreement contains the entire written agreement of the parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by the authorized representative(s) for each party.
- C. Nothing contained herein is intended to, nor shall not be construed to, create any rights in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representatives, to any third party.
- D. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of both parties.
- E. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect if such remainder would then continue to serve the purposes and objectives of the parties.
- F. In the event of a contractual dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, the matter shall be forwarded for discussions to the General Manager of the Utility and the Director of City's Project Manager, or their respective designee(s). If this process fails to resolve the dispute within thirty (30) days after such referral, a party may pursue any legal remedy available or the Parties may agree to submit the matter to alternate dispute resolution and if the matter is not resolved, either party shall be entitled to pursue any legal remedy available in a court of law.
- G. In the event that either party deems it necessary to institute legal actions or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in King County Superior Court of the State of Washington. This agreement shall be interpreted and construed in accordance with the laws of the State of Washington. The Utility hereby consents to the personal jurisdiction of the King County Superior Court of the State of Washington.

VII. INDEMNIFICATION OF UTILITY AND INSURANCE

- A. The City shall require the contractor building the Project to have the Utility named as an additional insured on all policies of insurance to be maintained by contractor(s) under the terms of any Project contract(s), with the City contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation and provide satisfactory proof thereof prior to commencing construction.
- B. The City shall require the contractor building the Project to indemnify, defend, and save harmless the Utility and its officers, agents, or employees from any claim, real or imaginary, filed against the Utility or its officers, agents, or employees alleging damage or injury arising out of the contractor's participation in the Project.
- C. The City shall contractually require the contractor building the Project to be solely and completely responsible for safety of all persons and property during performance of the work. The contractor shall be contractually required to comply with all applicable City and State regulations, ordinances, orders, and codes regarding safety.

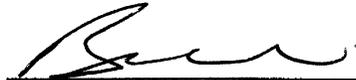
VIII. CONSTRUCTION.

- A. The City agrees to cause the Utility Work to be constructed in a good and workmanlike manner in accordance with the terms of this agreement and the Contract Bid Documents. .
 - B. In addition, the City shall require the Contractor to provide the Utility as a condition to final acceptance of the Utility Work a one-year written warranty against all defects in the Utility Work.
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The parties hereto have executed this Agreement effective as of the date last written below.

City of Sammamish

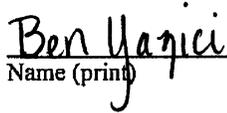
Northeast Sammamish Sewer & Water District



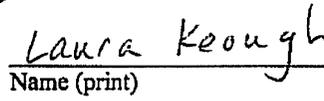
City Manager



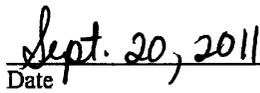
General Manager



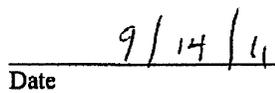
Name (print)



Name (print)



Date



Date



Exhibit "A"

Interlocal Agreement 2011 Pavement Program – Overlays

Scope of Work

Adjust NESSWD sanitary sewer manholes to finish grade of pavement on streets being repaved with HMA as part of the 2011 Pavement Program – Overlay project. This work is to be done by the City's project contractor, Lakeside Industries, Inc. per the project specifications and plans.

Cost Estimate

The unit price from low bidder contractor (Lakeside Industries, Inc.) for bid item "#43 Adjust Manhole" is \$325 EACH. The quantity for this bid item is 60 EACH. The total bid price for this bid item is $\$325 \times 60 = \$19,500$.
