

INTERLOCAL AGREEMENT

CITY OF SAMMAMISH AND SAMMAMISH PLATEAU WATER AND SEWER DISTRICT

ZACKUSE CREEK FISH PASSAGE AND STREAM RESTORATION PROJECT

RECITALS

This Agreement ("Agreement") is made and entered into by and between the City of Sammamish, a municipal corporation (the "City") and the Sammamish Plateau Water and Sewer District, a municipal corporation (the "District") (individually a "Party" and collectively the "Parties"), for the purposes set forth below.

WHEREAS, the City has prepared and bid Plans and Specifications for the City's Zackuse Creek Fish Passage and Stream Restoration Project ("Project"), and has awarded the Project by contract (the "Contract") to the lowest responsible bidder ("Contractor"); and

WHEREAS, the District provides water and sewer services in the general area of the Project; and

WHEREAS, the District has sewer and water mains within the limits of the Project that will need to be bypassed and relocated as part of the Project; and

WHEREAS, the City and the District can achieve cost savings and benefits in the public interest by bypassing and relocated sewer and water mains during construction of the Project, hereinafter referred to as the "District Work; and

WHEREAS, the City and the District have the authority to undertake joint and cooperative action pursuant to Chapter 39.34 RCW;

NOW, THEREFORE, in consideration of the following terms and conditions, the Parties agree as follows:

I. CONTRACT ADMINISTRATION

A. City Responsibilities

1. The City agrees to include and have constructed the District Work as part of the Project as further provided in this Agreement.
2. The City shall provide the administrative and clerical services necessary for the execution of the District Work.
3. The City shall include in the contract plans and specifications ("Contract Plans") engineering specifications and details provided by the District to perform the District Work.

4. The City will notify the District of any changes required by the City which substantially change the nature of the District Work and shall obtain the District's approval of such changes. Such approval shall not be unreasonably withheld by the District. Written notification by the City shall be given to the District prior to the commencement of the work.
5. Upon written notice from the District of any changes to the District Work needed during construction, the City shall make such changes, if feasible, to the Contract as part of the Contract's standard change order process.
6. The City shall provide the District with the Contractor's proposed schedule for the District Work and written notice when the Contractor begins the District Work.
7. The City will make monthly progress payments to the Contractor for District Work accepted by the District as complete.
8. The City will submit the paid monthly Contractor invoices to the District for reimbursement of District Work completed and accepted by the District.
9. The City will not grant the Contractor final acceptance for the District Work until the District has provided the City with written notice that the District Work is complete and approved for final acceptance.
10. The City shall require the Contractor to schedule any temporary shutdowns of the water and sewer system a minimum of one (1) week in advance.
11. The City shall approve daily quantities and pay requests when they include the District pay items.
12. The City shall invoice District for actual costs incurred for the District pay items.
13. The City shall provide surveyed as-built record drawings of the relocated water and sewer facilities.

B. District Responsibilities

1. The District shall provide inspection to verify proper compliance with requirements in the Contract Plans while the Contractor is doing the District Work and shall provide the City with a written summary of pay item quantities to be included in the City's monthly progress payments to the Contractor.
2. The District shall promptly provide the City with written documentation describing any change(s) in the District Work required during construction.
3. The District shall promptly provide a response to the City after the District is notified of any changes required by the City that substantially change the nature of the District Work per section A. 3. above.
4. Upon notice from the Contractor that the District Work is complete, the District shall, within five (5) working days, complete a final inspection of the completed work, and provide to the City a list of the accepted work and/or provide an

itemized and detailed response as to why any portion of the District Work cannot be given acceptance.

5. The District shall furnish an inspector and the City will allow the District's inspector to be onsite while Contractor is performing work on the water and sewer system.
6. The District shall approve any change orders relating to the water and sewer that the City will seek reimbursement from the District for before commencement on that work.
7. The District shall approve daily quantities and pay requests when they include the District pay items.

II. PAYMENT

- A. The District shall reimburse the City at the unit bid prices for the Zackuse Creek Fish Passage and Stream Restoration project.

The following reimbursement of the actual bid items will pertain to the District Work ("District Pay Items"):

1. 100% of the following items, A3-01, A3-02, A3-03, A3-04, A3-06, A3-07A, A3-10, A3-11, A3-14
2. 50% of the following items, A3-08, A3-12

Other District Work pay items may be added by project specific engineering details and specifications provided by the District and agreed upon by the City, which shall then be included in the City's Contract documents.

- B. The City shall be responsible for all other costs relating to the temporary bypass and relocation of the District's existing water and sewer utilities on the Project not identified in the bid items listed herein. The District's total reimbursement to the City for the District Work shall not exceed Fifty Thousand dollars, including applicable tax (\$50,000.00).
- C. The District shall reimburse the City at the unit bid prices bid for any other work approved by the District and completed by the Contractor for the District Work in accordance with the Contract and the Contract Plans, or in conformance with a District approved and City executed change order.
- D. In the event the Contractor uncovers any materials, while doing work solely related to completion of the District Work that require 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 District will be responsible for all costs incurred in handling and/or disposing of such materials, provided the District's cost responsibility shall be included in and limited by the total District reimbursement obligation set forth in Section II.B. above.

- E. All payments shall be due within forty-five (45) days from the date the City invoices the District for the District Work performed on the Project, and when due shall accrue simple interest at the rate of one percent per month.

III. PARTIES INDEMNIFICATION AND HOLD HARMLESS

- A. Each Party to this Agreement 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, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by 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 or expert witness fees, to enforce this Agreement, 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 the Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

IV. CONTRACTOR INDEMNIFICATION OF DISTRICT AND INSURANCE

- A. The City shall require the Contractor building the Project to have the District named as an additional insured on all policies of insurance to be maintained by Contractor(s) under the terms of any Project contract(s); and any Project contract shall require Contractor 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 to indemnify, defend, and save harmless the District and its officers, agents, or employees from any claim, real or imaginary, filed against the District 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 to be solely and completely responsible for safety of all persons and property during performance of the District's Work. The Contractor shall be contractually required to comply with all

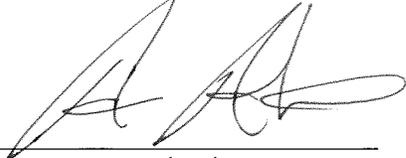
applicable City and State regulations, ordinances, orders, and codes regarding safety.

V. OTHER PROVISIONS

- A. The City agrees to require in its contract with the Contractor for the District Work to be constructed in a good and workmanlike manner in accordance with the terms of this Agreement and the Contract Bid Documents.
- B. This Agreement contains the entire agreement of the Parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.
- C. Nothing contained herein is intended to, nor shall be construed to, create any rights in any third party, or to form the basis for any liability on the part of the Parties or their officials, officers, employees, agents or representative, 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 the 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. This Agreement is authorized under RCW 39.34.080. Nothing herein shall be construed to create a partnership or joint venture between the Parties.
- G. The individuals signing this Agreement on behalf of the respective Party represent and warrant they have the power and authority to do so.
- H. The recitals set forth above are incorporated herein by this reference.
- I. This Agreement shall be effective upon the date Agreement execution by both Parties ("Effective Date"), and shall remain in effect until City acceptance of the Project and release of all Contract retainage

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates set forth below.

CITY OF SAMMAMISH



Lyman Howard, City Manager
Aaron Antin, Assistant City Manager
Acting City Manager

7/23/18
Date

SAMMAMISH PLATEAU
WATER AND SEWER DISTRICT



John C. Krauss, General Manager

6-22-18
Date