INTERLOCAL AGREEMENT BETWEEN THE CITY OF SAMMAMISH AND THE NORTHEAST SAMMAMISH SEWER WATER DISTRICT FOR THE ADJUSTMENT OF MANHOLE AND VALVE BOX CASTINGS ASSOCIATED WITH THE CITY OF SAMMAMISH 2017 & 2018 PAVEMENT PRESERVATION PROGRAM PROJECTS

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

WHEREAS, the City will prepare Plans and Specifications for the City's various projects included as part of the 2017 & 2018 Pavement Preservation Program ("Projects"), and will publicly bid the Projects, and award the Projects to the lowest responsible bidder ("Contractor"); and

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

WHEREAS, the District has manhole castings, valve box castings and meter boxes within the limits of the Projects that will need to be adjusted to final grade following the City's pavement work; and

WHEREAS, the City and the District can achieve cost savings and benefits in the public interest by adjusting the District's manhole and valve box castings during construction of the Projects, 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. BIDDING

A. The City shall incorporate a complete and final set of the District's Plans and Specifications for the District Work into the Contract Bid Documents for the Projects 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 District with the bid prices for the District Work for the District's approval. Within two weeks of receiving the bid prices, the District shall notify the City in writing that the District either approves or rejects their portion of the contract. The City shall not proceed with the District Work until the City has received approval from the District. If bids are received which, in the estimation of the District, are not acceptable for the District's portion, all or a portion of the District Work, as rejected by the District, 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 District rejects the City's lowest responsible bid, the District may select its own contractor to do the District Work. In that event;

1. The District shall require its contractor to coordinate all District Work located within the project site with the City's Contractor, without unreasonably interfering with or delaying the City's Contractor. The District 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 the District Work.
2. If the District's contractor unreasonably delays or impacts the City's Contractor, the District 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 District prompt notice of any potential claim as soon as the City has received knowledge thereof.
3. As part of any asphalt pavement overlay work, the City shall have its Contractor provide surface divots or pavement markers on any casting encountered during the City's overlay work.

II. CONTRACT ADMINISTRATION

A. City Responsibilities

1. The City shall provide the administrative and clerical services necessary for the execution of the District Work.
2. The City shall include in the Contract Plans engineering specifications and details provided by the District.
3. The City will notify the District of any changes required by the City which substantially change the nature of the Utility 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.
4. 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 City's Contract with the Contractor as part of the Contract's standard change order process.
5. 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.
6. The City will make monthly progress payments to the Contractor for District Work accepted by the District as complete.
7. The City will submit the paid monthly invoices to the District for reimbursement of District Work completed and accepted by the District.

8. The City will not grant the Contractor Final Acceptance until the District has provided the City with written notice that the District's Work is complete and approved for final acceptance.

B. District Responsibilities

1. The District shall provide engineering specifications and details, and an estimate of utility adjustments to be included in the Project Contract Plans and Specifications, and an Engineering Estimate of the proposed District Work.
2. The District shall provide inspection to verify proper compliance with requirements in the Project Contract Plans and Specifications 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.
3. The District shall promptly provide the City with written documentation describing any change(s) in the District Work required during construction.
4. 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.
5. The District shall provide the Contractor with a new casting to replace any casting that was damaged prior to the Project.
6. Upon notice from the Contactor that the District Work is complete, the District shall, within five 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.
7. The District shall assist in the approximate location of all castings to be adjusted. However the Contractor shall be responsible for determining the exact location of the casting with a metal detector.

III. PAYMENT

A. The District shall reimburse the City at the unit bid prices for each NESSWD manhole casting, NESSWD valve box casting and NESSWD meter box adjusted, and for providing traffic control associated with the District Work, as bid by the Contractor for the Project.

The following pay items will pertain to the District Work:

1. Flaggers and Spotters
2. Adjust NESSWD Manhole
3. Adjust NESSWD Valve Box
4. Adjust NESSWD Meter Box

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

B. 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 Project Specifications, or in conformance with a District approved and City executed change order.

C. 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.

D. 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.

IV. 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.

V. INDEMNIFICATON OF UTILITY 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.

VI. 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 remain in effect for the duration of the 2017 & 2018 Pavement Preservation Program Projects. Provided, however, that if the District rejects the City's lowest responsible bidder only the terms in section I.C. above will remain in effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date last written below ("Effective Date").

CITY OF SAMMAMISH

Lyman Howard, City Manager

June 7, 2017
Date

NORTHEAST SAMMAMISH SEWER AND WATER DISTRICT

Laura Keough, General Manager

3/30/17
Date