

INTERLOCAL AGREEMENT
CITY OF EDMONDS AND OLYMPIC VIEW WATER AND SEWER DISTRICT
224TH STREET SW SEWERLINE REPLACEMENT PROJECT

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into by and between the City of Edmonds, Washington (the “City”) and Olympic View Water and Sewer District (the “District”) (collectively, the “Parties”) as of the date entered below.

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities;

WHEREAS, the District is undertaking a capital improvement project known as the 224th Street SW Sewerline Replacement Project (the “Project”);

WHEREAS, the District plans to replace in present alignment or by parallel construction (hereafter “replacement”) certain sewer utilities within the project limits of the Project;

WHEREAS, the City owns and operates sewer utilities located within the project limits of the Project that are in need of replacement;

WHEREAS, integrating the sewer utilities work needed by the City into the Project would be more expedient, less expensive, and less disruptive to the public than undertaking this work separately;

WHEREAS, the Parties mutually desire to establish a formal arrangement under which the City will pay the District in exchange for the District incorporating the City’s sewer utility work into the Project;

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking;

WHEREAS, the City Council of the City of Edmonds has taken appropriate action to approve the City’s entry into this Agreement;

WHEREAS, the Board of Commissioners of the District has taken appropriate action to approve the District’s entry into this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, the City and the District agree as follows:

5916
10-24-12 to 12-21-13
CON-5-26-12

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the City will pay the District to incorporate the sewer utilities replacement work into the Project contract documents and to construct said replacement work in conjunction with the District's construction of the Project. The terms, conditions and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon its execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) the City's written acceptance of and payment for all District sewer utilities work provided to the City pursuant to this Agreement, or (b) December 31, 2013, when it shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with thirty (30) days' written notice of its intent to terminate. Termination or expiration shall not alter the City's payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out the City's portion of the work, and shall not alter the Parties' respective obligations under Section 10 of this Agreement.

Section 4. Obligations of the City. The City agrees to:

- A. Provide periodic payments to the District to reimburse the District for its outside costs of constructing the City's sewer utilities replacement work pursuant to Section 6 of this Agreement, and as follows:
 1. Engineering/Design. The City shall reimburse the District for 100% of the District's outside costs for engineering/design to incorporate the design prepared by the City's engineering consultant for the City's sewer utilities replacement work into the construction plans, specifications and contract documents for the Project. The City share shall be twenty-two percent (22%) of total engineering design costs, with the total actual cost to the City for this work not to exceed \$4,906 without prior approval by adopted change order, which approval shall not be unreasonably withheld
 2. Construction. The City shall reimburse the District for 100% of the District's actual outside costs for construction of the City's sewer utilities work based upon the contractor's bid, the actual quantities of materials installed, and the final actual costs of construction as follows:
 - a. The City sewer utilities portion of the Project will replace existing sewer main and appurtenances including and downstream of City Manhole 14-49

to a suitable location and point of connection to the City sewer utilities downstream of City Manhole 14-49D on 224th St SW. The City's estimated share of the Project is twenty-two percent (22%) of construction cost, including applicable sales tax. The corresponding estimated City share of construction, including sales tax, is \$46,000.

3. Construction Engineering and Management. The City shall reimburse the District for the City's prorated share of the District's actual outside costs for construction engineering and management of the Project. The City's prorated share of the construction engineering and management costs shall be computed by multiplying the District's actual outside costs for construction engineering and management times the percentage of the construction contract costs that the City's utilities work is of the total construction contract costs for the Project. The City share shall be twenty-two percent (22%) of the construction engineering and management, not to exceed \$2,970.00 without prior approval by adopted change order, which approval shall not be unreasonably withheld. The estimated costs to the City for outside construction engineering and management is approximately \$2,970.

4.

- B. Respond promptly to information requests submitted by the District or its agents regarding the sewer utilities replacement work.
- C. Upon satisfactory completion of the City's sewer utilities replacement work, provide written acceptance of the work to the District.

Section 5. Obligations of the District. The District agrees to:

- A. Incorporate the City's sewer utilities replacement work into the construction plans, specifications and contract documents for the Project.
- B. Assume responsibility for constructing the City's sewer utilities replacement work in accordance with the plans, specifications and contract documents, including but not limited to securing all necessary consultants, contractors and subcontractors. All construction contracts shall be procured through a formal competitive bidding process consistent with applicable State law.
- C. Submit to the City written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors clearly indicating the City's portion of the invoices.
- D. Assume lead agency status and responsibility for applying for and obtaining any and all regulatory permits necessary to complete the Project, including but not limited to right-of-way, SEPA and NEPA permits.

- E. Provide City personnel reasonable access to the Project's construction area for purposes of inspecting and monitoring the progress of the work performed on the City's sewer utilities replacement work.
- F. Respond promptly to information requests submitted by the City or its agents regarding the Project.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

- A. The actual costs incurred by the District to incorporate the design prepared by the City's engineering consultant for the City's sewer utilities replacement work into the construction plans, specifications and contract documents for the Project has been estimated to be \$4,906.00. The City shall tender payment to the District in the form of a check, money order or other certified funds, for actual costs incurred, for work approved by City, which approval shall not be unreasonably withheld within 30 days after the invoice is submitted to the City.
- B. For construction contract costs and for construction engineering and management costs incurred by the District for the City's utilities work on the Project, the District shall within thirty (30) days submit an invoice to the City for the City's share of said expenses for the City's utilities work. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by the District in determining the City's share of each expense. To the extent reasonably possible, the District shall document and tabulate separately the actual quantities of work installed to clearly identify the City's portion of the Project construction costs for the City's utilities work.
- C. Within thirty (30) days of receiving any invoice pursuant to subsection 6.B, the City shall tender payment to the District in the form of a check, money order or other certified funds for the invoiced amount for work approved by the City, which approval shall not be unreasonably withheld.
- D. In the event that the Parties disagree regarding the City's share of any expense incurred by the District regarding the Project, the Parties may agree to submit the question for resolution by a mediator or arbitrator acceptable to both Parties.

Section 7. City Reserves Right to Accomplish Work. If the contractor's bid for construction for the City's sewer utilities replacement work is unacceptable to the City for any reason, the City reserves the right to perform the City's sewer utilities replacement work through means separate from the District's construction contract, PROVIDED that by so doing, the City's work does not in any way delay, disrupt or otherwise negatively impact the District's contract work for the Project or increase the costs to the District therefore. If the City's accomplishment of its utilities work separately does delay, disrupt or otherwise negatively impact the District's contract work for the Project or increase the cost to the District therefore, the City shall reimburse the District for all such increased costs incurred by the District.

Section 8. Ownership and Disposition of Property. The City's sewer utilities replacement work done pursuant to this Agreement shall become and remain the exclusive property of the City upon completion. All other work constructed under the Project shall become and remain the exclusive property of the District upon completion.

Section 9. Administration; No Separate Entity Created. The General Manager for the District shall serve as the administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 10. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by the laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other Party or the other Party's property, and also from and against all claims, demands and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

The District specifically promises to indemnify the City against claims or suits brought under Title 51 RCW by its own employees, contractors or subcontractors, and waives any immunity that the District may have under that title with respect to, but only to, the limited extent necessary to indemnify the City.

Section 11. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in Snohomish County Superior Court.

Section 12. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the City and any employee, agent, representative or contractor of the District, or between the District and any employee, agent, representative or contractor of the City.

Section 13. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and no third party rights are created by this Agreement.

Section 14. Notices. Notices to the District shall be sent to the following address:

**Olympic View Water and Sewer District
General Manager
23725 Edmonds Way
Edmonds, WA 98026**

Notices to the City shall be sent to the following address:

**City of Edmonds
City Engineer**

CITY OF EDMONDS

By: David O. Earling
David O. Earling, Mayor

Date: 10-24-12

ATTEST:

Sandra S. Chase
Sandra S. Chase, City Clerk

APPROVED AS TO FORM:

[Signature]
Office of the City Attorney