

NOV 13 2008

INTERLOCAL AGREEMENT

**CITY OF SAMMAMISH AND
NORTHEAST SAMMAMISH SEWER & WATER DISTRICT**

EAST LAKE SAMMAMISH PARKWAY WIDENING PROJECT

THIS 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"), for the purposes set forth below.

WHEREAS, the City proposes to proceed with the East Lake Sammamish Parkway Widening Project (the "Project"); and

WHEREAS, the District provides water and sewer service in the general area of the Project in accord with applicable Washington State and King County laws, regulations and franchises; and

WHEREAS, the City and the District can achieve cost savings and benefits in the public's interest by the City performing certain work for the District during construction of the Project, namely the relocation of utilities (the "District Work"). The Scope of Work and Cost Estimate for the District Work are attached as Exhibit A, respectively, for informational purposes; actual costs will be determined as a result of approved contract bids and actual construction and construction administration costs.

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

I. DESIGN

The District shall, in a timely manner, furnish reproducible construction drawings, specifications, special contract provisions, and other necessary documents (collectively "District Plans") for the District Work. When delivered to City, the District Plans shall be incorporated into the City plans and specifications for the Project. The District shall notify the City of any changes, which must be made to the City Plans to bring them into conformance with District requirements, which changes shall be promptly made by the City.

II. BIDDING

The City shall incorporate the District Plans into its Contract Bid Documents as a separate bid schedule in such manner as to allow: 1) the accurate identification by the District of the costs of the District Work; and 2) the District's option to elect to exclude the District Work.

Within one work day following the opening of the bids for the Project, the City shall furnish the District with the complete bid of the lowest responsible bidder, including all bid prices, and the list of contractors and subcontractors for the District Work for the District's approval. By noon on the first or third Tuesday of the month following the opening of the bids (whichever occurs first), the District shall review the bid documents and notify the City in writing whether the District approves or rejects the bid for the District's work. The City shall not proceed with the District Work if the City has received written notification from the District that the District rejects the bid for the District Work, which it may do for any reason without cost or penalty. Bid awards shall be made to the lowest responsible bidder for the total project, subject to applicable laws and regulations.

If the District rejects the City's lowest responsible bid, the District may select its own contractor to do the District Work deemed necessary. The District shall pursue this work in accordance with Sammamish Ordinance 2001-78, which requires that such work be completed within 45 days of adoption of a City Council resolution and notification from the Director of Public Works, unless the Director of Public Works determines that allowing more time will not interfere with the City's planned work; provided, the City shall allow the District reasonable time and conditions to coordinate with City and accomplish the District Work. Additionally, the District shall require its contractor to coordinate all District Work located at the project site with the City contractor and with any contractors or work crews from other utilities and to not unreasonably interfere with or delay the City's contractor or the work by other utilities. The District shall notify its contractor of such requirement, and shall provide written notice to the City and the City's contractor 10 days prior to beginning District work on site.

III. CONTRACT ADMINISTRATION

A. The City shall provide the necessary engineering, administrative, inspection and clerical services necessary for the construction management of the Project. In providing such services, the City may exercise all the powers and perform all the duties as authorized by law and this agreement.

B. The District may furnish, and the City will allow, an inspector to be on the Project site to verify proper compliance with requirements set forth in the Special Provisions while the Contractor is doing the District Work. The District's inspector shall advise the City of any deficiencies noted. The City may designate the District's inspector as the City's agent to communicate directly with the Contractor's field personnel regarding compliance with the contract specifications for the District Work. The District and the City mutually recognize that the contract allows for 10 hour work days by the Contractor Monday through Saturday with Sunday and holiday work allowed upon request; both the City and the District will provide personnel they each determine is needed to be on site and/or on-call during these work times and each will be responsible to provide regular and overtime compensation to their own employees as each determines is needed.

C. During construction, the District shall notify the City as soon as practicable, in writing, of any changes it wishes to make in the plans and specifications, which affect the

District Work, which changes shall be made, if reasonably feasible. Similarly, the City will notify the District as soon as practicable of any changes required by the City in the scope of the Project, or of any changes which substantially change the nature of the District Work and will obtain the District's approval of such changes to the District Work. Notification by a party shall be given prior to commencement of the changes. The cost of the change to both parties shall be borne by the party proposing the changes, and any cost savings shall benefit the party proposing the changes provided that those cost savings are applicable to expenses that party would otherwise have been subject to pay. The City shall act as the District's agent in negotiating change orders with the Contractor.

D. The City shall provide the District with written notice of completion of the District Work. The District's inspector shall perform final inspection of the District Work. The District shall, within ten (10) working days of its final inspection, provide to the City final acceptance of the District Work, or alternatively, provide an itemized and detailed response as to why final acceptance of the District Work cannot be given. If the District fails to respond to the City's notice of completion within ten (10) calendar days, the District will be deemed to have given final acceptance of the District Work. Upon final acceptance of the District Work, the City shall be relieved of any and all responsibility and/or liability for the District Work and the condition of the District facilities; provided, however, the City shall assign its rights under the Project contract relating to the District Work to the District, including warranty and maintenance obligations by the Contractor relating to the District Work. The City shall require the Contractor to the extent required and the provisions enforceable in the Project contract to maintain the Performance Bond in effect for a period of one (1) year following District final acceptance of the water and sewer facilities to cover the cost of repairing or replacing faulty materials or workmanship.

E. The City shall provide the District with "as built" drawings of the District Work within 60 days after project completion. If the original design drawings were prepared in digital format using AutoCAD or other automated drafting/design software, the revisions during construction shall be incorporated onto the as-built record drawings digitally. The District will be provided all AutoCad files pertaining to the District Work. All hard copy drawings shall be on a minimum 4-mil mylar format, clearly marked in the lower right-hand corner as "As-Built". As-built information for water and sewer facilities shall conform to the District standard details for as-built drawings.

IV. PAYMENT

The District shall reimburse the City for the contract price of the District Work, as adjusted by any change orders agreed to by the District, to perform the District work.

Due to the high dollar value of the District's work that will be performed by the City, it is important that reimbursement be done in an expeditious manner. The City will provide monthly pay estimate reports to the District at least seven (7) calendar days prior to the City Council authorizing payment. The District will reimburse the City within 30 calendar days of receipt of

the City Council authorization of payment, except as to any disputed amounts. Any past due payments shall accrue simple interest at the rate of one percent (1%) per month until paid.

V. INDEMNIFICATION AND HOLD HARMLESS

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. 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, as respects the other Party only, 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.

Claims shall include, but not be limited to, defects or mistakes in plans, specifications and/or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright patent, trademark, trade name, and/or otherwise results in unfair trade practice.

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.

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.

VI. OTHER PROVISIONS

A. The City shall retain ownership and usual maintenance responsibility for the road and sidewalk. The District shall retain the rights of exclusive use, regulation, and control of the completed "District Work" and full ownership of such District Work including, but not limited to, the right to sell, transfer, or assign its rights in the District Work.

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 to this Agreement, 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.

VII. INDEMNIFICATION OF DISTRICT AND INSURANCE

The City shall require the contractor building the Project to have the District, its officers, agents and employees named as an 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. The Contractor shall provide the City with either a certified copy of all policies with endorsements attached or a Certificate of Insurance with endorsements attached as are necessary to comply with the contract specifications. The City shall provide the District with copies of all such policies and documents upon receipt of same by the City.

The City shall require the contractor building the Project to indemnify, defend, and save harmless the District and its officers, agents, or employees from any claim, damage, action, liability of proceeding brought or filed against the District or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project. The Contractor shall also be required to waive the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the District solely for the purposes of the indemnification.

The City shall require the contractor building the Project to be solely and completely responsible for safety and safety conditions at the job site, including the safety of all persons and property during performance of the work. The contractor shall comply with all applicable City and State regulations, ordinances, orders and codes regarding safety. The District shall have no responsibility as to safety and safety conditions at the job site.

This agreement is authorized under RCW 39.34.080. Nothing herein shall be construed to create a partnership or joint venture between the parties.

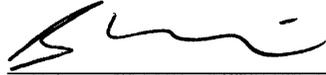
IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last written below.

CITY OF SAMMAMISH

NORTHEAST SAMMAMISH
SEWER & WATER

DISTRICT

Signature



Ben Yazici, City Manager

Date

12/18/08

Signature



Laura Szentes, General Manager

Date

11/10/08