

**INTERLOCAL AGREEMENT  
CITY OF DES MOINES AND LAKEHAVEN UTILITY DISTRICT  
REDONDO HEIGHTS STORM SEWER REPLACEMENT PROJECT**

WHEREAS, the City of Des Moines, Washington (hereinafter "City") is undertaking a capital improvement project known as the Redondo Heights Storm Sewer Replacement Project (hereinafter "the Project"); and

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; and

WHEREAS, the Lakehaven Utility District (hereinafter "District") owns and operates certain water facilities located in the City's right-of-way within and adjacent to the project limits of the Project, and the District has a franchise agreement to operate in said right-of-way; and

WHEREAS, the City intends to replace an existing storm drain on Redondo Way that serves Redondo Creek; and

WHEREAS, the City's Project requires certain work by the District to accommodate the District's existing water line and the proposed storm drain pipe; and

WHEREAS, including the District's work into the City's construction of the Project would be more expedient, less expensive, and less disruptive to the public than if the District undertook this work separately; and

WHEREAS, the City and the District (individually a "Party" and collectively the "Parties") mutually desire to establish a formal arrangement under which the District will pay the City in exchange for the City's incorporating the District's related utility work into the construction of the Project; and

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

WHEREAS, the City Council of the City of Des Moines has taken appropriate action to approve the City's approval of and entry into this Agreement ("Agreement"); and

WHEREAS, the Board of Commissioners of the District has taken appropriate action to approve and enter into this Agreement;

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

**TERMS**

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the District will pay the City to construct the District's work as designed by the District. 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 execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until one of the following events, whichever is later: (a) the District's written acceptance of and payment for all District's work provided pursuant hereto, or (b) December 31, 2012. Thereafter, the agreement 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 30 days written notice of its intent to terminate. Termination or expiration shall not alter the District'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 District's portion of the work, and shall not alter the Parties' respective obligations under Section 11 of this Agreement.

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

- A. Provide periodic payments to the City to reimburse the City for its costs of constructing the District's water facility work ("District Work") pursuant to Section 6 of this Agreement, and as follows:
  - a. Engineering/Design. The District will provide the City a detailed drawing and along with necessary construction notes and specifications to solicit a change order from the City's contractor.
  - b. Construction. The District shall reimburse the City for the City's actual costs for construction of the District Work based upon:
    - i. All approved change orders associated with the water line replacement. The engineer's estimate for the District Work, excluding sales tax, is approximately \$25,000.
    - ii. All Washington State Sales tax associated with the District work.
- B. The District shall pay the City an amount equal to five percent (5%) of the final construction cost of the District work including sales tax to cover Administrative and Construction Management costs (e.g., project management, change order preparation, pay estimate preparation, and administration).
- C. Respond promptly to information requests submitted by the City or its agents regarding the District Work.
- D. Upon completion of the District Work to the District's satisfaction, provide written acceptance of the District Work to the City.

- E. The District agrees that the Project is a priority for the City and that a District inspector will be available during project construction. The District inspector will have the responsibility for inspection and approval of the District Work and that the contractor employed by the City will be directed to comply with the District's requirements by the City's engineer or designee in accordance with plans and specifications approved by the District. The District's inspector shall immediately notify the City, verbally and in writing, of any disapproval of said work and provide said notification prior to progress payment for said work to the Contractor.
- F. If the District decides to reject the submitted change order for the District's work items, then the District acknowledges that construction of the District Work will be processed under a separate contract by the District.

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

- A. Allow the District's water facility work to be performed under the City's construction contract. The District Work will be completed and tracked as a separate change order.
- B. Submit to the District written invoices for payment in accordance with Section 6, including copies of invoices or other documentation from consultants and/or contractors, clearly indicating the District's portion of the invoices.
- C. Assume lead agency status and responsibility for applying for and obtaining any and all regulatory permits and approvals necessary to complete the Project, including but not limited to right-of-way permits and SEPA approvals.
- D. Provide District personnel access to the Project's construction area for purposes of inspecting, monitoring, approving or disapproving the progress of work performed on the District's water utility work. The City shall notify a District representative of all construction meetings and shall allow the District representative to participate in all construction meetings.
- E. Respond promptly to information requests submitted by the District or its agents regarding the Project.
- F. The City shall require the contractor to be responsible for compliance with all applicable federal, state and local statutes, regulations and ordinances regarding safety.

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

- A. For construction contract costs and for administrative and construction management costs incurred by the City for the District Work, the City shall submit invoices to the District for the District's share of said expense for the District Work. Said invoices shall contain a reasonably detailed explanation of the methodology utilized by the

City in determining the District's share of each expense. To the extent reasonably possible, the City shall document and tabulate separately the actual quantities of work installed to clearly identify the District's portion of the Project construction cost for the District Work. Final adjustment of prorated costs shall be delivered to the District within thirty (30) days of project close out.

- B. Within forty-five (45) days of receiving any invoice pursuant to subsection 6.A, the District shall tender payment to the City in the form of a warrant, money order or other certified funds for the invoiced amount, except as to any disputed amounts.
- C. In the event that the Parties disagree regarding the District's share of any expense incurred by the City regarding the Project, the Parties may agree to submit the question for resolution in accordance with the mediation/arbitration clause contained herein.

Section 7. (reserved)

Section 8. Change Orders and Authorization of Cost Overruns:

- A. Change Orders. The District shall have the right to approve or reject change orders relating to the District Work. The City shall have the right to approve or reject change orders relating to the City's work. The Parties shall mutually accept or reject change orders relating to joint work. Any dispute between the Parties as to proportional payment for joint element change orders shall be resolved pursuant to the mediation/arbitration clause contained herein.

Section 9. Ownership and Disposition of Property. The District Work pursuant to this Agreement shall become and remain the exclusive property of the District upon completion. All other work constructed under the Project shall become and remain the exclusive property of the City upon completion. The City will forward to the District any guarantee or warranty furnished as a normal trade practice in connection with the purchase of any equipment, materials, or items used in the construction of the Project. The City shall submit redline drawings to the District upon completion of the Project for District review and approval. The City's contractor shall warrant the workmanship and materials utilized in the District Work to be free from defects for a period of one (1) year from the date of the District's ownership of the District Work, provided the District shall retain any rights, claims or demands the District may have against the City's contractor relating to the District Work under applicable statutes of limitation.

Section 10. Administration; No Separate Entity Created. The City Planning, Building, Public Works Director, or his/her designee, shall serve as the City's administrator of this Agreement. The District General Manager, or his/her designee, shall serve as the District's administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 11. 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 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, to the extent caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

The City specifically promises to indemnify the District against claims or suits brought under Title 51 RCW by its own employees, contractors, or subcontractors, and waives any immunity that the City may have under that title with respect to, but only to, the limited extent necessary to indemnify the District. The City shall also indemnify and hold the District harmless from any wage, overtime or benefit claim of any City employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The City further agrees to fully indemnify the District from and against any and all costs of defending any such claim or demand to the end that the District is held harmless therefrom.

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. The District shall also indemnify and hold the City harmless from any wage, overtime or benefit claim of any District employee, agent, representative, contractor, or subcontractor performing services under this Agreement. The District further agrees to fully indemnify the City from and against any and all costs of defending any such claim or demand to the end that the City is held harmless therefrom.

Section 12. Mediation/Arbitration Clause: If a dispute arises from or relates to this Agreement or the breach thereof and if the dispute cannot be resolved through direct discussions, the Parties agree to endeavor first to settle the dispute in an amicable manner by mediation before a mutually agreed alternative dispute resolution entity or by mediation administered under the American Arbitration Association's Commercial or Construction Rules. The mediator may be selected by agreement of the parties or through the American Arbitration Association. Following mediation, any unresolved controversy or claim arising from or relating to this Agreement or breach thereof may be settled through binding arbitration if arbitration is mutually agreed to by the Parties. If the Parties agree to submit the controversy to arbitration, such arbitration shall be conducted under mutually agreed rules, or under the American Arbitration Association's Commercial or Construction Arbitration Rules. The arbitrator may be selected by agreement of the Parties or through appointment pursuant to the rules of the American Arbitration Association. All fees and expenses for mediation or arbitration shall be borne by the Parties equally. However, each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. Following mediation, if the Parties do not agree to submit the controversy to arbitration, either Party may file an action in King County Superior Court. In any such court action, each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence.

Section 13. 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 King County Superior Court.

Section 14. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the District and any employee, agent, representative or contractor of the City, or between the City and any employee, agent, representative or contractor of the District.

Section 15. 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 16. Notices. Notices to the City shall be sent to the following address:

**City of Des Moines  
Loren Reinhold, Assistant Public Works Director  
21650 11<sup>th</sup> Avenue So.  
Des Moines, WA 98198**

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

**Lakehaven Utility District  
Wes Hill, Project Engineer  
31627 1<sup>st</sup> Avenue South  
Federal Way, WA 98003**

Section 17. Duty to File Agreement With County Auditor. The City shall, after this Agreement is executed by both Parties, file this Agreement with the King County Auditor.

Section 18. Integration/Entire Agreement. This document constitutes the entire embodiment of the Agreement between the Parties, and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above. This Agreement supersedes any oral representations that are inconsistent with or modify its terms and conditions.

Section 19. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

Section 20. Amendment. This Agreement may be amended only upon consent of all Parties hereto. Any amendment hereto shall be in writing and shall be ratified and executed by the Parties in the same manner in which it was originally adopted.

Section 21. Severability. If any provision of this Agreement shall be held invalid, the remainder of this agreement shall not be affected thereby.

Section 22. Counterparts. This Agreement shall be effective whether signed by all Parties on the same document or whether signed in counterparts.

Reviewed and approved as authorized by motion of the City of Des Moines City Council on the ~~4<sup>th</sup>~~ day of ~~Oct.~~ Sept., 2012.  
27<sup>th</sup>

CITY OF DES MOINES  
By: [Signature]  
Anthony A. Piasecki, City Manager  
Date: 10/4/12

ATTEST:  
[Signature]  
City Clerk

APPROVED AS TO FORM:  
[Signature]  
Des Moines City Attorney

Reviewed and approved as authorized by motion of the Lakehaven Utility District Board of Commissioners on the 27<sup>th</sup> day of September, 2012.

By: [Signature]  
John C. Bowman, General Manager  
Date: 9/28/12

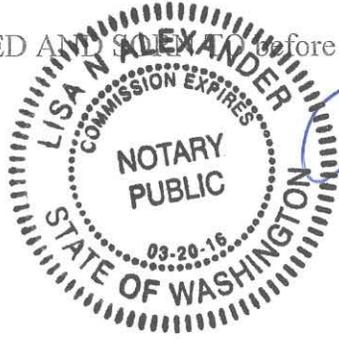
APPROVED AS TO FORM:  
[Signature]  
Steven H. Pritchett, General Counsel  
Lakehaven Utility District

STATE OF WASHINGTON)

COUNTY OF KING)

On this day, personally appeared before me John Bowman, the General Manager of Lakehaven Utility District and stated that he/she is authorized to sign this instrument on behalf of said District for the uses and purposes therein mentioned.

SUBSCRIBED AND SIGNED before me this 28 day of September, 2012.



[Signature]  
NOTARY

Lisa N. Alexander

Print Name

My commission expires: 3-20-16