

09-112

**AGREEMENT REGARDING THE
THUNDERBIRD DRIVE WATER MAIN REPLACEMENT PROJECT
BETWEEN THE CITY OF DES MOINES AND HIGHLINE WATER DISTRICT**

This Agreement ("Agreement") is entered into between the City of Des Moines, a Washington municipal corporation ("City"), and Highline Water District, a Washington municipal corporation ("District"), (individually a "Party" and collectively the "Parties") for the purposes set forth herein.

RECITALS

WHEREAS, the District is presently undertaking the replacement of approximately 1400 lineal feet of Asbestos Concrete (AC) water main in Thunderbird Drive located within the City. The contract for the project, referred to as the Thunderbird Drive Water Main Replacement Project SW07-2 (the "Project") was publicly bid as a public works project and the Project contract was awarded to RP & Company, Inc. as the lowest responsible bidder (the "Contractor"). Whereas the Project's plans and specifications require the District to patch the excavated water main trench and install a one-half street overlay on the side of the street where the trench patch is located. Whereas, the City has requested that the District have the Contractor complete a full street overlay as described on **Exhibit "A"** attached hereto and incorporated herein by this reference ("Full Street Overlay") in the area to be affected by the Project work in consideration of the City paying the difference in the cost to undertake a one-half street overlay as compared to a full street overlay by reimbursement to the District. Whereas the Contractor's bid for a trench patch and a one-half street overlay was \$60,895.00, not including tax, and the District has obtained an estimate from the Contractor for the Full Street Overlay of \$99,066.00, not including tax. Therefore, the difference between a one-half street overlay and a Full Street Overlay is \$38,171.00; and

WHEREAS, the District is willing to require the Contractor to complete a full street overlay as part of the Project work on the conditions proposed by the City, and the District and the City now desire to work together for the mutual benefit of the roadway project and the water main replacement work; and

WHEREAS, the District and the City are authorized to undertake joint and cooperative action pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW,

NOW THEREFORE, in consideration of the terms and conditions set forth below, the Parties agree as follows:

AGREEMENT

Section 1. Incorporation by Reference The recitals set forth above are incorporated herein in full by this reference.

Section 2. General. The District agrees, on behalf of the City, to have the Contractor perform the Full Street Overlay as described on **Exhibit "A"** as part of the Project Work in accordance with and as described in the Project's Plans and Specifications.

Section 3. Bidding and Construction The District is hereby designated the City's construction agent for the Project. The District will incorporate the requirements for the Full Street Overlay as set forth on **Exhibit "A"** as part of the Project's Plans and Specifications as set forth on **Exhibit "B"** attached hereto and incorporated herein by this reference and shall require the Contractor to perform the Full Street Overlay. The District shall keep the City advised as to the progress of the Project work. The District, as construction agent, shall have final judgement, after consulting with the City, with regards to decisions related to the work of the Contractor.

Section 4. Authority to Construct The City hereby authorizes the District to proceed with the construction of the Full Street Overlay in accordance with **Exhibit "A"** and as further described in this Agreement.

Section 5. Inspection by District The City shall furnish an inspector on the Project. Any costs for such inspection will be borne solely by the City. All contact between the City's inspector and the Contractor shall be through the District's representatives.

Section 6. Payment The City, in consideration of the faithful performance of the work to be done by the District, agrees to reimburse the District the actual difference between a one-half street overlay (estimated at \$60,895) and the full street overlay (estimated at \$99,066) described in **Exhibit "A"**. This cost difference is currently estimated to be \$38,171 plus \$3,397 in WSST. The City also agrees to reimburse the District an additional 10% administrative fee on this difference, currently estimated to be \$3,817. Payment shall be made by the City to the District within 30 days of the District's invoice to the City for the City's cost of the work undertaken by the District on the City's behalf. Payments delayed beyond 30 days shall include interest of 1 percent per month.

Section 7. Extra Work In the event of unforeseen causes require an increase in the City's cost obligation of 25 percent or more from that included in **Exhibit "A"**, this Agreement shall be modified by supplemental agreement to provide for such increase. In the event it is determined that any "substantial change" from the description of the work contained in the Agreement is required, written approval must be secured from the City before commencing such work. "Substantial change" is defined as any change requiring an increase in the City's financial obligation as set forth in **Exhibit "A"** of greater than 25 percent.

Section 8. Final Acceptance The District shall conduct a field review of the Full Street Overlay work with representatives of the City and shall further require all punchlist items to be corrected to the satisfaction of the City and the District before final acceptance by the District. The City agrees, upon satisfactory completion of the Full Street Overlay work as determined by the City, to deliver a letter of acceptance approving the Full Street Overlay work, provided acceptance shall not constitute acceptance of any unauthorized or defective work or materials, nor be a waiver of any manufacturer's, supplier's or contractors' warranties. Final acceptance of the project shall be by the District after inspection by all agencies involved.

Section 9. Delivery of Completed Work The District agrees, within 30 days from the date of completion and final acceptance by the District and the City of the Project improvements, including the Full Street Overlay, to transfer ownership of Full Street Overlay improvements to the City by bill of sale or other appropriate documents. The District will forward to the City any guarantee or warranty furnished as a normal trade practice in connection with the performance of the Full Street Overlay and any materials or items used in the construction of the Project. The District shall submit redline drawings to the City upon completion of the project for City review and approval. Upon delivery by the District to the City and City approval as described in this section, the City shall issue a release and waiver of all claims or demands of any nature, past or present whether known or unknown, that result from the District's performance of the work contemplated in this Agreement; provided the release and waiver shall not constitute any rights, claims or demands the City may have against the Contractor as a third party beneficiary under the contract between the District and the Contractor. This release and waiver must be in a form acceptable to the District Attorney. The Contractor shall warrant the workmanship and materials utilized in the Full Street Overlay to be free

of defects for a period of One (1) year from the date of transfer; provided the City shall retain any rights, claims or demands the City may have against the Contractor relating to the City's work under applicable statutes of limitation.

Section 10. Legal Relations The District and the City agree to indemnify, defend and hold harmless the other, its officers, agents, employees, and volunteers from any and all damages, costs or expenses in law or equity that may any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of, or which may be occasioned any willful or negligent act or omission of the municipal entity arising out of the activities which are the subject of this Agreement.

The District shall require the contractor constructing the Project to have the City, its officers, agents and employees named as an additional insured on all policies of insurance to be maintained by contractor(s) under the terms of any Project contract(s), with the Contractor required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation. The Contractor shall provide the District 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 District shall provide the City with copies of all such policies and documents upon receipt of same by the District.

The District shall require the contractor building the Project to indemnify, defend, and save harmless the City and its officers, agents, or employees from any claim, damage, action, liability of proceeding brought or filed against the City 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 City solely for the purposes of the indemnification.

Section 11. Resolution of Disputes and Governing Law This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court located in Kent, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law, provided, however, nothing in this paragraph shall be construed to limit the City's or District's right to indemnification under Section 10 of this Agreement.

Section 13. Written Notice All communications regarding this Agreement shall be sent to the Parties at the addresses listed on the signature page of this Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

Section 14. Assignment Any assignment of this Agreement by either Party without the written consent of the non-assigning party shall be void.

Section 15. Modification No waiver, alteration, amendment, or modification of any of the provisions for the Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the District.

Section 16. Entire Agreement The written provisions and terms of this Agreement, together with any attached exhibits, shall supersede all prior verbal statements of any officer or other representative of either Party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. This document, including all exhibits, is the entire agreement between the Parties. Should any language in any of the exhibits to the Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

Section 17. Effective Date This AGREEMENT shall be effective as to all Parties on the last date signed below.

This Agreement is executed by the Parties by their authorized officers indicated below

CITY OF DES MOINES

Grant L. Fredricks

BY GRANT L. FREDRICKS

ITS ACTING CITY MANAGER

DATE 1/28/08

At the direction of the Des Moines
City Council taken at an open public
meeting on 1/24/08.

ATTEST:

Pernis Staab
CITY CLERK, CITY OF DES MOINES

APPROVED AS TO FORM:

P. Bosman
DES MOINES CITY ATTORNEY

HIGHLINE WATER DISTRICT

Matt Everett

BY Matt Everett

ITS General Manager

DATE 2/13/08

ATTEST:

Mary Jones
Construction Project Coordinator

APPROVED AS TO FORM:

DISTRICT ATTORNEY

EXHIBIT A

DESCRIPTION AND ESTIMATED COST OF FULL STREET OVERLAY

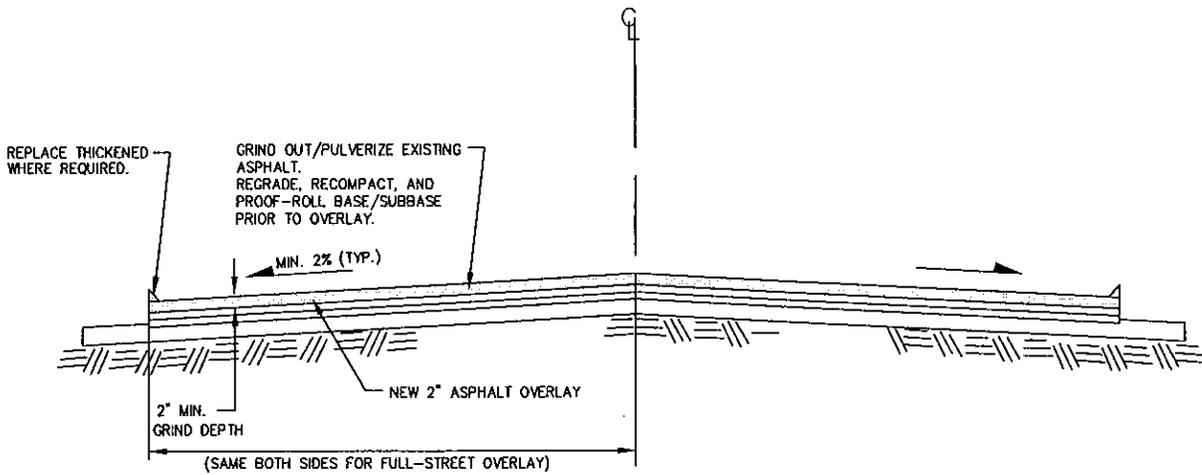
The City of Des Moines has requested that Highline Water District have the Contractor complete a full street overlay for the Thunderbird Drive Water Main Replacement Project SW07-2. The price bid for the full street overlay will include the following construction activities: pulverize or grind the full-width of the existing asphalt pavement, re-grade the base and/or sub-base materials as necessary to achieve the minimum two (2) percent slope from the roadway crown, re-compact the base and/or sub-base to the minimum compaction requirements as outlined in the Contract Plans and Specifications, proof-roll the base/and or sub-base to ensure a uniform full street width overlay, overlay the full street width with a minimum two (2) inches depth of asphalt concrete pavement, and replace thickened asphalt edges, all as set forth in **Exhibit "B"** as part of the Project's Plans and Specifications.

The District has obtained an estimate from the Contractor for the Full-Street Overlay of \$99,066.00.00, not including tax. The cost share of the Full-Street Overlay is set forth in the **"Agreement"** entered between the City of Des Moines and Highline Water District regarding the Thunderbird Drive Water Main Replacement Project.

EXHIBIT B

PLANS AND SPECIFICATIONS

EXHIBIT B
FULL STREET OVERLAY DETAIL
TO BE INCLUDED IN THE PROJECT PLANS AND SPECIFICATIONS



OVERLAY SECTION

NTS



11255 Kirkland Way, Suite 300
Kirkland, WA 98033
p. 425.827.2014 | f. 425.827.5043
.....
Civil | Structural | Planning | Survey
paceengrs.com

SCALE: NTS FILE: \\CAD\Sheets\Exhibit B Overlay Detail.dwg
DATE: 01/24/08 PH PROJ. NO.: 07104.00