

**INTERLOCAL AGREEMENT  
CITY OF DES MOINES AND WATER DISTRICT 54  
SOUTH 216<sup>th</sup> STREET IMPROVEMENT PROJECT  
Marine View Drive to 11<sup>th</sup> Avenue South**

WHEREAS, the City of Des Moines, Washington (hereinafter "City") is undertaking a capital improvement project known as the S. 216th Street Improvement 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 Water District 54 (hereinafter "District") owns and operates certain water utilities located in the S. 216<sup>th</sup> Street right-of-way and 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 of Des Moines intends to improve S. 216<sup>th</sup> Street and this construction presents an opportunity to upgrade the District's water utilities; and

WHEREAS, the District plans to upgrade certain water utilities located within and adjacent to the project limits of the Project; and

WHEREAS, integrating the District's water utilities work into the City's design and construction of the Project would be more expedient, less expensive, and less disruptive to the public than undertaking both the City's and the District's projects separately; and

WHEREAS, 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 utilities work into the design and 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 entry into this Agreement; and

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 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 incorporate the design of the District's water utilities upgrades and relocations into the Project contract documents and to construct said utilities upgrades and relocations in conjunction with the City's design and 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 execution by the Parties hereto. Unless terminated in accordance with Section 3, or Section 4.I, 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 infrastructure provided pursuant hereto, or (b) December 31, 2011. 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 designing and constructing the District's water utilities relocation and upgrade work pursuant to Section 6 of this Agreement, and as follows:

a. Engineering/Design.

- i. The District will provide the City with, and assume full responsibility for, engineered plans and specifications for all work to be completed under this agreement. The plans shall be stamped by a licensed engineer and made in accordance with current State of Washington Specifications for Road, Bridge, and Municipal Construction, unless otherwise noted.
- ii. The District shall reimburse the City \$4,000 for engineering/design to incorporate the design prepared by the District's engineering

consultant for the District's water utilities relocation and upgrade work into the construction plans, specifications and contract documents for the Project.

b. Bid Process. The District shall participate in the bid process as follows:

- i. Provide the City with plans, specifications, and such other information relating to Water District 54 water utilities relocation and upgrade work as is necessary to prepare the bid documents by January 4<sup>th</sup>, 2010.
- ii. Review and approve bid documents as prepared by the City not later than 10 days following submission of the bid documents to the District by the City.
- iii. Accept or reject bids associated with the District's Bid Schedule. Within ten (10) days of receiving the bid tabulation from the City, the District shall notify the City in writing that the District either approves or rejects the bid for the District's Schedule.

c. Construction. The District shall reimburse the City for the City's actual costs for construction of the District's utilities work based upon:

- i. Contractor's bid schedule for this work, the actual quantities of work installed, and the final actual costs of construction. The engineer's estimate for this work, excluding sales tax, is between \$440,000 and \$480,000 or approximately 18 percent of the total estimated construction contract.
- ii. All costs for the restoration of roadway and driveway hot mix asphalt, curbs, sidewalks, and private property restoration required to resurface and restore disturbed areas outside the City's project limits based on the final approved plans. Determination of the extent and limits of the restoration outside of the City's project limits will be identified by the District on the final approved plans and included in the District's bid schedule. Payment will be for the final actual costs of construction based on installed quantities.
- iii. A portion of the actual project costs for hot mix asphalt restoration of South 216<sup>th</sup> Street equivalent to one (1) twelve (12) foot wide lane for the length of the project. The hot mix asphalt price will be based upon the bid price in the City's bid schedule and payable by the District. The District's share of this is equivalent to 701 tons of hot mix asphalt. The engineer's estimate for this work is between \$55,000 and \$65,000.

- iv. A portion of the actual project costs for mobilization and traffic control calculated in the following manner: (Total Actual Mobilization, and Traffic Control Cost) + (Sum of District's actual costs derived from Sections 4.A.c.i and Section 4.A.c.ii) / (Total Project Construction Cost). The District anticipates that 18% the total project mobilization and traffic control costs will be the responsibility of the District. If the City determines that the bids schedules for one or more of these items in 4.A.c.iv is unbalanced, then the District agrees to adjust their contribution to balance these bid items not to exceed 18% of these costs.
  - v. All Washington State Sales tax associated with the District's work.
- B. Provide construction surveying, monumentation, and staking of the District's work utilizing datum approved in advance by the City or the City's Consulting Engineer. The District shall replace any monuments that are removed or disturbed solely as the result of the District's work, as required by the City for its project.
  - C. The District shall be responsible for preparing as-built construction drawings and providing said information to the City within 30 days of completion of the District's work.
  - D. Reimburse the City for the District's prorated share of the City's actual outside costs for construction engineering and management of the project. The District's prorated share of the construction engineering and management cost shall be computed by multiplying the City's actual outside cost for construction engineering and management times the percentage of the construction contract cost that the District's utilities work is of the total construction contract cost for the project, then multiplying the resultant times the same percentage share.
  - E. Reimburse the City for the District's prorated share of the City's direct project administration and management costs estimated not to exceed \$8,000.
  - F. Respond promptly to information requests submitted by the City or its agents regarding the water utilities relocation and upgrade work.
  - G. Upon satisfactory completion of the District's water utilities relocation and upgrade work, provide written acceptance of the work to the City.
  - H. The District agrees that the South 216<sup>th</sup> Street Project is a priority for the City and that a District inspector will be available during the project construction. The District inspector will record bid item quantities and provide them to the City's engineer for inclusion in monthly pay estimates. The District inspector will have the responsibility for inspection and approval of the District facilities and that the contractor employed by the City will be directed to comply with the District requirements by the City's engineer or designee in accordance with plans and specifications approved by the

District. The District 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.

- I. If the District decides to reject the bid for the District's bid schedule, then the District acknowledges that construction of these utility improvements will be processed under a separate contract by the District. The District acknowledges that the construction of these utility improvements under a separate contract could cause delay and/or increase the cost of the City's project, and the District therefore agrees to postpone its improvements until after the City's project is completed. The District also agrees to restore the roadway, including the pavement surface and sub-grade to its newly constructed condition as part of the District's project, at its sole expense.

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

- A. Incorporate the design prepared by the District's engineering consultant for the District's water utilities relocation and upgrade work into the construction plans, specifications and contract documents for the Project as a separate schedule.
- B. Assume responsibility for constructing the District's water utilities relocation and upgrade 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. The City shall have sole authority to award and manage the construction contract per the terms of this agreement.
- C. Submit to the District written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors, clearly indicating the District'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 permits and SEPA approvals.
- E. 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 utilities relocation and upgrade 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.

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

- A. The actual cost incurred by the City to incorporate the design prepared by the District's engineering consultant for the District's water utilities relocation and upgrade work into the construction plans, specifications and contract documents for the Project has been pre-determined to be \$4,000.00. The District shall tender payment to the City in the form of a check, money order, or other certified funds in this amount within 30 days of execution of this Agreement.
- B. For construction contract costs and for construction engineering and management costs incurred by the City for the District's utilities work on the Project, the City shall submit invoices to the District for the District's share of said expense for the District's utilities 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's utilities work. Final adjustment of prorated costs shall be delivered to the District within 30 days of project close out.
- C. Within 30 days of receiving any invoice pursuant to subsection 6.B, the District shall tender payment to the City in the form of a check, money order or other certified funds for the invoiced amount.
- D. 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. All change orders shall be subject to review and recommendation by the District's Administrator. The District shall have the right to approve or reject change orders relating to the District's 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.
- B. Cost Overruns. The City is authorized on behalf of the District to negotiate and approve all unit price over-runs in bid quantities and change orders related to the installation of the District's water utility improvements and related work. The

District also authorizes the expenditure by the City of a contingency of up to 10% of the contractor's total price for the District's bid schedule for over-runs in bid quantities and change orders associated with the installation of the District's water utility improvements and related work. For any quantity overruns that cause the cost of the District's water line installation to exceed the authorized 10% contingency amount, the City will notify the District in writing requesting a letter of concurrence allowing the City to exceed the 10% contingency before proceeding with the work. The letter will include an explanation of the changed conditions necessitating exceeding the previously approved contingency. A letter of concurrence shall be provided to the City within a reasonable time frame so as to not cause a Project delay. If there is a potential delay due to extra work or a change order, the City will indicate in this notification to the District along with a time for response required from the District. The City will include a progress schedule and any change orders for the District's water line installation and related work with the District's monthly invoice. In any event and even without a letter of concurrence from the District, the City is authorized to take any reasonable action and to expend any reasonable amount of money to assure that the District's water line and related work will not interfere or delay the timely completion of the project. Any disputes as to the reasonableness of the City's actions or expenditures for the water line installation and related work will be resolved as set forth in Section 12 below.

Section 9. Ownership and Disposition of Property. The District's water utilities relocated or upgraded 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.

Section 10. Administration; No Separate Entity Created. The City of Des Moines Planning, Building, Public Works Director, or his designee, shall serve as the City's administrator of this Agreement. The Water District 54 President, or 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, 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 before resorting to arbitration. 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 shall be settled through binding arbitration which 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.

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  
City Transportation Engineer  
21650 11<sup>th</sup> Avenue So.  
Des Moines, WA 98198**

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

**Water District 54  
Board President  
922 South 219<sup>th</sup> Street  
Des Moines, WA 98198**

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 21<sup>st</sup> day of DECEMBER, 2009.

CITY OF DES MOINES

By: [Signature]  
Anthony A. Piasecki, City Manager

Date: 12/24/09

ATTEST:

[Signature]  
City Clerk ( [Signature] )

At the direction of the Des Moines  
City Council taken at an open public  
Meeting on 12-21-2009.

APPROVED AS TO FORM:

[Signature]  
Des Moines City Attorney

Reviewed and approved as authorized by motion of the Water District 54 Board of Commissioners on the 15<sup>th</sup> day of December, 2009.

By: [Signature]  
Alli Larkin, President, Board of Commissioners

Date: December 18, 2009

STATE OF WASHINGTON)

COUNTY OF KING)

On this day, personally appeared before me Alli Larkin, the President of Water District 54 and stated that he is authorized to sign this instrument on behalf of said company for the uses and purposes therein mentioned.

SUBSCRIBED AND SORN TO before me this 18<sup>th</sup> day of December, 2009.



[Signature]  
NOTARY  
Patti L. Clayton  
Print Name  
My commission expires: 8/27/13