

**INTERLOCAL AGREEMENT
CITY OF DES MOINES AND
HIGHLINE WATER DISTRICT**

**SOUTH 223rd STREET – PAVEMENT
REHABILITATION PROJECT
(24th Avenue South to Marine View Drive)**

RECITALS

WHEREAS, the City of Des Moines, Washington ("City") is undertaking a capital improvement project known as the South 223rd Street – Pavement Rehabilitation Project ("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, Highline Water District ("District") owns and operates certain water utilities located in the South 223rd Street and 24th Avenue South right-of-way within and adjacent to the Project limits and the District has a franchise agreement to operate in said right-of-way; and

WHEREAS, the City intends to construct improvements to South 223rd Street and its approaches; and

WHEREAS, the District is interested in replacing a 6-inch water main within the right-of-way limits of the City's project between 16th Ave S and 24th Ave S with a 8-inch water main, along with other improvements ("District Work"); and

WHEREAS, integrating the District Work into the City's design and construction of the Project would be more expedient, less expensive, and less disruptive to the public than if the District undertook the District 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 consideration of the City's incorporating the District 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 has taken appropriate action to approve the City's approval of and entry into this Agreement ("Agreement"); and

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

NOW, THEREFORE, in consideration of the terms, conditions and covenants

contained herein, the Parties agree as follows:

AGREEMENT

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 Work into the Project contract documents and to construct the District Work 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. Unless terminated in accordance with Section 3, this Agreement shall remain in effect until one of the following events occurs, whichever is later: (a) the District's written acceptance of and payment for the District Work provided pursuant hereto, or (b) December 31, 2019. Thereafter, this 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. Subject to the provisions of Section 4 herein, either Party may terminate this Agreement with cause by providing the other Party with at least thirty (30) days written notice of its intent to terminate. Termination or expiration of this Agreement 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.

- A. The District shall provide monthly payments to the City to reimburse the City for its costs of incorporating the design of the District Work into the construction documents, and for constructing the District Work pursuant to Section 6 of this Agreement, and as follows:
 - a. **Engineering/Design.** The District shall participate in the design process as follows:
 - i. The District will coordinate with the City and its engineering consultants on the preparation of the engineering plans and

specifications necessary to accommodate the District Work utilizing specifications and bid quantities for common work that is acceptable to the City. The City may use the District's survey for preparation of its plans but shall hold the District harmless from any errors, omissions or corrections necessary to design and construct said improvements. The District shall review the final Plans and Specifications, and provide the City a written notice of acceptance of the plans and specifications associated with the District Work within fifteen (15) days of receipt.

- ii. The District shall reimburse the City for the City's costs for consultant support to incorporate the District plans, specifications, and estimate into the City's Contract Documents totaling a single, lump sum payment of Ten Thousand Dollars (**\$10,000**).
 - iii. The District shall utilize 100% import Crushed Surfacing Top Course (CSTC) as defined by the WSDOT Standard Specifications for all trench backfill as part of its bid schedule unless approval for a different material is provided by the City. No native materials excavated, as part of this project shall be utilized for trench backfill unless the City provides approval to use such native materials.
 - iv. The District's Work shall include installation of water-related appurtenances, trench backfill and a 1-inch temporary HMA trench patch for the pavement restoration. Permanent pavement restoration shall be designed and constructed by the City and compensated by the District as described in Section 4.A.d.
- b. Bid Process. The District shall participate in the bid process as follows:
- i. Accept or reject bids on bid items associated with the District Work. Those bid items include the items identified on a separate Bid Schedule for the District Work.
 - ii. Within ten (10) days of receiving the bid tabulation from the City, the District shall notify the City in writing that the District either agrees to proceed with the District Work as part of the Project, or the District chooses to complete the District Work on its own as part of a separate Project.
 - iii. To determine the lowest responsive, responsible bidder, the City will include all Bid Schedules unless the District rejects the bid for the District Work.

- c. Construction. If the District elects to proceed with the District Work as part of the Project, the District shall reimburse the City for the City's actual costs for construction of the District Work based upon:
- i. Contractor's bid prices for the District Work, the actual quantities of work installed, and the final actual costs of construction. The District engineer's estimate for the District Work, excluding sales tax, is approximately Four Hundred Seventy Five Thousand Dollars (**\$475,000**).
 - ii. All Washington State Sales tax associated with the District Work.
- d. Right-of-Way Use Construction. The District shall reimburse the City for the surface restoration construction costs of the District Work within the right-of-way and impacts based upon:
- i. The City Engineer's estimate of Right-of-Way Impacts and associated overlay restoration conditions that would be included within a City right-of-way permit if the District pursued the District Work independent of the Project. This amount has been estimated and negotiated by the Parties to be a single, lump sum payment of Eighty Nine Thousand Five Hundred Dollars (**\$89,500**) and includes all Work, Services, Labor, Materials, Equipment and Incidentals necessary to mitigate the Right-of-Way impacts to be deemed the responsibility of the District, specifically including Mobilization, Traffic Control, Planing Bituminous Pavement, 2" HMA Class 1/2" PG 64-22 for Half Street Overlay, and Striping & Pavement Marking Restoration.
 - ii. The City Engineer's estimate of Hot Mix Asphalt Pavement restoration that would be required as part of the District's waterline trenching work. This amount has been estimated and negotiated by the Parties to be a single, lump sum payment of One Hundred Thirty Thousand Six Hundred Dollars (**\$130,600**) and includes all Work, Services, Labor, Materials, Equipment and Incidentals necessary to perform hot mix asphalt pavement restoration deemed to be the responsibility of the District, specifically including Mobilization, Traffic Control, HMA Class 1/2" PG 64-22 for Trench Patch, two curb ramps, and Asphalt Saw Cutting. It has been determined that allowing the City to assume responsibility of all hot mix asphalt work on the Project, the Parties can benefit from economy of scale, reduced 'sacrificial' hot mix asphalt, and increased quality control of final product.

- iii. In consideration of the District's remission of Payments to the City for the Right-of-Way Impacts and the Hot Mix Asphalt Pavement restoration, the City agrees to accept the Payments referenced in Section 4.A.d.i and 4.A.d.ii in lieu of construction and fully satisfy the District's obligation to perform the pavement and surface restoration related to the District's Work. Following the City's receipt of the Payments, the City agrees to be responsible for the condition of the City right-of-way where the District's Work was performed, and to perform any further improvements as necessary to the right-of-way which the City would have required the District to perform as part of the Project. In an event in which there is documented failure of the District's facilities, trenching, or appurtenances that affect the right-of-way, the District will be responsible for all restoration costs.
- iv. Following the City's receipt of the Payments, the City agrees to indemnify, defend, and hold harmless the District and its officers, agents, employees, and volunteers from and against any and all damages, costs or expenses in law or equity that may any time arise out of or related to damages to property or personal injury by reason of the condition the City right-of-way following the District's completion of the Work.
- e. Construction Management: The District shall reimburse the City for the District's prorated share of the City's costs incurred for Project construction engineering and management.

The District's prorated share of engineering and construction management cost for the District Work has been estimated and negotiated by the Parties based on the engineer's estimate for the District Work to be a single, lump sum payment of Thirty Thousand Two Hundred Dollars (\$30,200).

- f. Construction Engineering and Inspection: The District shall provide its own construction engineering and inspection during construction of the District Work. The District inspector shall coordinate directly with the City's inspector during the 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 inspector or designee in accordance with plans and specifications approved by the District. The District's inspector shall immediately notify the City's inspector, verbally and in writing, of any disapproval of said work and provide said notification to the City prior to progress

payment for said work to the Contractor. The District's inspector will provide copies of all daily field reports to the City's Construction Manager.

The District shall review and approve Requests for Approval of Materials ("RAM") for materials to be used proposed by the contractor for District bid item work as provided by the City. The District shall complete the review within five (5) business days of receiving any RAM from the contractor or the City.

- g. Construction Claims: If claim(s) are filed on the Project by the contractor that are directly related to the District Work ("Claim"), the District shall reimburse the City for the City's reasonable expenses incurred to respond to said Claim, including the City's outside costs for construction engineering and management, if any, and City administration support including legal representation.
- B. The District shall respond within five (5) business days to information requests submitted by the City or its agents regarding the District Work.
- C. Upon completion of the District Work to the District's satisfaction, the District shall provide written acceptance of the District Work to the City.
- D. The District may abandon the existing water main in place provided the water main is drained, filled with CDF to prevent collapse, and capped. Cost of handling and proper disposal of any AC water main disturbed by the District or the City shall be the District's responsibility.
- E. If the District decides to reject the bid for the District Work, then the District acknowledges that construction of the District Work may be processed under a separate contract by the District. The District acknowledges that the construction of the District Work under a separate contract could cause delay and/or increase the cost of the Project. If the District elects to proceed with the District Work, the District shall require its contractor to coordinate all District work within the Project work area with the City contractor and with any contractors or work crews from other utilities and to not unreasonably interfere with or delay the City contractor or the work by other utilities. If the District chooses to forgo a separate contract, the District acknowledges the City will not allow construction and replacement for a period defined in the City's franchise utility agreement from the date of acceptance of the City's project physical completion.
 - a. The District acknowledges the City's project design is dependent on

the inclusion of the District's project based on coordination and negotiations that have occurred during the Project design lifecycle. If the District decides to reject or remove its bid schedule as part of the bid process, the single payment of \$10,000 outlined in Section 4.A.a.ii will continue to be required to be paid by the District.

Section 5. Obligations of the City.

- A. The City shall incorporate the design of the District Work into the construction plans, specifications, and contract documents for the Project provided said plans, specifications and documents are prepared in similar format to the Project's contract documents. The District Work will be under a separate bid schedule in order to provide a clear identification of the bid item cost allocations between the District Work and the Project work.
- B. The City shall assume responsibility for constructing the District 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 and/or Federal laws as may be applicable. The City shall have sole authority to award and manage the construction contract per the terms of this Agreement.
- C. The City shall periodically submit to the District written invoices for payment in accordance with Section 6. The City shall include copies of invoices or other documentation from consultants and/or contractors, clearly indicating the District's portion of the invoices.
- D. The City shall assume lead agency status and responsibility for applying for and obtaining any and all regulatory permits necessary to complete the Project including the District Work, including but not limited to right-of-way permits, NPDES permits, and SEPA approvals.
- E. The City shall 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 Work. The City shall notify a District representative of all construction meetings and shall allow the District's representative to participate in all construction meetings.
- F. The City shall respond promptly to information requests submitted by the District or its agents regarding the Project.
- G. The City shall require the contractor constructing the Project to have the District, its elected and appointed 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 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 by the City.

The City shall require the contractor building the Project to indemnify, defend, and save harmless the District and its elected and appointed 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 to be responsible for compliance with all applicable federal, state and local statutes, regulations and ordinances regarding safety.

- H. The City shall design and construct the pavement surface restoration in lieu of construction by the District as provided in this Agreement.

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

- A. For construction contract costs incurred by the City for the District Work on the Project, 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 thirty (30) days of receiving any invoice pursuant to subsection 6.A, the District shall tender payment to the City in the form of a warrant payable to the City for the invoiced amount, except as to any disputed amounts.
- C. The cost incurred by the City for construction engineering and management, and construction costs incurred by the City for the District Work on the Project has been pre-determined and illustrated in Section 4 of this Agreement. The

District shall tender payment to the City in the form of a warrant payable to the City in an amount of **\$250,300** within thirty (30) days of execution of the Construction Contract with the Contractor. The District shall also tender payment to the City in the form of a check, money order, or other certified funds in an amount of **\$10,000** within fifteen (15) days of execution of this Agreement.

- D. If 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.
- 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 Work. The District also authorizes the expenditure by the City of a contingency of up to ten percent (10%) of the contractor's total price for the District's bid items for over-runs in bid quantities and change orders associated with the installation of the District Work. For any quantity overruns that cause the cost of the District's water line installation to exceed the authorized ten percent (10%) contingency amount, the City will notify the District in writing requesting a letter of concurrence allowing the City to exceed the ten percent (10%) contingency before proceeding with the work. The City's notice shall 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 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 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 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 and assign 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 final completion of the City's Project, 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 of Des Moines 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 to the extent 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 alleged breach thereof and if the dispute cannot be resolved through direct discussions between the Parties, 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 - Kent.

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
Transportation & Engineering Services Manager
216560 11th Avenue South
Des Moines, WA 98198**

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

**Highline Water District
General Manager
23828 30th Avenue South
Kent, WA 98032**

Section 17. Interlocal Cooperation. Pursuant to RCW 39.34.040, this Agreement shall be filed with the King County Auditor upon full execution or listed by subject on the City's and District's respective web sites.

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 Agreement signed by the Parties, 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 or 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 the Parties. 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 provisions 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 11 day of January, 2018.

CITY OF DES MOINES

By: 
Michael Matthias, City Manager

Date: 1-16-2018

ATTEST:


City Clerk

APPROVED AS TO FORM:


Des Moines City Attorney

Reviewed and approved as authorized by Resolution No. 18-1-30 of the Highline Water District Board of Commissioners on the 3rd day of January, 2018.

By: 
Matt Everett, General Manager

Date: 1/17/18