

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF BURLINGTON AND PUBLIC
UTILITY DISTRICT NUMBER 1 OF SKAGIT COUNTY**

THIS AGREEMENT is made and entered into this day of January ²⁰¹⁰ 2015, by and between the City of Burlington, a Washington Municipal Corporation, herein referred to as "CITY," and Public Utility District Number 1 of Skagit County, herein referred to as "DISTRICT."

WHEREAS, the City is in the process of constructing the Pervious Concrete Project in the vicinity of Hazel Avenue,

WHEREAS, DISTRICT desires to replace and upgrade an existing DISTRICT water main located within the project limits,

WHEREAS, the parties believe the project will be completed most efficiently and cost effectively if the DISTRICT work is conducted pursuant to the City's contract with the prime contractor,

WHEREAS, the City and DISTRICT are each independently authorized by law to conduct such activity; and,

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking which each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each party to the contract; and,

WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, including an agency of state government, on a basis of mutual advantage; and,

WHEREAS, it is of mutual advantage to the City and DISTRICT to enter into this Agreement providing a mechanism for the DISTRICT's work related to the City's project to be constructed by the City and paid for by the DISTRICT as part of the Pervious Concrete Project (the Project); and,

WHEREAS, it is necessary for the City and the DISTRICT to enter into an agreement setting forth the terms, conditions, and requirements for completing the Project.

NOW, THEREFORE, in consideration for the terms and conditions contained herein and in the documents incorporated herein, the parties agree as follows:

STATEMENT OF WORK

Design and Construction of water main within Hazel Ave Right of Way from Burlington Boulevard to Spruce Street to be completed by PUD. Design drawings will be included in the City Project is estimated to cost \$4,100. Installation of water main (Schedule C of future construction contract) is estimated to cost \$180,000. Construction engineering includes construction contract administration, material testing, and surveying.

Total Bid Schedule C Construction Contract (estimated)				180,000
Design Engineering (City)	1	EST		4,100
Construction Engineering (City)	1	EST		18,000
Subtotal				202,100
City Administration	1	EST	5%	10,100
TOTAL (ROUNDED)				212,200

COMPENSATION

City will charge DISTRICT for its portion of the services described above at its actual costs plus 5% for Administration for a maximum compensation not to exceed \$212,200 without further authorization from DISTRICT. Requests by DISTRICT for any other services by the City shall be negotiated as a mutually agreed amendment to this Agreement prior to the City providing the service. Upon reaching the maximum compensation, the City will have no further responsibility or obligation regarding the provision of services under this Agreement unless it is amended by mutual written agreement to authorize additional compensation.

It is contemplated that the City will contract for all aspects of the job, and the DISTRICT will reimburse the City for its respective share of the contract costs associated with the scope of work identified above.

DISTRICT will furnish field inspection services for its portion of the work. City's contract manager and inspector will coordinate with DISTRICT and schedule testing and administer change orders and pay requests.

Design and construction phase engineering coordination, construction surveying and soils testing costs shown above are estimates. The actual cost will be billed based on invoices from the appropriate sub-consultant. Construction Phase Services and Construction Contract will be determined after close of bids.

In the event a dispute arises between the City and a contractor that may affect the costs of the work for which DISTRICT is responsible, the City will consult with DISTRICT concerning the dispute and the method of resolution.

In the event the work requires change orders due to unforeseen conditions or other matters, the City is authorized to approve change orders related to the portion of the work for which DISTRICT is responsible, after consultation with DISTRICT, for a total amount not to exceed the amount provided for in the construction contract for changes, overruns and contingencies.

PAYMENT PROCEDURE

The City shall submit invoices to DISTRICT on a monthly basis. Payment shall be made by the DISTRICT to the City within 30 days of receipt of the invoice. Details of payment process shall be determined by the parties' respective financial offices.

INDEPENDENT CAPACITY

The officials, employees or agents of each party who are engaged in the performance of this Agreement shall continue to be officials, employees or agents of that party and shall not be considered for any purpose to be officials, employees or agents of the other party.

LEGAL RELATIONS

Neither party shall be liable for damage or claims which arise from or relate to the performance or non-performance of this Agreement by the other party. Each party shall be responsible only for the negligent acts and omissions of its own officers, employees, and agents, and no party shall be considered the agent of the other.

ASSIGNMENT

DISTRICT understands that the City will contract for services to be provided under this agreement and amendments thereto. However, neither party shall assign or convey its interests or obligations under this Agreement without the written consent of the other. There are no third-party beneficiaries of this agreement.

DISPUTES

It is expected that any conflicts arising out of the implementation of this Agreement will be resolved at the staff level. In the event that issues cannot be resolved by staff in a timely fashion, the parties agree to elevate the dispute through equivalent management levels of each party, and if necessary to the general manager and City Supervisor.

In the event that a dispute cannot be resolved in the manner described above, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

AMENDMENT

This Agreement shall be amended only by written mutual consent of the parties. Amendments to this agreement may be initiated by any of the parties and will become final after written agreement by all parties and appropriate signatories is executed.

TERMINATION

This agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual consent or terminated. Either party may terminate this Agreement upon

thirty (30) days written notification to the other party. If this Agreement is so terminated, DISTRICT shall be responsible to the City for performance rendered or costs incurred or contracted for in accordance with the terms of this Agreement prior to the effective date of termination, including the cost of any work contracted for by the City or the cost to the City to terminate the contract for said work.

CONTRACT MANAGEMENT

The contract administrators shall be the persons listed below. The contract administrator for each party shall be responsible for and shall be the contact person for all notices and communications regarding the performance of this Agreement.

Michael E. Demers
Engineering Technician II
PUD No. 1 of Skagit County
POB 1436
1415 Freeway Drive
Mount Vernon, WA 98273
(360) 848-4432
demers@skagitpud.org

John Abenroth
Project Engineer
City of Burlington
833 Spruce Street
Burlington, WA 98233
(360) 755-9715
johna@burlingtonwa.gov

GOVERNANCE

This Agreement is entered into and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal constitution statutes and rules;
- Statement of work; and
- Any other provisions of the Agreement, including materials incorporated by reference.

WAIVER

A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in writing signed by an authorized representative of the party and attached to the original Agreement.

SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of the Agreement, and to this end the provisions of this Agreement are declared to be severable.

ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

ADDITIONAL PROVISIONS

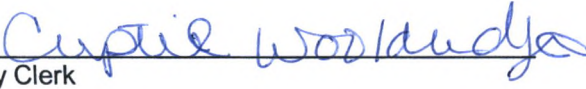
This Agreement does not create any separate legal entity, create any joint organization, establish any common budget, nor authorize the joint acquisition of any personal or real property.

DATED this 14th day of January, 2010 ~~2015~~.

City of Burlington


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

PUBLIC UTILITY DISTRICT NO.1 OF SKAGIT COUNTY


Robert B. Powell, General Manager

APPROVED AS TO FORM:

