

RESOLUTION R-4778

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN AN INTERAGENCY AGREEMENT WITH THE KING COUNTY DEPARTMENT OF NATURAL RESOURCES (KCDNR) TO PROVIDE FOR RELOCATION AND MODIFICATION OF A CITY WATERMAIN.

WHEREAS, KCDNR is reconstructing their sanitary sewer pump station at the intersection of Third Street and Park Lane; and

WHEREAS, in preparation of the pump station reconstruction, KCDNR has requested that the City of Kirkland allow KCDNR to relocate an existing Kirkland watermain within Third Street; and

WHEREAS, Kirkland has plans to increase the size of the aforementioned watermain; and

WHEREAS, it is in the interest of both parties to complete the watermain work in association with the Downtown Kirkland Transit Center; and

WHEREAS, the Council finds that entering into this interagency agreement is in the public interest;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute an interagency agreement substantially similar to the agreement attached hereto as Exhibit A with KCDNR authorizing reimbursement for certain costs associated with the watermain relocation and modification.

Passed by majority vote of the Kirkland City Council in open meeting this 6th day of October, 2009.

Signed in authentication thereof this 6th day of October, 2009.


MAYOR

Attest:


City Clerk



EXHIBIT A INTERAGENCY AGREEMENT

FOR INCORPORATION OF THE CITY OF KIRKLAND WATERMAIN IMPROVEMENT INTO THE KING COUNTY DEPARTMENT OF NATURAL RESOURCES DOWNTOWN KIRKLAND PUMP STATION UPGRADES PROJECT

The City of Kirkland (hereinafter the "City") a municipal corporation and King County, a political subdivision of the State of Washington through its King County Department of Natural Resources (hereinafter the "County"), hereinafter referred to as the "parties", do hereby agree as follows:

1. PURPOSE

The purpose of this Agreement is to provide for the relocation and increased sizing (modification) of the City watermain and appurtenances along Third Street between Central Way and Kirkland Avenue, as identified on the water construction plans supplied by the County and to address construction of the County's new Kirkland Pump Station Project. The construction of the Kirkland Pump Station Project will require the County to relocate approximately 500 linear feet of an existing 8" watermain owned by the City. As part of that relocation, the City has requested that the County upsize the County's portion of relocated watermain from 8" to 12". The City has also requested that at the City's sole expense the remaining approximately 310 linear feet of watermain along 3rd Street be replaced and upsized with a new 12" watermain to accommodate increased City uses. The upsizing of the watermain from 8" to 12" will add approximately 30% to the County's costs for pipe materials, equipment, excavation and disposal for the County's portion of the relocated watermain. The watermain upsizing portion of the Kirkland Pump Station Project shall be referred to as the Watermain Modifications.

In order to minimize the overall impacts to the Community, the County is working with Sound Transit to coordinate the construction of utility improvements that will serve the new County Kirkland Pump Station with the construction of the Kirkland Transit Center/3rd Project. Sound Transit is willing to construct a section of sewer pipeline underneath 3rd Street between Central Way and Kirkland Avenue and a relocated potable water pipeline underneath 3rd Street between Central Way and Kirkland Avenue as part of the Kirkland Transit Center/3rd Project in order to minimize contractor and community disruption. King County and Sound Transit intend to enter into an agreement for such construction. In that agreement the Kirkland Transit Center/3rd Project is referred to as the Transit Center Project, and the sanitary and water system upgrades are referred to as the Utility Pipeline Work. The parties have determined that it is in their mutual best interest to coordinate the City Watermain Modifications with the Transit Center Project.

2. THE WATERMAIN MODIFICATION PROJECT

The parties hereby agree that the plans for modifications to the City's watermain and appurtenances, including without limitation, appropriate connections for services, will be prepared by the County, reviewed by the City and incorporated in the plans for the Transit Center Project. The County, or its professional engineering representative, in accordance with the design standards set by the City will perform the City's modification design. The County's utilities and the City's Watermain Modifications are hereinafter collectively referred to as "the Utility Pipeline Work."

3. THE CONSTRUCTION PROCEDURE

a. County Engineering and Design

The County shall be responsible for performing the engineering and design, however the City shall be responsible for all engineering and design costs associated with increasing the new watermain from eight inches to twelve inches in diameter. The watermain design and plans shall be performed by the County or its professional engineering representative and shall include the City's specifications, standard details and a separate bid item schedule in such a manner as to allow the identification of costs for the Watermain Modifications. The City has been provided with and has provided comments to the 30 % and 60% design plans and specifications for the Watermain Modifications. The City shall be provided with the 90% design phase watermain modification plans and specifications for review and comment. The City shall return its comments to the County no later than 30 calendar days after receipt by the City. The County shall incorporate these comments into the final watermain plans and specifications, and upon completion of the final design.

b. Contractor Selection

In a manner consistent with the terms of the County and Sound Transit's agreement, Sound Transit shall call for bids for the construction of the Utility Pipeline Work and shall provide the City with copies of the bid tabulation. Sound Transit shall select the lowest responsible bid for the Transit Center Project based on the lowest overall bid price for the Transit Center Project and shall enter into a contract with the successful contractor to construct the Utility Pipeline Work. Sound Transit shall administer the construction contract. The City shall assist Sound Transit in the administration of the contract by agreeing to review and return, with comments, all watermain related Contractor submittals, Requests for Information and Requests for Change Orders for the Watermain Modifications in accordance with the timeline set forth in the Transit Center Project construction Contract Documents for such responses. The City recognizes and acknowledges that any delays associated with such responses may result in claims and/or additional costs due to the Contractor.

c. Sound Transit as Contracting Agency

Sound Transit shall serve as the contracting agency during construction for the parties and shall generally manage and oversee the construction of the City's watermain relocation in conjunction with the Transit Center Project.

d. Change Orders

Sound Transit may approve changes in those parts of the construction contract providing for modifications of the watermain and appurtenances, provided that if any change order would change the nature of the modification work or would cause that portion of the contract price attributable to such modification work to increase by more than \$5000 or cumulatively more than two percent (2%) of the original contract amount attributable to the Watermain Modifications then the following procedure will be followed:

Prior to issuing a Change Order to the Contractor, Sound Transit will seek the agreement of the County and the City for any change to the Watermain Modifications.

City Agreement with Change Order. If the City agrees with the change order in its entirety, Sound Transit will issue the change order to the Contractor, and the City shall be liable for the amount of such change order that applies to the City's share of the Watermain Modifications.

City Partial Agreement with Change Order. If the City disputes any portion of the change order, then Sound Transit may issue the change order to the Contractor, and the City will be liable for the amount it does not dispute, with the disputed remainder being reserved for dispute resolution between the City, King County and Sound Transit as provided in Section 12 herein.

City Disagreement with Change Order. If the City disputes the entire change order, then Sound Transit may issue the change order to the Contractor, and the full amount of the disputed change order will be reserved for dispute resolution between the City, King County and Sound Transit as provided in Section 10 herein.

In the event of a claim by the Contractor(s), each party shall be responsible for its proportionate share based on its proportionate responsibility for the claim and each party shall be responsible for its own attorneys' fees and costs. PROVIDED THAT nothing in this Agreement shall be construed to make King County responsible for a Contractor claim, to the extent that it is caused by the actions, inactions or responsibilities of Sound Transit, the City, and/or their agents, employees or consultants. PROVIDED FURTHER THAT nothing in this Agreement shall be construed to make the City responsible for a Contractor claim, to the extent that it is caused by the actions, inactions or responsibilities of Sound Transit, King County and/or its agents, employees or consultants.

e. Payment Procedure

The County shall invoice the City as calculated in this Section. As of the current 90% design specifications and drawings for the Utility Work, the Watermain Modifications requested by the City consists of an additional approximately 310 LF attributable solely to the City (the City's 310 LF) plus the increased costs for pipe materials, equipment, excavation and disposal for upsizing the watermain from 8" to 12". The final amount may change between the 90% drawings and the actual contract documents. The City shall pay the actual per linear foot cost as shown on the bid documents for the City's 310 LF, the costs of relocation of other utilities necessitated by the City's 310 LF, plus 30% of the County's LF costs for, approximately 500 LF, to cover the increased costs of the upsizing from an 8" to a 12" watermain. The City shall pay the invoiced amount within thirty days of the receipt of such invoice. Any change order work associated with the City's portion of the Watermain Modifications shall be invoiced to the City. In accordance with section 3.d above, the City shall pay County for such work within thirty (30) days of the receipt of such invoice.

f. Payments to Contractor

Sound Transit shall make all disbursements to the Contractor.

g. Final Acceptance

That portion of the Contractor's work consisting of the City's watermain modification shall not be given final acceptance until it is approved in writing by the County and the City. Either party shall not unreasonably withhold approval for final acceptance hereto. The watermain and appurtenances shall become the property of the City upon final acceptance.

h. Staff Time, Costs, and Incidental Expenses

At all times material hereto, unless expressly included in this agreement, the parties shall separately bear their own staff time, engineering costs, attorneys fees and incidental expenses.

- i. In a manner consistent with the terms of the County and Sound Transit's agreement, Sound Transit shall segregate costs for the construction of the Utility Pipeline Work and shall provide the City with copies of the bid tabulation.

4. CITY'S PERMITTING OF KIRKLAND PUMP STATION PROJECT

- a. The City has issued to Sound Transit a street use permit for use of a portion of Park Lane for the duration of the construction of the Transit Center Project. The City hereby also authorizes the assignment of that Street Use Permit from Sound Transit to the County and shall authorize the extension of the duration of the Street Use Permit until the County's substantial completion of the Kirkland Pump Station Project which is to commence at completion of the Transit Center and Utility Project Work.
- b. The City will charge Sound Transit permitting fees related only to the County's approximately 500 LF relocation of the existing eight inch watermain; the City will not charge permitting fees for the approximate 30% cost increase attributable to the increased sizing of the watermain from eight inches to twelve inches in diameter or the cost of the City's 310 LF.
- c. As part of the Kirkland Pump Station Project, the County will construct, operate and maintain certain improvements in the City-owned real property adjacent to Third Street between Central Way and Kirkland Avenue. Pursuant to City Resolution No. 3237, such real property has been dedicated by the City as public right of way. Therefore the County may construct, operate and maintain its improvements in such real property without cost or charge by the City.
- d. As part of the Transit Center Project, Sound Transit has requested that the County allow for Sound Transit's relocation of Transit Shelter Bay 4 to the east side of the King County Pump Station parcel. King County is willing to grant such request only so long as such use of King County property for Sound Transit receives full value and credit by the City as meeting applicable requirements in City of Kirkland Zoning Code Chapters 92, 95, 115 and 142.

5. INDEMNIFICATION AND INSURANCE

- a. Sound Transit shall require the Contractor building the Transit Center Project to have the City of Kirkland, its officials, 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 Sound Transit. The Contractor building the Project shall be required to maintain Builder's Risk Insurance and Public Liability Insurance.
- b. Sound Transit shall require Contractor building the Transit Center Project to indemnify, defend, and save harmless the City and its Commissioners, officers, agents, or employees from any claim, real or imaginary, filed against the City or its officers, agents, or employees alleging damage or injury arising out of the contractor's participation in the Project.
- c. Sound Transit shall require Contractor building the Transit Center Project to be solely and completely responsible for safety and safety conditions on the job site, including the safety

of all persons and property during performance of the work. Contractor shall comply with all applicable Federal, County, and State regulations, ordinances, orders, and codes regarding safety. The contractor's attention is directed to the requirements of the Washington Industrial Safety and Health Act, WISHA, RCW 49.17.

6. DURATION

This Agreement shall become effective immediately upon execution by the Parties hereto and shall remain in effect until completion of the Kirkland Pump Station Project unless terminated sooner, as provided herein.

7. TERMINATION

- a. The County has the right to terminate this Agreement by providing written notice to the City if the County determines not to undertake the Kirkland Pump Station Project or to discontinue the Kirkland Pump Station Project or if Sound Transit determines not to undertake the Transit Center Project or to discontinue said Project.
- b. The City has the right to terminate this Agreement only by providing written notice to the County prior to the award of the Transit Center construction contract, in which case the City shall be responsible for all costs authorized under Section 3.e incurred by the County and/or Sound Transit in executing the necessary contract changes to delete the Watermain and Appurtenance Modification Work.

8. NOTICES AND OTHER COMMUNICATIONS

Any notices required herein shall be in writing and shall be deemed to have been duly given if delivered personally, sent by nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to the parties at the addresses listed below

City of Kirkland
Daryl Grigsby, Public Works Director
or his designee
123 Fifth Avenue
Kirkland, Washington 98033

King County Dept of Natural Resources
Jan K. Knudson, Project Manager
or her designee
201 South Jackson Street, Suite 0508
Seattle, Washington 98104

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Notices may also be given by facsimile transmission (provided the fax machine has printed a confirmation of receipt). All notices that are mailed shall be deemed received three (3) business days after mailing. All other notices shall be deemed complete upon actual receipt or refusal to accept delivery.

9. INTEGRATION AND MODIFICATION

This agreement constitutes the final and completely integrated agreement between the parties concerning its subject matter and it may be signed in counterparts without affecting the validity of this provision. No modification of this agreement or this section is valid unless in writing and signed by both parties.

10. ASSIGNMENT

Neither party to this Agreement shall transfer or assign any right nor obligation hereunder, except as provided in Section (3)(g) above, without the prior written consent of the other party.

11. APPLICABLE LAW

This Agreement and the rights of the parties hereunder shall be governed by the laws of the State of Washington and venue for any action hereunder shall be King County, State of Washington. may be signed in counterparts, and, if so signed, shall be deemed one integrated document.

12. DISPUTE RESOLUTION

The Parties will work collaboratively in accordance with the following steps to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of authority. The Parties shall use their best efforts to resolve disputes and issues arising out of or related to this Agreement. In the event of a dispute, the disputing Party shall notify the other Party in writing of any problem or dispute which the disputing Party believes needs formal resolution. This written notice shall include: (1) a description of the issue to be resolved; (2) a description of the difference between the Parties on the issue; and (3) a summary of steps taken by the disputing Party to resolve the issue. The Parties shall meet within three (3) business days of receiving the written notice and attempt to resolve the dispute. In the event the Parties cannot resolve the dispute (and that dispute is not subject to some other formal appeal process), then the City Manager or his/her designee and the County Director of Natural Resources and Parks or his/her designee shall meet within seven (7) business days of receiving notice and engage in good faith negotiations to resolve the dispute. The Parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted; provided that this requirement shall not apply if the applicable statute of limitations will run during the time that may be required to exhaust the procedural steps set forth above.

13. INVALIDITY OR UNCONSTITUTIONALITY

If any section, sentence, clause or phrase of the Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, the City and the County may mutually substitute a new provision to replace the invalidated section, sentence or clause to enable the Agreement to continue. If the City and the County agree that, accomplishing the purpose of the Agreement cannot be saved by such a revision, the Agreement will be deemed terminated as of the date of the finding of the invalidity or unconstitutionality and all costs incurred by the parties shall remain the responsibility of the parties having incurred them with the following exception: If such date of the finding occurs after construction has commenced on the watermain modification, and the work accomplished prior to the date of the finding is deemed acceptable for use by the City, the City shall reimburse the County for all expenses associated with the portion deemed acceptable for use.

The date of this Agreement is _____, 2009.

The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities. Execution of this Agreement by the undersigned representatives of the City has been authorized by Resolution No. _____ of the City of Kirkland.

CITY OF KIRKLAND

KING COUNTY DEPT OF NATURAL RESOURCES

City Manager

Director

Approved as to form:

Approved as to form:

City Attorney

King County Attorney