

RESOLUTION R- 4301

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT WITH NORTSHORE UTILITY DISTRICT FOR THE CONSTRUCTION OF SEWER MAIN AND WATER MAIN RELOCATIONS AND IMPROVEMENTS IN CONNECTION WITH THE CITY'S JUANITA CREEK AT NE 124TH STREET CULVERT REPLACEMENT PROJECT.

WHEREAS, the City of Kirkland will be replacing the culvert at Juanita Creek and NE 124th Street as authorized by the 2000 to 2005 Capital Improvement Program; and

WHEREAS, the Northshore Utility District would like to replace and relocate a sewer main and water main installed in NE 124th Street at Juanita Creek to facilitate the construction of the culvert replacement by the City and to take advantage of the fact that the right of way will be uncovered at that time; and

WHEREAS, Northshore Utility District has agreed to reimburse the City of Kirkland for the design and construction costs of those sewer main and water main relocations and improvements in NE 124th Street if the City will undertake that project on NUD's behalf; and

WHEREAS, the City of Kirkland is authorized by RCW Chapter 39.34 to enter into Interlocal agreements with other governmental entities;

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

Section 1. The City Manager is hereby authorized to execute an Interlocal Agreement with Northshore Utility District on behalf of the City in substantially the form attached hereto as Exhibit A and incorporated herein by this reference.

Passed by majority vote of the Kirkland City Council in open meeting this 4th day of September, 2001.

Signed in authentication thereof this 4th day of September, 2001.

MAYOR

Attest:

City Clerk



EXHIBIT A INTERLOCAL AGREEMENT

FOR INCORPORATION OF NORTSHORE UTILITY DISTRICT WATER AND SEWER MAIN RELOCATION INTO THE CITY OF KIRKLAND'S JUANITA CREEK AT NE 124TH STREET CULVERT REPLACEMENT PROJECT

The City of Kirkland (hereinafter the "City") and Northshore Utility District (hereinafter the "District"), both municipal corporations, in accordance with the Interlocal Cooperation Act (Chapter 39.34 RCW) do hereby agree as follows:

1. PURPOSE

The purpose of this Agreement is to provide for the relocation of District water and sewer mains and appurtenances along NE 124th Street between 98th Avenue NE and 100th Avenue NE, as identified on the water and sewer construction plans supplied by the City. The water and sewer main design will be incorporated into the City approved construction drawings for the Juanita Creek Culvert project, officially entitled Juanita Creek at NE 124th Street Culvert Replacement Project (CSD 0017) (hereinafter the "Improvement Project"). The parties have determined that it is in their mutual best interest to coordinate the relocation of these water and sewer mains and appurtenances in conjunction with the Improvement Project.

2. THE PROJECT

The parties hereby agree that the plans for relocation of the District's water and sewer mains and appurtenances, including without limitation appropriate connections for services, will be prepared by the City, reviewed by the District and incorporated in the City's plans for the Improvement Project. The City, or its professional engineering representative, in accordance with the design standards set by the District will perform the District's relocation design. The City's culvert replacement project and the District's relocation of water and sewer mains and appurtenances are hereinafter referred to as "the Project."

3. THE CONSTRUCTION PROCEDURE

a. City Engineering and Design

The City shall be responsible for performing the engineering and design and the District shall be responsible for all engineering and design costs associated with the water and sewer main relocation. The water and sewer main design and plans shall be performed by the City or its professional engineering representative and shall include the District's specifications, standard details and a separate bid item schedule. After review by the District the water and sewer relocation plans and specifications shall be returned to the City with comments no later than 30 calendar days after receipt by the District of water and sewer plans and specifications. The City shall incorporate the water and sewer main plans, the District's specifications, standard details and schedule of items in such a manner as to allow the identification of costs for the water and sewer main relocation. Upon completion of incorporating all comments into the final documents, the City shall provide the District with the official Engineer's Estimate for the complete project, including detailed breakdown of the specific items identified for the water and sewer main relocations. This estimate information shall be maintained as confidential by the District.

b. Contractor Selection

The City shall call for bids for the construction of the Project and shall provide the District with copies of the bid tabulation. The City shall select the lowest responsible bid for the Project

and shall enter into a contract, in the City's name only, with the successful contractor to construct both the culvert replacement and associated work and water and sewer schedules of the Project. The City shall administer such construction contract. The District shall attend the pre-construction meeting and assist the City in the administration of the contract by agreeing to review and return, with comments, all water and sewer-related contractor submittals for the Project within seven (7) days of the date of receipt by the District.

c. City as Contracting Agency

The City shall serve as the contracting agency during construction for the parties and shall generally manage and oversee the construction of the District's water and sewer main relocation in conjunction with the Project. The District will provide on-call inspections of the relocation work prior to backfilling operations being performed. The District will be responsible for direct inspection of all pressure and purification testing, of relocated water and sewer lines and appurtenances. The District will be responsible for any and all excess costs incurred by the City as a direct result of the District's failure to timely inspect and test the water and sewer line installation work performed by the contractor. Compaction requirements of the District will be incorporated with those of the City. The City will provide for compaction testing.

d. Change Orders

The City may approve changes in those parts of the construction contract providing for relocation of the water and sewer mains and appurtenances, provided that if any change order would change the nature of the relocation work or would cause that portion of the contract price attributable to such relocation work to increase by more than \$1,000.00 or cumulatively more than two percent (2%) of the original contract amount attributable to the water and sewer main relocation work, the District's prior consent to the change orders shall be obtained, which consent shall not be unreasonably withheld. In the event that consent is unreasonably withheld, the District will be held responsible for all liability incurred by the City resulting from such withholding of consent. The City shall immediately provide the District with copies of all requests for change orders and executed change orders associated with water and sewer main relocation regardless of the dollar amount of the change order.

e. Payment Procedure

The City shall provide the District with monthly progress billings for that portion of the Project attributable to relocation of the District's water and sewer main and appurtenances. The City and District will meet to review and agree upon progress and proposed disbursements to Project contractors. The District shall pay the City for the cost of relocating the described water and sewer mains and appurtenances, along with appropriate side connections, as provided in the contract bid (as adjusted by change order), based upon agreed upon progress, within forty five (45) days of receipt of each billing.

f. Payments to Contractor

The City shall make all disbursements to Project contractors.

g. Final Acceptance

That portion of the contractor's work consisting of the District's water and sewer main relocation shall not be given final acceptance until it is approved in writing by the City and the District. Either party shall not unreasonably withhold approval for final acceptance hereto. The water and sewer main and appurtenances shall become the property of the District upon

final acceptance. The City agrees to assign all warranties related to the water and sewer main and appurtenances to the District.

h. Staff Time, Costs, and Incidental Expenses

At all times material hereto, the parties shall separately bear their own staff time, engineering costs, and incidental expenses.

Should any claims arise related to the water and sewer line and appurtenance relocation portion of the Project, the City shall handle and administer such claims in the same manner as it would handle any other claims on the Project. The City shall immediately notify the District and keep it informed as to the progress of the claim. The District will provide guidance to the City regarding proposed terms of settlement. Any decision regarding the settlement or prosecution of a claim shall be approved by the District prior to being finalized. If the District and the City cannot agree as to the prosecution or settlement of a claim, the District may prosecute or defend the claim and the City will assign such claims to the District. The District agrees to pay any costs of prosecution or defense if assigned such claims and defend, indemnify and hold harmless the City from all damages the City suffers from the District's prosecution or defense of the claim.

i. Identification of Bid Items and Limitation of District Costs Based Upon Initial Contract Bids

The City will identify the bid items for the water and sewer main relocation work in the construction contract. The District's obligation to reimburse the City for the water and sewer main relocation work of the project shall be limited to sum of all engineering and design costs, incidental expenses, claims and change order(s) pertaining to the water and sewer line relocations **plus** the lessor of:

1. The sum of the costs of the bid items identified as pertaining to the water and sewer line relocation work, or
2. The dollar amount equal to one hundred fifteen percent (115%) of the amount determined by multiplying the total project bid for the contract by the percentage of the Engineer's Estimate associated with the cost of the bid items for the water and sewer main relocation work.

j. District Inspections

The City will allow the District to inspect the water and sewer main relocation work at reasonable times before any work is covered. To accomplish this, the City will provide the District with copies of the contractor's project schedules and any revisions thereto, and advise the District 24 hours prior to the need for such inspection. The district agrees to provide such inspection in a timely manner to minimize delay to the contractor and City.

4. INDEMNIFICATION AND INSURANCE

- a. The City shall require the Contractor building the Project to have the Northshore Utility District, its Commissioners, 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 City. The Contractor building the Project shall be required to maintain Automobile Liability, Commercial General Liability and Workers Compensation coverage.
- b. The City shall require Contractor building the Project to indemnify, defend, and save harmless the District and its Commissioners, officers, agents, or employees from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with

building the Project, except for injuries and damages caused by the sole negligence of the District.

- c. The City shall require Contractor building the 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 City, County, and State regulations, ordinances, orders, and codes regarding safety. The contractor's attention will be directed to the requirements of the Washington Industrial Safety and Health Act, WISHA, RCW 49.17.

5. NOTICES AND OTHER COMMUNICATIONS

All notices and other formal communications to be delivered under this Agreement shall be mailed or delivered to the following:

City of Kirkland
Jim Arndt, Public Works Director
or his designee
123 Fifth Avenue
Kirkland, Washington 98033

Northshore Utility District
John D. Hastig, Engineering Manager
or his designee
P.O. Box 489
Kenmore, Washington 98028

Provided, however, the parties may change their respective designation of representatives by written notification to one another.

6. 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.

7. ASSIGNMENT

Neither party to this Agreement shall transfer or assign any right or obligation hereunder, except as provided in Section (3)(g) above, without the prior written consent of the other party.

8. COSTS TO PREVAILING PARTY

In the event of litigation or other legal action to enforce any rights, responsibilities or obligations under this Agreement, the parties agree that each will be responsible for all legal expenses incurred by in relation to the legal action.

9. 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.

10. 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 District may mutually substitute a new provision to replace the invalidated section, sentence or clause to enable the Agreement to continue. If the City and District 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 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 water and sewer main relocations, and the work accomplished prior to the date of the finding is deemed acceptable for use by the District, the District shall reimburse the City for all expenses associated with the portion deemed acceptable for use.

Dated this _____ day of _____, 2001.

Execution of this Agreement by the undersigned representatives of each party has been authorized by Resolution No. _____ of the City of Kirkland and Resolution No. _____ of the Board of Commissioners of the Northshore Utility District.

CITY OF KIRKLAND

NORTHSHORE UTILITY DISTRICT

City Manager



General Manager

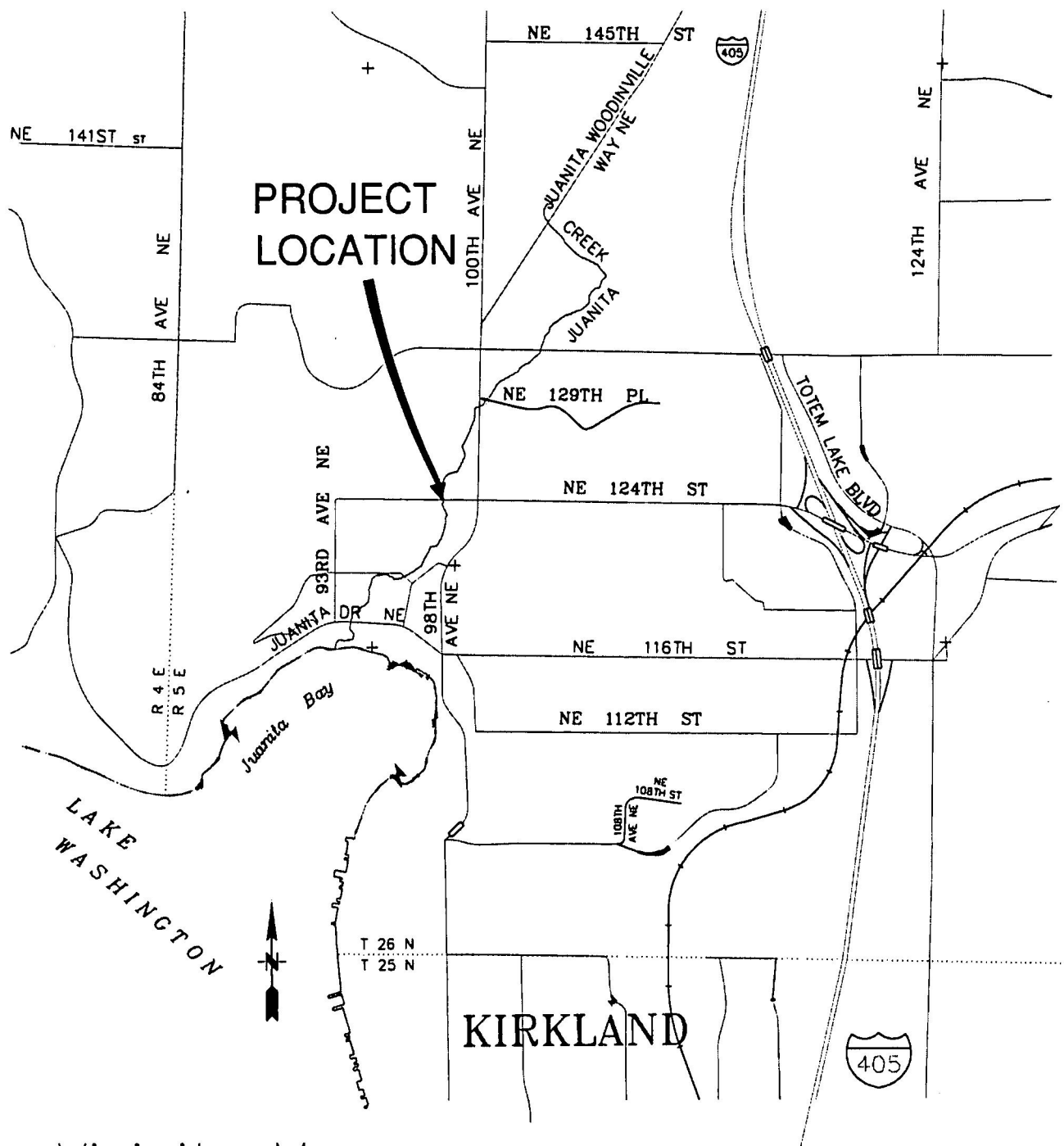
Approved as to form:

Approved as to form:



City Attorney

Utility District Attorney



Vicinity Map
Juanita Creek at NE 124th Street
Culvert Replacement CSD-0017