

**INTERLOCAL AGREEMENT  
TOWN OF WOODWAY AND OLYMPIC VIEW WATER AND SEWER DISTRICT  
TWIN MAPLES 2020 STORMWATER AND WATER MAIN REPLACEMENT**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the Town of Woodway, Washington (the "Town") and Olympic View Water and Sewer District (the "District") (collectively, the "Parties") as of the date entered below.

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;

WHEREAS, the District is undertaking a capital improvement project known as the Twin Maples 2020 Water Main Replacement Project (the "Project");

WHEREAS, the District plans to replace in present alignment or by parallel construction (hereafter "replacement") certain water utilities within the project limits of the Project as depicted in Exhibit A;

WHEREAS, the Town owns and operates storm utilities located within the project limits of the Project that are in need of replacement;

WHEREAS, integrating the stormwater utilities work needed by the Town into the Project would be more expedient, less expensive, and less disruptive to the public than undertaking this work separately;

WHEREAS, the Parties mutually desire to establish a formal arrangement under which the Town will pay the District in exchange for the District incorporating the Town's stormwater utility work into the Project;

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking;

WHEREAS, the Town Council of the Town of Woodway has taken appropriate action to approve the Town's entry into this Agreement;

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 Town and the District agree as follows:

## TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which the Town will pay the District to incorporate the stormwater utilities replacement work into the Project contract documents and to construct said replacement work in conjunction with the District's 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 its execution by the Parties hereto. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) the Town's written acceptance of and payment for all stormwater utilities work provided in accordance with the contract to the Town pursuant to this Agreement, or (b) December 31, 2022 when it 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 thirty (30) days' written notice of its intent to terminate. Termination or expiration shall not alter the Town's payment obligations under Section 6 for services already rendered and costs expended on behalf of the Town, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out the Town's portion of the work and shall not alter the Parties' respective obligations under Section 10 of this Agreement.

Section 4. Obligations of the Town. The Town agrees to:

A. Provide periodic payments to the District as set forth in section 6 below to reimburse the District for its outside costs of constructing the Town's stormwater utilities replacement work pursuant to Section 6 of this Agreement, and as follows:

1. Engineering/Design. The Town shall reimburse the District for 100% of the District's outside costs for engineering/design to incorporate the design prepared by the Town's engineering consultant for the Town's stormwater utilities replacement work into the construction plans, specifications, and contract documents for the Project. The Town's share is estimated to be \$2,500.00 which is five percent (5%) of total engineering design costs, with the total actual cost to the Town for this work not to exceed \$5,000.00 without prior approval by Town of adopted change order, which approval shall not be unreasonably withheld.
2. Construction. The Town shall reimburse the District for 100% of the District's actual outside costs for construction of the Town's stormwater utilities work based upon the contractor's bid, the actual quantities of materials installed, and the final actual costs of construction as follows:

- a. The Town stormwater utilities portion of the Project consists of bioretention retrofit work that includes the installation of two (2) raingardens, one (1) concrete drainage structure and associated storm drainage piping.
  3. Construction Engineering and Management. The Town shall reimburse the District for the Town's prorated share of the District's actual outside costs for construction engineering and management of the Project. The Town's prorated share of the construction engineering and management costs shall be computed by multiplying the District's actual outside costs for construction engineering and management times the percentage of the construction contract costs that the Town's utilities work is of the total construction contract costs for the Project. The Town share shall be \$2,035.00 (5%) of the construction engineering and management, not to exceed \$ 5,000.00 without prior approval by adopted change order, which approval shall not be unreasonably withheld.
  4. Administrative Costs. In addition to the above referenced costs, \$2,500 shall be added and billed to the Town for overhead costs for accounting, billing, and administrative services of the District.
  5. Change Orders. The Parties acknowledge that unforeseen circumstances may arise that necessitate change orders. The Town expressly authorizes the District to proceed with change orders not exceeding ten percent (10%) of the contracted amount without prior authorization. Any amount in excess of ten percent (10%) requires prior written authorization by the Town, which shall not be unreasonably withheld.
- B. Respond promptly to information requests submitted by the District or its agents regarding the stormwater utilities replacement work.
1. Design and Specification Approval. The Town shall review and provide written approval of any design and/or specification materials for the Project within 10 calendar days of delivery to the Town by the District.
- C. Upon satisfactory completion of the Town's stormwater utilities replacement work, the Town will provide written acceptance of the work to the District. Following project acceptance, the Town shall save, hold harmless and indemnify the District, it's employees, officers and elected officials from and against any and all design and/or construction defects or workmanship. The Town's sole remedy shall be against the Contractor(s).

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

- A. Incorporate the Town's engineering design, plans and specifications and stormwater utilities replacement work into the District's construction plans, specifications and contract documents for the Project.



- B. Assume responsibility for constructing the Town's stormwater utilities replacement 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 for public works contracts for water/sewer special purpose districts and cities.
- C. Submit to the Town written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors clearly indicating the Town'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, SEPA and NEPA permits.
- E. Provide Town personnel reasonable access to the Project's construction area for purposes of inspecting and monitoring the progress of the work performed on the Town's stormwater utilities replacement work.
- F. Respond promptly to information requests submitted by the Town or its agents regarding the Project.
- G. Upon final acceptance by the Town, the District shall assign any warranty for the work performed on the Town's stormwater utility infrastructure to the Town.

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

- A. The actual costs incurred by the District to incorporate the design prepared by the Town's engineering consultant for the Town's stormwater utilities replacement work into the construction plans, specifications and contract documents for the Project has been estimated to be \$ 50,000.00. The Town shall tender payment to the District in the form of a check, money order or other certified funds, for actual costs incurred, for work approved by Town, which approval shall not be unreasonably withheld within 30 days after the invoice is submitted to the Town.
- B. For construction contract costs and for construction engineering and management costs incurred by the District for the Town's utilities work on the Project, the District shall within thirty (30) days submit an invoice to the Town for the Town's share of said expenses for the Town's utilities work. Said invoice shall contain a reasonably detailed explanation of the methodology utilized by the District in determining the Town's share of each expense. To the extent reasonably possible, the District shall document and tabulate separately the actual quantities of work installed to clearly identify the Town's portion of the Project construction costs for the Town's utilities work.

- C. Within thirty (30) days of receiving any invoice pursuant to subsection 6.B, the Town shall tender payment to the District in the form of a check, money order or other certified funds for the invoiced amount for work approved by the Town, which approval shall not be unreasonably withheld.
- D. In the event that the Parties disagree regarding the Town's share of any expense incurred by the District regarding the Project, the Parties may agree to submit the question for resolution by a mediator and in the event the disagreement cannot be resolved through mediation, through binding arbitration pursuant to the Rules of the American Arbitration Association.

Section 7. Town Reserves Right to Accomplish Work. If the contractor's bid for construction for the Town's stormwater utilities replacement work is unacceptable to the Town for any reason, the Town reserves the right to perform the Town's stormwater utilities replacement work through means separate from the District's construction contract, PROVIDED that by so doing, the Town's work does not in any way delay, disrupt or otherwise negatively impact the District's contract work for the Project or increase the costs to the District, therefore. If the Town's accomplishment of its utilities work separately does delay, disrupt, or otherwise negatively impact the District's contract work for the Project or increase the cost to the District therefore, the Town shall reimburse the District for all such increased costs incurred by the District.

Section 8. Ownership and Disposition of Property. The Town's stormwater utilities replacement work done pursuant to this Agreement shall become and remain the exclusive property of the Town upon completion. All other work constructed under the Project shall become and remain the exclusive property of the District upon completion.

Section 9. Administration; No Separate Entity Created. The General Manager for the District shall serve as the administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 10. Insurance. For the duration of this Agreement, each Party shall maintain the same coverage and amounts of insurance that it currently has. If either Party should make changes that decrease the coverage or amounts, that Party shall notify the other in writing at least 30 days before the effective date of the change.

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 the laws of the State of Washington. Except as otherwise specifically provided herein, 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 District specifically promises to indemnify the Town 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 Town.

Section 12. 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 Snohomish County Superior Court.

Section 13. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between the Town and any employee, agent, representative or contractor of the District, or between the District and any employee, agent, representative or contractor of the Town.

Section 14. 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 15. Notices. Notices to the District shall be sent to the following address:

**Olympic View Water and Sewer District  
General Manager  
8128 228<sup>th</sup> St SW  
Edmonds, WA 98026**

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

**Town of Woodway  
Town Administrator  
23920 113<sup>th</sup> Place W  
Woodway, WA 98020**

Section 16. Duty to File Agreement with County Auditor. The District shall, after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor.

Section 17. Integration. 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.

Section 18. 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 provision.



OLYMPIC VIEW WATER & SEWER DISTRICT

By: Dave Barnes  
Dave Barnes, General Manager

Date: 2/8/22

TOWN OF WOODWAY

By: Michael S. Quinn, Mayor ELIZABETH MITCHELL, MAYOR PRO TEM

Date: Elizabeth Mitchell  
18 February 2022

ATTEST:

Heidi Napolitano  
Heidi Napolitano, Town Clerk

APPROVED AS TO FORM:

Greg Rubstello  
Greg Rubstello, Town Attorney