

**INTERLOCAL AGREEMENT
ALDERWOOD WATER & WASTEWATER DISTRICT
AND
CITY OF LYNNWOOD
REGARDING THE 2023 CIPP SEWER PROJECT**

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between the ALDERWOOD WATER & WASTEWATER DISTRICT, a public utility district (“AWWD”) located at 3626 156th Street SW, Lynnwood, WA, 98087 and THE CITY OF LYNNWOOD, a municipal corporation (the “City”), for the purposes set forth below.

Recitals

WHEREAS, AWWD operates and maintains existing sanitary sewer facilities in AWWD’s service area; and

WHEREAS, the AWWD has concluded that the 2023 CIPP (Cast-In Place Pipe) Sewer Project (the “Project”), is necessary in order to preserve and rehabilitate certain sanitary sewer mains within AWWD’s service area; and

WHEREAS, the City operates and maintains existing sanitary sewer facilities in the City’s service area; and

WHEREAS, the City has concluded that it is necessary in order to preserve and rehabilitate certain sanitary sewer mains within the City’s service area; and

WHEREAS, AWWD and the City have determined it is advantageous to the rate payers of both agencies prepare a joint contract, the Project as a larger joint project is expected to result in lower per foot costs for both agencies; and

WHEREAS, AWWD is the lead agency for the construction of the Project; and

WHEREAS, it is deemed to be in the best interest of the public, the City and AWWD to include necessary items of work, as requested by the City, into AWWD’s construction contract proposed for this Project; and

WHEREAS, the parties are authorized to enter into an interlocal agreement pursuant to chapter 39.34 RCW in order to jointly accomplish the Project.

NOW, THEREFORE, the City and AWWD wish to enter into this Agreement outlining the work and associated cost for the implementation of the 2023 CIPP Project.

I. OBJECTIVE OF AGREEMENT

The objective of this Agreement is to set forth the mutual obligations and rights of the City and AWWD for the accomplishment of the Utility Work, also known as AWWD Project Number S2201 and described in Exhibits “A” and “B” which are attached hereto and incorporated herein by this reference.

II. RESPONSIBILITIES OF THE PARTIES

A. AWWD shall act as the lead agency on the Project and will be responsible for preparing AWWD’s plans and specifications during the design and construction phases of the Project and which shall include the City’s plans within AWWD’s plan set. AWWD’s Project Manager shall act as the administrator of this cooperative undertaking.

B. The City shall provide construction plans conforming to the general format and level of detail agreed to by the Parties, based on samples provided by AWWD, showing the City sewer facilities to be included in the Project (the “City’s Utility Work”). The City shall review the final contract and specifications and concur with the acceptability of the final bid document package prior to AWWD advertising for construction bids.

C. AWWD shall (i) include the City’s Utility Work into AWWD’s plans and specifications; (ii) print and distribute the Contract Specifications and Plans; (iii) administer the advertisement for construction; and (iv) award and administer the contract, including accountings, making payments to the Contractor, and keeping the Project records, all in accordance with applicable law.

D. AWWD, acting for and on behalf of the City, shall provide limited construction management for the City. The City shall provide field inspection for the City’s utility Work occurring on the City facilities. The City shall provide copies of all daily inspection reports for work involving the City’s utility work on a weekly or other agreed upon interval, establishing quantities and acceptance of work on the City’s facilities.

E. The City shall be solely responsible for all costs associated with the City’s Utility Work and shall reimburse AWWD in accordance with the terms of Section V below.

F. The City shall make all reasonable efforts to cooperate with the AWWD’s Contractor in facilitating the City’s Utility Work and make necessary personnel available so as to not delay the Contractor’s construction schedule.

G. The City shall, within ten (10) calendar days after notification of completion of the City’s Utility Work, issue notification of any deficiencies or issue written notification of acceptance. AWWD’s Contractor shall correct all deficiencies as determined by the City. If, after the ten (10) day period, notification has not been received by AWWD, the City’s Utility Work shall be considered complete and accepted by the City.

H. The City shall furnish an inspector for the City's Utility Work. Any costs for such inspection will be borne solely by the City. All communications between said inspector and the AWWD's contractor shall:

- a. Only address the City's sewer facilities and the City's Utility Work;
- b. Be documented in the City's daily inspection report; and
- c. Include AWWD's project representatives as a cc: on all e-mails.

I. The City shall own all utility facilities constructed or modified under this Agreement within the City's service area. This Agreement makes no changes, permanent or temporary, in the ownership or responsibility for maintenance to any City or AWWD facility. Each agency shall have independent and full recourse to any warranty terms included in the construction document that apply to that party's facilities.

J. The performance of the duties of the parties under this Agreement shall be done in accordance with standard operating procedures and customary practices of the parties.

K. No provision of this Agreement shall relieve either party of its public agency obligations and or responsibilities imposed by law.

L. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

M. AWWD shall (i) require the Contractor to name the City as additional insured on insurance furnished by the Contract Specifications and (ii) shall provide copies of insurance documentation to the City.

III. DURATION OF AGREEMENT

This Agreement shall become effective immediately upon the signing of all parties and filing or recording under Section XVI of this Agreement, and shall remain in effect until the City's Utility Work has been accepted by the City and the City has paid AWWD in full; provided, that the respective indemnification obligations of the City and AWWD in Section VIII shall survive the expiration or termination of this Agreement. The parties anticipate that the Project will be completed by December 31, 2023.

IV. SEPARATE ENTITY NOT CREATED

No separate legal entity is created hereby, as each of the parties is contracting in its capacity as a municipal corporation of the State of Washington.

V. FINANCING

A. The City agrees to set aside funds for payment to AWWD for the City's Utility Work in an amount not less than the estimate of cost for the bid items for the City's Utility Work and for an amount necessary to reimburse AWWD for construction

management, inspection and administration services related to the City's Utility Work. The City's estimate of costs is shown in Exhibits "A" and "B" which are attached hereto and incorporated herein.

B. AWWD shall provide the City with properly executed invoices showing expenditures on the City's Utility Work identified in Section V.C below. Invoices shall be based on Contractor's unit price bid on the City's Utility Work. Undisputed invoices shall be paid by the City within thirty (30) days of receipt by the City. Payment by the City shall not constitute an agreement as to the appropriateness of any item or acceptance of the work so represented.

C. The City shall pay the AWWD for the following costs:

- (i) 100 percent of the final cost of all contract items related to the City's Utility Work, as shown in the bid proposal of the successful bidder; and
- (ii) The cost of any extra work associated with the City's Utility Work within the 15% contingency, and any costs for extra work that have been approved in accordance with Section VII.
- (iii) A sum equal to 5 percent of the City's Utility Work, as shown on Exhibit B, for reimbursement of AWWD's construction management, contract administration, and overhead expenses.

VI. TERMINATION

A. This Agreement may be terminated by either Party in whole or in part, for convenience without cause, prior to the termination date specified in Paragraph III, upon thirty (30) days advance written notice.

B. This Agreement may be terminated by either Party, in whole or in part, for cause prior to the termination date specified in Paragraph III, upon thirty (30) days advance written notice to the other Party. Reasons for termination for may include, but are not limited to, non-performance; misuse of funds; and/or failure to provide related reports/invoices/statements as specified in Paragraph II.

C. If the Agreement is terminated as provided in this section: (1) each Party will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) each Party shall be released from any obligation to provide further services pursuant to this Agreement.

D. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

VII. AMENDMENTS

This Agreement may be amended at any time by written agreement of both Parties. Such requests will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope.

There may be unforeseen conditions requiring immediate resolution during the construction phase of this Agreement such as construction disputes and claims, changed conditions and changes in the construction work. Reimbursement for increased construction management and/or construction contract amount shall be limited to costs covered by a modification, change order or extra work order approved by both Parties, as follows:

A. Should it be determined that any change from the contract plans and specifications is required, AWWD, through the Capital Projects Manager, shall have authority to make such changes up to the amount of the "Contingency" shown in Exhibit "B" as may be adjusted in accordance with the accepted bid price.

B. Any change in the work which would cause the "Grand Total" cost to exceed the amount shown in Exhibit "B", will require a Letter of Understanding, signed by both the City's Public Works Director or his/her designee and AWWD's General Manager or his/her designee, describing changed scope of work and estimated change in the City's Utility Work cost.

C. In the event of a claim by the construction contractor: (1) the City shall be responsible to pay any meritorious claim that relates to the City's Utility Work; and (2) AWWD shall be responsible to pay any meritorious claim that relates to AWWD's portion of the Scope of Work.

VIII. HOLD HARMLESS AND INDEMNIFICATION

A. The City agrees to defend, hold harmless and indemnify AWWD and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of the City's participation in this Project including any act or omissions of the City, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the City or otherwise. The City further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the City or AWWD, arising from the City's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the City and AWWD shall be shared, based upon the percentage of fault attributed to each Party as either mutually agreed or determined by the trier of fact.

B. AWWD agrees to defend, hold harmless and indemnify the City and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of AWWD's

participation in this Project including any act or omissions of the AWWD, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the AWWD or otherwise. AWWD further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the City or AWWD, arising from AWWD's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the City and AWWD shall be shared, based upon the percentage of fault attributed to each party as either mutually agreed or determined by the trier of fact.

C. The City and AWWD hereby specifically and expressly waive any and all immunity under industrial insurance, Title 51 of the Revised Code of Washington, and agree that the foregoing waiver was mutually negotiated by the Parties. Further, the indemnification obligations of the Parties under this Agreement shall not be limited in any way by insurance or any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts; provided, however, that the Parties' waiver of immunity by the provisions of this section extends only to claims against AWWD by the City or claims against the City by AWWD and does not include, or extend to, any claims by the Parties' employees directly against either Party or claims by any third-party contractor against either Party.

IX. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

X. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the City and AWWD at the addresses provided below

David Mach
City Engineer
City of Lynnwood
19100 44th Ave W
Lynnwood, WA 98036

Don Ranger
Project Engineer
AWWD Capital Projects Department
3626 156th Street SW
Lynnwood, WA 98087

or to such other respective addresses as either Party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.

XII. COMPLIANCE WITH REGULATIONS AND LAWS

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. Jurisdiction and venue for any action arising out of this Agreement shall be in Snohomish County, Washington.

XIII. ASSIGNMENT

The Parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other Party.

XIV. ATTORNEYS' FEES

If either Party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other Party with respect to this Agreement, and in the further event that one Party shall substantially prevail in such action, the losing Party shall, in addition to all other payments required therein, pay all of the prevailing Party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

XV. NONDISCRIMINATION

Each of the Parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

XVI. FILING

Copies of this Agreement shall be filed with the Auditor's Office of the county in Washington State in which the property or project is located, the Secretary of State of the State of Washington; and the respective Clerks of the parties hereto; Provided that as an alternative, the Agreement may be listed by subject on AWWD's or the City's web site or other electronically retrievable public source.

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:



Christine Frizzell, Mayor

11/29/2022

Date

Paul McIntyre

Paul McIntyre, Board President

12/6/2022

Date

EXHIBIT A
CITY OF LYNNWOOD
UTILITY CONSTRUCTION ASSOCIATED WITH
2023 CIPP SEWER PROJECT
ALDERWOOD WATER & WASTEWATER DISTRICT PROJECT NO. S2201

Utility Work Description

The City of Lynnwood, in conjunction with the Alderwood Water & Wastewater District 2023 CIPP Sewer, will have AWWD's Contractor install CIPP liners in City sanitary sewer lines. An estimate of the scope of Utility Work and the costs associated with it, based on the preliminary design, is as follows:

DESCRIPTION	PLAN QTY	UNIT	UNIT COST	TOTAL COST
Mobilization, Cleanup, and Demobilization	1	LS	\$10,000	\$10,000
Temporary Traffic Control	1	LS	\$13,000	\$13,000
Environmental Controls	1	LS	\$1,000	\$1,000
CIPP – Sewer Main 8-inch Diam.	2,292	LF	\$70	\$160,440
Force Account	1	FA	\$10,000	\$10,000
Total Improvement Costs				\$194,440

EXHIBIT B
CITY OF LYNNWOOD
UTILITY CONSTRUCTION ASSOCIATED WITH
2023 CIPP SEWER PROJECT
ALDERWOOD WATER & WASTEWATER DISTRICT PROJECT NO. S2201

Preliminary Cost Summary

Total Improvement Cost	\$ 194,440.00
Sales Tax on Bid Items (Included in Unit Prices at 10.6%)	\$ 20,416.20
Contingency (15% of Improvement Costs)	<u>\$ 29,166.00</u>
Subtotal	\$ 244,022.20
Engineering Design	\$ 0.00
Construction Management, Contract Administration, & Overhead (Estimated at 5% of Improvement Costs)	 <u>\$ 9,722.00</u>
Total Estimated Utility Work Costs	\$ 253,744.20