

INTERLOCAL AGREEMENT

City of Wenatchee Contract No. 1718-2
Chelan County PUD Contract No. SA19-040
State Parks Contract No. IA 719-365

THIS INTERLOCAL AGREEMENT ("Agreement") is hereby entered into this date by and between the CITY OF WENATCHEE ("City"), PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY ("District"), and the WASHINGTON STATE PARKS AND RECREATION COMMISSION ("State Parks"), sometimes collectively referred to as the "Parties."

RECITALS

WHEREAS the City, is engaged in the "Olds Station Sanitary Sewer Expansion Project Phase 2 – Lift Station" involving the reconstruction of the existing Olds Station Lift Station at 2435 Euclid Ave, Wenatchee, Chelan County, Washington (collectively the "Project"), as generally depicted on the Project map included in the City's bid package; and

WHEREAS the City is the sanitary sewer purveyor responsible for the regional Publicly Owned Treatment Works ("POTW"),

WHEREAS the District owns a certain adjacent parcel of land located at 333 Olds Station Road, specifically identified as Wenatchee Confluence State Park (Park); and

WHEREAS the District has a lease and operating agreement with the State Parks for the operation and maintenance of the Park; and

WHEREAS the District owns and the State Parks maintains the onsite sanitary sewer collection system ("System") internal to the Park, primarily including an RV dump station, individual restrooms, sewer effluent pump, pump run-time meter, and pressurized force main

WHEREAS the System connects and discharges to the POTW at a point north of the Park, approximately 500 feet west of the existing Olds Station Lift Station; and

WHEREAS the System does not have a flow meter to measure total effluent volume directly, but instead registers only pump run-time duration, which is in turn used to estimate the total volume of effluent; and

WHEREAS said practice of indirectly calculating effluent volume has resulted in inaccurate measurements and subsequent overbilling of the State Parks by the City; and

WHEREAS the Parties desire to retrofit the System by installing an electromagnetic flow meter to measure the effluent volume instead of the current run-time meter, which retrofit will include an electromagnetic flow meter, meter vault, isolation valves, valve boxes and piping, flow meter pedestal and control panel assembly (collectively "Flow Meter Improvements"); and

WHEREAS the Parties have worked cooperatively through the design phase to include the Flow Meter Improvements as part of the Project; and

WHEREAS the City publicly bid the Project on or around December 5, 2018, and awarded the bid contract ("City Project Contract") to KRCL, LLC ("City Contractor"); and

WHEREAS, except for the cost of the electromagnetic flow meter, which is to be paid entirely by the City, the lump sum bid item cost for the for the Flow Meter Improvements totaled \$70,000 plus applicable sales tax.

The Parties desire to continue their cooperative efforts during the construction of the Flow Meter Improvements by City Contractor as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the foregoing Recitals, which are incorporated by this reference into the Agreement, the City, District, and State Parks agree as follows:

1. **Purpose.** The purpose of this Agreement is to allocate a cost share for all Parties and establish the roles and responsibilities for each Party both during construction of the Flow Meter Installation and future operation of the System.
2. **Scope of Work.** The Scope of Work for the Flow Meter Improvements within the Park is primarily as follows, and specifically as set forth in the City's accepted bid dated December 6, 2018:
 - a. Potholing
 - b. Sawcut, remove and dispose of existing asphalt pavement;
 - c. Expose and connect to the existing force main piping;
 - d. Install new electromagnetic flow meter, meter vault, isolation valves, valve boxes and piping;
 - e. Install new flow meter pedestal and control panel assembly;
 - f. Install new electrical conduit and conductors from the existing lift station to the new flow meter vault;
 - g. Replace existing asphalt pavement, and striping; and
 - h. Restoration of affected landscape to its pre-construction condition.
3. **City's Obligations.** Subject to the provisions of this Agreement and in accordance with the final plans, specifications and construction documents, the City shall:
 - a. Cause to be constructed the items listed in Section 2;
 - b. Administer the City Project Contract, including:
 - Scheduling the construction work;
 - Management of the Project budget;

- Coordinating with and providing direction to the City's Contractor;
 - Administration of change orders subject to District's and State Parks' approval in advance of any change orders affecting the Scope of the Work described in Section 2 or additional costs therefor, provided the District and State Parks do not incur additional costs;
 - Provide field engineering, including survey control and construction staking, through City Contractor;
- c. Upon completion of the Flow Meter Improvements, take ownership, and maintenance and financial responsibilities for the Flow Meter Improvements; financial responsibility includes responsibility for repair and/or all replacement costs;
 - d. Contribute a minimum of \$16,000 plus Washington State sales tax for the cost of the Flow Meter Improvements.
 - e. Pay all contractors and subcontractors and to indemnify and defend the District and State Parks from any and all liens, claims and property encumbrances in any way related to the City's obligation to pay any entity that works to construct and install the Flow Meter Improvements.

4. State Parks' Obligations. Subject to the provisions of this Agreement the State Parks shall:

- a. Provide access to the City and City's Contractor as needed for the construction of the Flow Meter Improvements, including any temporary System shutdowns necessary to complete the Scope of Work.
- b. Allow the City's Contractor to temporarily stage equipment, materials and excavated spoils in three parking stalls immediately adjacent to the construction area.
- c. Provide a lump-sum payment to the City in the amount of \$20,000 for its portion of the costs associated with the Flow Meter Improvements not including applicable Washington State sales tax.
- d. Continue to comply with the conditions of service and agree that the \$16,000 credit due from the city to the State Parks' sanitary sewer billing account are to be applied to the construction costs of the Flow Meter Improvements.
- e. Agree to provide and pay for electric service to the Flow Meter Improvements until such time as sewer service is no longer required.
- f. Continue to operate and maintain all elements of the System, including but not limited to the force main upstream of the connection point to the POTW, with the exception of the Flow Meter Improvements, which are the sole responsibility of the City.

5. District's Obligations. Subject to the provisions of this Agreement the District shall:

- a. Provide a lump-sum payment to the City in the amount of \$34,000 for its portion of the costs associated with the Flow Meter Improvements, not including applicable Washington State sales tax;
- b. Provide a permit to the City for the purpose of owning, operating, and maintaining the Flow Meter Improvements;

- c. Agree to allow the City to install remote wireless telemetry on the meter controller pedestal including mast arm and antennae as may be required during future system upgrades;
 - d. Have no further obligation for the operation and maintenance of the Flow Meter Improvements, or responsibility for any costs for repair or replacement of the Flow Meter Improvements, other than the potential for the cost of electricity serving the Flow Meter Improvements in the event of the termination of the lease and operating agreement for the Park with State Parks.
- 6. Duration and Termination.** This Agreement shall become effective upon the filing of the executed Agreement with the Chelan County Auditor, or alternatively listed by subject on District's web site pursuant to RCW 39.34.040. This agreement will terminate at such time as the Parties mutually agree to terminate sanitary sewer service to the Park and abandon the Flow Meter Improvements.
- 7. Cost.** City's costs associated with construction of the Flow Meter Improvements shall be determined by actual quantity and line item cost for that portion of the Project set out in the lowest responsible bid included in the City Project Contract for the entire Project accepted by the City, plus any change orders, or the portion thereof, attributable to accommodating the System, approved by the District or State Parks. The District and State Parks shall reimburse the City's costs as set forth in Sections 5 a. and 4 c., respectively, and in accordance with WAC 458-20-170. After reimbursement, the City's outstanding costs will be a minimum of \$16,000 plus Washington State sales tax. In the event the City's outstanding cost is less than said minimum, the difference will reduce the cost to the District and State Parks equally.
- 8. Payment.** Upon receipt of correct invoices from the City, the District and State Parks shall individually make their respective payments to the City consistent with Section 4 and 5 identified herein after completion and all inspections of the Project. Payment will be due within 20 days of the date a correct invoice is mailed by the City to the District and State Parks.
- 9. Records.** The City shall keep and maintain accurate and complete cost records pertaining to City Project Contract. Each party shall have full access and the right to examine any such records during the term of this Agreement. All records, books, documents and other materials maintained, prepared, or issued by the City in the implementation of this Agreement shall be the property of the City, which shall have the responsibility of the retention and release of those materials.
- 10. Mutual Indemnity.** The District shall indemnify, defend and hold harmless the City and the State Parks, their officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by any negligent act, omission or failure of the District, its officers, agents, and employees, in connection with the Work described in this Agreement, or arising out of the District's, its officer's, agent's and/or employee's non-observance or non-performance of any law, ordinance, or regulation applicable to the Work.

The indemnification obligation of District shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the District expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

The City shall indemnify, defend and hold harmless the District and State Parks, their officers, agents, employees, contractors, and subcontractors from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by any negligent act, omission or failure of the City, its officers, agents, employees, Contractor and subcontractors in connection with the Work in this Agreement, or arising out of the City's, its officer's, agent's, employee's, Contractor's and/or subcontractor's non-observance or non-performance of any law, ordinance, or regulation applicable to the Work.

The indemnification obligation of the City shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the City expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

The State Parks shall indemnify, defend and hold harmless the District and the City, their officers, agents, employees, contractors, and subcontractors from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by any negligent act, omission or failure of the State Parks, its officers, agents, employees, Contractor and subcontractors in connection with Work described in this Agreement, or arising out of the State Parks', its officer's, agent's, employee's, contractor's and/or subcontractor's non-observance or non-performance of any law, ordinance, or regulation applicable to the Work.

The indemnification obligation of the State Parks shall not be limited in any way by the application of any workmen's compensation acts, disability benefit acts or other employee benefit acts and the State Parks expressly waives the protection afforded by such laws. The foregoing waiver and indemnification obligations have been mutually negotiated.

11. **Severability.** In the event that any provision of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provision shall be enforced and validated to the extent permitted by law. All other provisions of this Agreement are severable, and the unenforceability or invalidity of any single provision hereof shall not affect the remaining provisions.
12. **Attorney's Fees.** In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms of this agreement, such enforcing party shall be entitled to compensation for its reasonable attorneys' fees and costs. In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.
13. **Construction.** This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or

understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

- 14. **Mutual Negotiation and Construction.** This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.
- 15. **Governing Law, Venue.** This Agreement is governed by the laws of the state of Washington, without regard to its conflict of law provisions. The jurisdiction of any action hereunder shall be in the Superior Court, Chelan County, Washington.
- 16. **Public Disclosure.** The obligations of the parties regarding confidential information may be subject to state and federal public disclosure laws, as now exist or as may be hereafter amended. The parties may disclose confidential information to the extent it is required to be disclosed pursuant to the public disclosure laws. If a public disclosure of confidential information is requested, the party receiving the request agrees to notify the other of such request at least ten (10) business days prior to disclosure being made. The other party may immediately seek a protective order in the appropriate court. The receiving party will reasonably cooperate with the other in such action, but is under no obligation to obtain or seek any court protection.
- 17. **Relationship of Parties.** The Parties intend that an independent contractor relationship will be created by this Agreement. The conduct and control of the City Project Contract and safety measures required by City Project Contract lie solely with the City and its Contractor. Neither party, their officers, employees, agents, contractors or subcontractors shall be considered an agent or employee of the other for any purpose and neither party is entitled to any of the benefits that the other provides for its respective employees.

**APPROVED BY
CITY OF WENATCHEE**

this 18th day of MARCH, 2019.

By: 

Name: Frank J. Kuntz

Title: Mayor

Attest: _____

**APPROVED BY
PUBLIC UTILITY DISTRICT NO. 1 OF
CHELAN COUNTY, WASHINGTON**

this 18th day of MARCH, 2019.

By: 

Name: DANIEL FRAZIER

Title: DIRECTOR OF SHARBO SUC

Attest: _____

**APPROVED BY
WASHINGTON STATE PARKS
AND RECREATION COMMISSION**

this 12 day of MARCH, 2019.

By: 

Name: MARK BIBBEALL

Title: Chief Financial Officer