

**HIGHLINE WATER DISTRICT  
King County, Washington**

**RESOLUTION 16-4-6D**

**RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT BY AND BETWEEN HIGHLINE WATER DISTRICT AND MIDWAY SEWER DISTRICT FOR THE S 268TH STREET WATER AND SEWER MAIN REPLACEMENTS**

**WHEREAS**, Highline Water District ("Water District") is designing a water main replacement project, commonly known as the S. 268th Water Main Replacement Project, located in the area of South 268th Street from 16th Avenue South to 19th Avenue South in the City of Des Moines (the "Water Project"); and

**WHEREAS**, Midway Sewer District ("Sewer District") is designing a sewer replacement project, commonly known as the S. 268th Sewer Replacement Project, in the same area as the Water Project (the "Sewer Project"); and

**WHEREAS**, the Parties agree that both Projects involve excavation of many of the same rights-of-way and that both entities would enjoy economic savings and provide greater convenience; and

**WHEREAS**, to the public if the Projects were constructed simultaneously; and

**WHEREAS**, the Parties desire to work together for the mutual and overall benefit of both districts; and

**WHEREAS**, this Agreement is entered into pursuant to the Interlocal Cooperation Act (chapter 39.34 RCW) to form the basis for a cooperative public works project.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The General Manager or designee is authorized to enter into an Interlocal Agreement (Attachment-1, incorporated herein) with Midway Sewer District for the S 268th St Water and Sewer Main Replacements.
2. The General Manager and/or the District's Legal Counsel are authorized to make minor changes to the agreement if required.

**ADOPTED BY THE BOARD OF COMMISSIONERS** of Highline Water District, King County, Washington, at an open public meeting held this **6th** day of **April 2016**.

**BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
Vince Koester, President

  
\_\_\_\_\_  
Todd Fultz, Secretary

  
\_\_\_\_\_  
Daniel Johnson, Commissioner

  
\_\_\_\_\_  
George Landon, Commissioner

  
\_\_\_\_\_  
Kathleen Quong-Vermeire, Commissioner

## ATTACHMENT - 1

### AGREEMENT

This Agreement ("Agreement") is entered into by and between Midway Sewer District, a Washington municipal corporation, located and doing business at 3030 South 240<sup>th</sup> Street, Kent, Washington 98032 ("SEWER DISTRICT") and Highline Water District, a Washington municipal corporation, located and doing business at 23828 30<sup>th</sup> Avenue South, Kent, Washington 98032 ("WATER DISTRICT") (individually a "Party" and collectively the "Parties") for the purposes set forth herein.

### RECITALS

1. The WATER DISTRICT is designing a water main replacement project, commonly known as the S. 268<sup>th</sup> Water Main Replacement Project, located in the area of South 268<sup>th</sup> Street from 16<sup>th</sup> Avenue South to 19<sup>th</sup> Avenue South in the City of Des Moines (the "Water Project"); and
2. The SEWER DISTRICT is designing a sewer replacement project, commonly known as the S. 268<sup>th</sup> Sewer Replacement Project, in the same area as the Water Project (the "Sewer Project"); and
3. The Parties agree that both Projects involve excavation of many of the same rights-of-way and that both entities would enjoy economic savings and provide greater convenience to the public if the Projects were constructed simultaneously; and
4. The Parties desire to work together for the mutual and overall benefit of both districts.
5. This Agreement is entered into pursuant to the Interlocal Cooperation Act (chapter 39.34 RCW) to form the basis for a cooperative public works project.

### AGREEMENT

In consideration of the terms and conditions set forth herein, the Parties agree as follows:

1. **Lead Agency.** The WATER DISTRICT shall serve as the lead agency and as the agent of SEWER DISTRICT to facilitate the simultaneous construction of both the Sewer Project and the Water Project.
2. **Project:** The Parties agree to cooperate in the construction of a joint project to be known as the "S. 268<sup>th</sup> Watermain and Sewer Replacement Project" (collectively, the "Project"), which shall consist of the following elements:
  - 2.1. The WATER DISTRICT elements of the Project are identified in **Exhibit A** attached hereto and incorporated herein in full by this reference.
  - 2.2. The SEWER DISTRICT elements of the Project are identified in **Exhibit B** attached hereto and incorporated herein in full by this reference.

2.3. The Shared Cost elements between the Parties for the Project are identified in **Exhibit C** attached hereto and incorporated herein in full by this reference.

3. **WATER DISTRICT Responsibilities:** The responsibilities of WATER DISTRICT shall include:

3.1. Subject to mutual agreement of the Parties, appoint an employee of WATER DISTRICT staff to serve as project manager (“Project Manager”).

3.2. Preparation of Water Project specifications, plans and drawings.

3.3. Preparation of Project bid documents consisting of three schedules, one incorporating the Water Project plans and specifications, and one consisting of the Sewer Project plans and specifications and one incorporating the joint Road Surface Restoration Project plans and Specifications.

3.4. Obtain all necessary permits needed for work identified in **Exhibit A** prior to bid opening.

3.5. Advertise for bids and award the Project contract subject to the right of both Parties to reject all bids as to their respective schedules and mutually to reject all bids in totality as further provided herein.

3.6. Sign a Project contract, as approved by both Parties with the successful bidder (“Contractor”), timely issue Notice to Proceed with the Project work, and make progress and final payments.

3.7. Administer the Project and, subject to SEWER DISTRICT’s inspection responsibilities, perform all engineering, survey and field inspections, and make all payments to Contractor. The WATER DISTRICT shall have the final determination, after consulting with the SEWER DISTRICT, with regards to all decisions related to the work of the Contractor.

3.8. Keep the SEWER DISTRICT informed as to progress of Project.

3.9. Payment for all WATER DISTRICT work and 50% of the Shared Costs identified in **Exhibit C**.

4. **SEWER DISTRICT Responsibilities:** The responsibilities of SEWER DISTRICT shall include:

4.1. Provide the WATER DISTRICT with plans, specifications, and such other information relating to SEWER Project elements as is necessary to prepare the bid documents for the Project.

4.2. Obtain all necessary permits needed for the SEWER Project work identified in **Exhibit B** prior to bid opening.

4.3. Review and approve bid documents not later than ten (10) business days after the WATER DISTRICT has submitted bid documents to the SEWER DISTRICT.

4.4. Appoint a staff person to serve as the SEWER DISTRICT representative for participation in all meetings related to the project and for making SEWER DISTRICT inspections and decisions relating to the Project. SEWER DISTRICT representative shall communicate with Contractor through the Project Manager.

- 4.5. Accept or reject any or all bids as to SEWER DISTRICT Schedule. The SEWER DISTRICT shall have the right to reject the Contractor's bid for the Sewer Project if the bid exceeds the engineer's estimate for the Sewer Project by twenty five percent (25%). However, if the SEWER DISTRICT rejects the bid, the WATER DISTRICT will not permit a third party contractor to complete any sewer line work concurrently with the WATER DISTRICT project. The WATER DISTRICT shall not proceed with the SEWER DISTRICT work if the WATER DISTRICT has received written notification from the SEWER DISTRICT within fourteen (14) business days that the SEWER DISTRICT rejects the bid(s) for the Sewer Project. Bid awards shall be made to the lowest responsible bidder for the total Project, subject to applicable laws and regulations.
- 4.6. Inspect SEWER DISTRICT work elements and approve or disapprove of the work being done in a timely manner so as to not delay construction activities.
- 4.7. Make such progress and final payments to WATER DISTRICT as specified in Paragraph 5 herein.
5. **Payment** An itemized cost for work to be performed by the WATER DISTRICT for the SEWER DISTRICT shall be established once the Project Bid has been awarded and such Cost schedule shall be attached to this Agreement as **Exhibit D**. The SEWER DISTRICT agrees to reimburse the WATER DISTRICT for the actual direct construction cost of all work specified in Exhibit D plus fifty percent (50%) of the Shared Costs identified in **Exhibit C**. Payment shall be made by the SEWER DISTRICT to the WATER DISTRICT within thirty (30) days, upon the request of the WATER DISTRICT, to cover actual direct costs incurred by the WATER DISTRICT, except as to any disputed amounts. Payments delayed beyond thirty (30) days shall include interest payments one percent (1%) per month.
6. **Change Orders/Extra Work** All change orders shall be subject to review and recommendation by the Project Manager. In the event unforeseen causes require an increase in the SEWER DISTRICT's cost obligation of twenty five percent (25%) or more from that identified in **Exhibit D** ("Substantial Change") this Agreement will be modified by a supplemental agreement covering any such increase. In the event it is determined that any Substantial Change from the description of the Sewer Project work contained in the Agreement is required, written approval must be secured from the SEWER DISTRICT before the beginning of such work. The WATER DISTRICT shall provide at least ten (10) days prior written notice for all changes to the SEWER DISTRICT's portion of the work regardless of the financial obligation.
7. **Emergency Repairs** Prior to WATER DISTRICT's acceptance of the Contractor's work, if there is a need for emergency repair and the WATER DISTRICT's contractor is unable to perform such repair in a timely manner, the SEWER DISTRICT shall have permission to enter upon the WATER DISTRICT's work area and complete said emergency repair. Emergency repairs are defined as work performed by WATER DISTRICT or SEWER DISTRICT forces to stabilize, remove immediate hazards or dangers by cutting and capping water or sewer mains, and restoring immediate utility services to customers in the area. Upon completion of any emergency repairs by the WATER DISTRICT or the SEWER DISTRICT, the Parties shall cooperatively determine each Party's financial responsibility.
8. **Final Acceptance** The WATER DISTRICT shall conduct a field review of the Sewer Project improvements with the SEWER DISTRICT and shall further require all punch list items to be corrected to the satisfaction of the SEWER DISTRICT and the WATER DISTRICT before final acceptance by the WATER DISTRICT. The SEWER DISTRICT agrees, upon satisfactory

completion of the Sewer Project work as determined by the SEWER DISTRICT to deliver to the WATER DISTRICT written notice of approving the Sewer Project work for final acceptance by the WATER DISTRICT. Such approval shall not constitute acceptance of any unauthorized or defective work or materials, nor be a waiver of any manufacturer's, suppliers' or contractors' warranties relating to the Sewer Project work.

9. **Delivery of Completed Sewer Project Work** The WATER DISTRICT agrees within thirty (30) days from the date of final acceptance by the WATER DISTRICT of the Project work to transfer ownership of the Sewer Project work to the SEWER DISTRICT by bill or sale and/or other appropriate documents. The WATER DISTRICT will assign and transfer to the SEWER DISTRICT any guarantees or warranties furnished by the Contractor, sub-contractors or equipment or material suppliers pursuant to the Project contract or as a normal trade practice in connection with the purchase of any equipment, materials or items used in construction of the Sewer Project work. The WATER DISTRICT shall submit as-built drawings to the SEWER DISTRICT in the form agreed upon by the Parties upon completion of the Project work for the SEWER DISTRICT'S review and approval.
  
10. **Maintenance Period** The WATER DISTRICT shall require the Contractor to warrant the Sewer Project work to be free from defects in workmanship and materials utilized in the Sewer Project work for a period of one (1) year from the date of final acceptance by the WATER DISTRICT of the Sewer Project work, provided the SEWER DISTRICT shall retain any rights, claims or demands the SEWER DISTRICT may have against the Contractor relating to the Sewer Project work under applicable statutes of limitations.
  
11. **Legal Relations** The Parties agree to indemnify, defend, and hold harmless the other Party, and its officers, agents, employees, and volunteers from any and all damages, costs or expenses in law or equity that may any time arise or be set up because of damages to property or personal injury received by reason of, or in the course of, or which may be occasioned any willful or negligent act or omission of the respective Party arising out of the activities which are the subject of this Agreement.
  - 11.1. The WATER DISTRICT shall require the contractor constructing the Project to have the SEWER DISTRICT, its officers, 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 WATER DISTRICT contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation. The Contractor shall provide the WATER DISTRICT with either a certified copy of all policies with endorsements attached or a Certificate of Insurance with endorsements attached as are necessary to comply with the contract specifications. The WATER DISTRICT shall provide the SEWER DISTRICT with copies of all such policies and documents upon receipt of same by the WATER DISTRICT.
  - 11.2. The WATER DISTRICT shall require the contractor building the Project to indemnify, defend, and save harmless the SEWER DISTRICT and its officers, agents, or employees from any claim, damage, action, liability of proceeding brought or filed against the SEWER DISTRICT or its officers, agents or employees alleging damage or injury arising out of the contractor's participation in the Project. The Contractor shall also be required to waive the Contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, as to the SEWER DISTRICT solely for the purposes of the indemnification.
  - 11.3. The WATER DISTRICT shall require the Contractor to be solely and completely responsible for safety and safety conditions at the Project site, including the safety of all persons and

property during the performance of the Project work. The Contractor shall comply with all applicable federal, state and local statutes, codes, regulations, rules, orders and ordinances regarding safety. The SEWER DISTRICT shall have no responsibility as to safety and safety conditions at the job site.

- 12. Resolution of Disputes and Governing Law** This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the King County Superior Court located in Kent, King County, Washington, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law, provided, however, nothing in this paragraph shall be construed to limit the Parties' right to indemnification under Section 11 of this Agreement.
- 13. Written Notice** All communications regarding this Agreement shall be sent to the Parties at the addresses listed on the signature page of this Agreement, unless notified to the contrary. Any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
- 14. Assignment** Any assignment of this Agreement by either Party without the written consent of the non-assigning Party shall be void.
- 15. Modification** No waiver, alteration, or modification of any of the provisions for the Agreement shall be binding unless in writing and signed by a duly authorized representative of the Parties.
- 16. Entire Agreement** The written provisions and terms of this Agreement, together with any attached Exhibits, shall supercede all prior verbal statements of any officer or other representative of either Party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. This document, including all Exhibits, is the entire agreement between the Parties. Should any language in any of the Exhibits to the Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.
- 17. Recitals** The recitals set forth above are incorporated in full herein by this reference.

**18. Effective Date** This Agreement shall be effective as to all Parties on the last date signed below.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the dates written below.

**MIDWAY SEWER DISTRICT**

**HIGHLINE WATER DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Approved as to Form:

\_\_\_\_\_  
Brian Snure  
Attorney for SEWER DISTRICT

\_\_\_\_\_  
John Milne  
Attorney for WATER DISTRICT

# **EXHIBIT A**

## **SCOPE OF WORK**

### **HIGHLINE WATER DISTRICT PROJECT – SCHEDULE A**

The scope of work for Highline Water District's Project is to replace existing water system improvements along S 268<sup>th</sup> St between 16<sup>th</sup> Ave S and 19<sup>th</sup> Ave S including the adjacent streets on 16<sup>th</sup> Pl S, 17<sup>th</sup> Ave S, 17<sup>th</sup> Place S and 18<sup>th</sup> Place S. Work will include but not limited to in the installation of approximately 1,950 LF of 8" and smaller DI mains, traffic control, temporary erosion and sedimentation control, water system improvements, hydrants, services, temporary road patching, surface restoration, and other work as necessary to build a new and complete water distribution system within the project limits.

Highline Water District shall be responsible for all direct and indirect costs and expenses associated with Schedule A water work including but not limited to construction, administration, permitting, outside consulting, construction observation and any other incidental water work.



## **EXHIBIT B**

### **SCOPE OF WORK**

#### **MIDWAY SEWER DISTRICT PROJECT – SCHEDULE B**

The scope of work for Midway Sewer District's Project is to replace existing sewer collection system along S 268th St between 16th Ave S and 19th Ave S, including the adjacent streets on 16th Pl S, 17th Ave S, 17th Place S and 18th Place S. Work will include but not limited to in the installation of approximately 1,850 LF of 8" PVC sewer mains, traffic control, temporary erosion and sedimentation control, sewer system improvements, manholes, sewer stubs to the property line, temporary road patching, surface restoration, and other work as necessary to build a new and complete sewer collection system within the project limits.

Midway Sewer District shall be responsible for all direct and indirect costs and expenses associated with Schedule B sewer work including but not limited to construction, administration, permitting, outside consulting, construction observation and any other incidental sewer work.

Midway Sewer District has provided drawings and specifications for the Schedule B work to Highline Water District for incorporation into the project.

## **EXHIBIT C**

### **SCOPE OF WORK**

#### **SHARED ROAD RESTORATION WORK – SCHEDULE C**

The scope of work for road restoration work shall include repaving existing roads damaged by construction activities, including 16th Pl S, 17th Ave S, 17th Place S and 18th Place S. Work will include but not limited to mobilization, traffic control, pulverizing the existing road surface, reshaping existing surface grinding, compaction, hauling and lawful disposal of excess materials, CSTC, grinding, and installation of HMA surfacing in compliance with the City of Des Moines ROW permit within the project limits. Temporary trench patching on S 268th St shall be included in the parties' separate Schedules A and B.

The parties shall share equally all direct and indirect costs and expenses associated with Schedule C road restoration work, including but not limited to construction, administration, permitting, construction observation, outside consulting, reimbursement cost to the City for "fee-in-lieu" of overlay and any other incidental work.

**EXHIBIT D**  
**COST OF WORK**

INSERT BID FOR SCHEDULE B AND C INTO THIS SECTION AFTER AWARD

**Agenda Item No.:** 5.3  
**Agenda Date:** 4/06/16  
**Reviewed By:** JAD

**Subject:** Authorize Interlocal Agreement between HWD and Midway Sewer District  
S 268th St Water and Sewer Main Replacements Project

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL						
<i>Expenditures?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Budgeted?</i>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	N/A	<input type="checkbox"/>
<i>Estimated Amount:</i> \$ _____						Excludes sales tax

**ATTACHMENTS:**

1. Resolution 16-4-6D
2. Attachment-1: Interlocal Agreement

**COMMENTS**

Highline Water District (HWD) is designing a water main replacement project, commonly known as the S. 268th Water Main Replacement Project, located in the area of South 268th Street from 16th Avenue South to 19th Avenue South in the City of Des Moines (the "Water Project")

Midway Sewer District (MSD) is designing a sewer replacement project, commonly known as the S. 268th Sewer Replacement Project, in the same area as the Water Project (the "Sewer Project")

HWD and MSD desire to work together for the mutual and overall benefit of both districts.

Staff recommends approval of this resolution.