

**AN INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF LAKEWOOD AND THE LAKEWOOD WATER DISTRICT  
REGARDING THE  
CONSTRUCTION OF ROADWAY IMPROVEMENTS  
AND WATER MAINS  
ALONG BRIDGEPORT WAY SW FROM 83<sup>RD</sup> ST SW TO 75<sup>TH</sup> ST W**

THIS AGREEMENT is entered into by and between the CITY OF LAKEWOOD, a municipal corporation of the State of Washington (the "City") and the LAKEWOOD WATER DISTRICT, a special purpose district of the State of Washington (the "Water District").

WHEREAS, the parties to this agreement, pursuant to RCW Chapter 39.34, are authorized to enter into an interlocal agreement for the purposes of cooperatively and efficiently providing utility services to the citizens they serve; and,

WHEREAS, the purpose for this agreement is to allow coordination between the parties during the construction of roadway improvements and water mains facilities within the public rights-of-way along Bridgeport Way SW from 83<sup>rd</sup> ST SW to 75<sup>th</sup> ST W (hereinafter, "the Project"); and,

WHEREAS, Bridgeport Way SW from 83<sup>rd</sup> ST SW to 75<sup>th</sup> ST W is located within the boundaries of both the City and the Water District; and,

WHEREAS, Bridgeport Way SW from 83<sup>rd</sup> ST SW to 75<sup>th</sup> ST W is served by undersized and aging water main systems; and,

WHEREAS, the City and the Water District have entered into a franchise agreement granting to the Water District the right to construct, maintain, operate, replace, and repair water systems in, across, over, along, under, through, and below the public rights-of-way of the City; and,

WHEREAS, paragraph 4.1 of the franchise agreement provides that when the District "protects, supports, temporarily disconnects, relocates, or removes" any of its installations, the City and the District shall be 50/50 responsible for costs" when said work is "associated with City facilities that generate revenue such as storm drainage or sanitary sewer facilities;" and,

WHEREAS, the City and the Water District recognize the need for improved utility infrastructure; and,

WHEREAS, the City pursued and received over \$3.4 million in grants to design and construct the roadway improvements and has budgeted \$649,000 from its Surface Water Management Fund to upgrade the storm water collection and treatment systems along the corridor (all these improvements are collectively referred to as (the "Roadway Improvements"); and,

WHEREAS, the Water District has budgeted over \$0.8 million from its capital improvement fund to upgrade undersized water mains within the corridor subject to the Roadway Improvements (the "Water Main Improvements"); and,

WHEREAS, the City is the lead agency for the design and construction of the Roadway Improvements; and,

WHEREAS, the City and the Water District recognize that it is in the best interest of the public to coordinate the design and construction of the Roadway Improvements and Water Main Improvements when the coordination will minimize costs, conflicts among the utility systems, and public inconvenience during construction; and

WHEREAS, it is deemed in the best interest of the public, the City, and the Water District to incorporate the Water Main Improvements into the City's construction plans and contract for the Roadway Improvements if the incorporation will increase efficiency and decrease costs (collectively, the combined Water Main Improvements and Roadway Improvements are the "Project"); and

WHEREAS, the City and the Water District both recognize the complexity and challenges associated with implementing the Project and pledge to work cooperatively together to assure a mutual successful implementation;

NOW, THEREFORE, in consideration of the terms and conditions contained herein, it is mutually agreed by and between the City and the Water District as follows:

#### SECTION 1. PURPOSES

The purposes of this Agreement are to: (1) document the agreement reached between the City and the Water District regarding the design and construction of the Project, and (2) establish the roles and responsibilities of the City and the Water District relating to the design, construction, oversight, and administration of the Project.

#### SECTION 2. IDENTIFICATION OF GOALS

The goals entering into this Agreement are to: (1) facilitate the design and construction of the Project; (2) produce a project that meets the applicable standards and approval of both the City and the Water District; (3) achieve maximum cost savings for the benefit of the public served by both the City and the Water District and the Water District's ratepayers; (4) minimize inconvenience to the traveling public during construction of the Project; (5) perform appropriate levels of construction administration and construction quality assurance and quality control; (6) create a Project schedule maximizing coordination among the City, the Water District, and the Project's contractor(s); (7) provide the Water District with planning input during all aspects of Project; (8) create a Project sequencing schedule to insure continuity of water service and fire flow to all areas of affected community throughout the duration of the Project.

#### SECTION 3. THE CITY'S RESPONSIBILITY

- A. The City shall designate a construction lead administrator to administer the cooperative undertaking of the Project.

- B. The City shall lead development of design and bid documents for the Roadway Improvements.
- C. The City shall pay for all portions of the Project not related to the Water Main Improvements.
- D. The City shall provide base map information to the Water District for use in the Water District's design and bid document development of the Water Main Improvements including: (1) electronic computer-aided drafting (CAD) topographic mapping files; (2) proposed roadway CAD files; and (3) proposed storm drainage CAD files.
- E. The City shall provide CAD / design support for the development of the Water Main Improvements plans and specifications. This shall include drafting support for the Water District's engineer; and review, editing, and insertion of the Water District's special provisions into the Project contract provisions. The City shall provide reproducible plans and specifications for the Water Main Improvements for inclusion in the Project bid documents.
- F. The City shall complete all necessary environmental documentation for the Roadway Improvements and shall serve as the lead agency in ensuring that the Project complies with all applicable requirements of the State Environmental Policy Act, chapter 43.21C RCW (SEPA).
- G. In coordination with the Water District, the City shall secure all necessary rights-of-way and easements required for the construction of the Roadway Improvements.
- H. The City shall lead the public outreach effort to inform citizens and property owners of pending construction activities associated with the Project including: (1) mailings and flyers for open houses, provided no such mailing or flyer shall be distributed unless the City has first consulted with the Water District regarding the mailing's or flyer's contents; (2) scheduling facilities for hosting of meetings; (3) scheduling appropriate City staff to be present at meetings; (4) providing mapping and handouts; and (5) summarizing meeting notes and action items. The City shall provide a minimum of ten (10) business days' written notice to the Water District of all scheduled open houses and public meetings. The City shall provide copies to the Water District of handouts made available at open houses and public meetings.
- I. The City shall be the lead in development of the contract provisions for the Project including: (1) inclusion of plans and specifications provided by the Water District for the Water Main Improvements in the Project's plans and specifications; (2) advertisement and posting for bids; (3) instructions to bidders, including an instruction that bidders show the cost of contract items allocated to the Water Main Improvements segregated from the cost of contract items allocated to the Roadway Improvements; (4) bid form, bid schedules, and bidder information and signature form; (5) establishment of the naming and scope of each of the various bid schedules; (6) deposit or bid bond form; (7) non-collusion affidavit form; (8) subcontractor list; (9) disadvantaged business enterprise utilization certificate; (10) bidder's construction experience form; (11) contract agreement; (12) contract bond (performance and payment); (13) Federal-AID provisions; and (14) state and federal wage rates.
- J. The City shall be the lead in the bidding process for the Project.
- K. Prior to advertising the Project, the City shall provide to the Water District the draft contract provisions prepared by the City. The City shall not advertise the Project before

the Water District has responded to the draft contract provisions as described in Section 4.F of this Agreement.

- L. No more than three (3) business days after identifying the lowest responsible and responsive bidder for the Project, the City shall submit that bidder's bid proposal to the Water District for review and response as described in Section 4.G of this Agreement.
- M. The City shall not award the Project construction contract to that bidder before the Water District has responded to the bidder's proposal as described in Section 4.G of this Agreement.
- N. Prior to commencement of any work on the Project, the City shall organize a preconstruction conference and shall provide the Water District with no less than five (5) business days' prior notice of the scheduled preconstruction conference.
- O. The City shall be the lead on the construction administration for the Project including: (1) constructability analysis (independent consultant review of construction staging, utility conflicts, utility staging, etc.); (2) submittal management, except for work associated with the Water Main Improvements which management shall be administered by the Water District; (3) inspection services, except for work associated with the Water Main Improvements which inspections shall be conducted by the Water District; (4) setting agendas for, facilitating, and preparing meeting minutes from weekly construction meetings; (5) setting agendas for, facilitating, and preparing meeting minutes from monthly management meetings; (6) construction contract scheduling; (7) reviewing of contractor payment requests; (8) document reviews; and (9) record drawings.
- P. The City shall bill the Water District for costs related to the Water Main Improvements in accordance with the payment provisions set forth in this Agreement.
- Q. The City shall post information signs in at least two locations within the Project area showing the project funding and funding partners for the Project. The information signs shall identify that the Water Main Improvements are undertaken and funded by the Water District.
- R. The City shall promptly notify the Water District of the completion of the Water Main Improvements.
- S. The City shall promptly notify the Water District of any issues related to the Project that the City believes are inconsistent with the design or construction documents of the Project, or with this Agreement. The City shall work cooperatively with the Water District to resolve any such issues to the mutual satisfaction of both Parties. If the Parties are unable to resolve the issues cooperatively, the Parties shall engage in the dispute resolution procedures identified in this Agreement.

#### SECTION 4. WATER DISTRICT RESPONSIBILITY

- A. The Water District shall lead development of design and bid documents for the Water Main Improvements. The Water District shall design the Water Main Improvements and develop the specifications and details for inclusion in the Project bid documents. The Water District's engineer shall review, approve and seal the Water Main Improvements design and bid documents prepared in conjunction with the City.
- B. The Water District shall pay for all portions of the Water Main Improvements as described in Section 5 of this Agreement.

- C. The Water District shall complete all necessary environmental documentation for the Water Main Improvements and shall submit said documentation to the City for the City's compliance with SEPA.
- D. In coordination with the City, the Water District shall secure all necessary rights-of-way and easements required for the construction of the Water Main Improvements.
- E. The Water District shall actively participate in the public outreach portion of the Project in preparation for and during construction activities by: (1) sending appropriate representatives to public outreach meetings if the City provides adequate notice as described in Section 3.H of this Agreement; and (2) preparing plans and mapping specific to the Water Main Improvements.
- F. Prior to the advertising of the Project, the Water District shall review the draft contract provisions prepared and provided to the Water District by the City for any required modifications. Within five (5) business days after receiving the draft contract provisions, the Water District shall issue written notification to the City of any issues with the draft contract provisions or of acceptance of the draft contract provisions. If the Water District notifies the City of any issues with the draft contract provisions, the City shall have the option to address the issues. If the City does not address the issues to the Water District's satisfaction, the Water District may terminate this Agreement as set forth in this Agreement. If, after the five (5) day period, the Water District has not notified the City of any issues with the draft contract provisions or of acceptance of the draft contract provisions, the draft contract provisions shall be considered accepted by the Water District.
- G. After receiving a copy of the lowest responsible and responsive bidder's bid proposal from the City, the Water District shall, within five (5) business days issue written notification to the City of any issues with the proposal or of acceptance of the proposal. If the Water District notifies the City of any issues with the proposal, the City shall have the option to address the issues. If the City does not address the issues to the Water District's satisfaction, the Water District may terminate this Agreement as set forth in this Agreement. If, after the five (5) day period, the Water District has not notified the City of any issues with the proposal or of acceptance of the proposal, the proposal shall be considered accepted by the Water District.
- H. The Water District shall provide a representative for construction administration of the Project to: (1) review and, if acceptable, approve submittals, requests-for-information, and other documents about the Water Main Improvements and return them to the lead construction administrator within three (3) business days; (2) be present at weekly construction and monthly management meetings; (3) review contractor payment requests for work associated with the Water Main Improvements; (4) coordinate with the contractor(s) and the City to determine temporary water service needs including materials necessary for and location of temporary water mains and services, maintenance of temporary water mains and services, and timetable(s) for construction and dismantling of temporary water mains and services; (5) coordinate with the City and contractor(s) when old water mains are to be abandoned and installed portions of new mains shall be brought into service; (6) verify pre-determined project and sequencing schedules are followed by the contractor(s); and (7) assist in determining need and direction of potential changes in project and sequencing schedules if a change in conditions arises. If any disputes arise regarding the Water District's role in construction administration of the Project, the

Parties shall work cooperatively to resolve any such disputes to the mutual satisfaction of both Parties. If the Parties are unable to resolve the issues cooperatively, the Parties shall engage in the dispute resolution procedures identified in this Agreement.

- I. The Water District shall inspect all work associated with the Water Main Improvements. All costs for such inspection shall be borne by the Water District. All contact between the Water District's inspectors and the City's contractor shall be through the City's on-site representative who shall be identified by the City at the Project preconstruction conference.
- J. The Water District shall provide to the City copies of all daily inspection reports for work involving the Water Main Improvements on a weekly or other agreed-upon interval.
- K. The Water District shall, within twenty (20) business days after the City's notification of completion of the Water Main Improvements, issue written notification to the City of any deficiencies or of acceptance of the work. The City's contractor shall correct any deficiencies as soon as reasonably practicable. If, after the twenty (20) day period, notification has not been received by the City, the Water Main Improvements shall be considered complete and accepted by the Water District.
- L. The Water District shall provide to the City reproducible "as-built" plan/mark-up sheets showing the completed Water Main Improvements, provided that construction of said utilities has been completed under the terms of this Agreement. The Water District shall also provide to the City an electronic copy of the "as-built" plans in the following format: Water CAD. If the Agreement is terminated prior to completion of the Water Main Improvements, the Water District shall provide to the City reproducible "as-built" plan sheets of all completed work on the Water Main Improvements.
- M. The Water District shall promptly notify the City of any issues related to the Project that the Water District believes are inconsistent with the design or construction documents of the Project, or with this Agreement. The Water District shall work cooperatively with the City to resolve any such issues to the mutual satisfaction of both Parties. If the Parties are unable to resolve the issues cooperatively, the Parties shall engage in the dispute resolution procedures identified in this Agreement.

#### SECTION 5. COSTS AND PAYMENTS

- A. The Water District agrees to set aside funds for payment to the City for all costs associated with the Water Main Improvements, as described in Section 5.B of this Agreement.
- B. The Water District shall pay the City for the following costs:
  - (1) The Water District shall pay the City on a time and materials basis for the design and contract administration costs incurred by the City for the Water Main Improvements. A cost estimate is included as Exhibit A for the benefit of the Water District on what they can expect to pay the City for these services.
  - (2) 100 percent of the final cost of all contract items related to the Water Main Improvements, as shown in the bid proposal of the successful bidder. The parties to this agreement will work cooperatively in preparation of the bid request and bid documents so that bids will separately identify and allocate costs so that the financial obligations of the parties may be determined with a high degree of certainty;

- (3) The Water District's proportionate share of the unallocated Project costs, such as mobilization and demobilization, as shown in the bid proposal of the successful bidder. The Water District's proportionate share shall be determined by the following formula: (Costs allocated to Water Main Improvements in the bid proposal of the successful bidder) divided by (Costs allocated to the Project in the bid proposal of the successful bidder). The amount to be determined at a future date by execution of an addendum to this agreement;
  - (4) The Water District shall pay the City the entirety of the Water District's portion of the contract administration costs. The amount to be determined at a future date by execution of an addendum to this agreement.
  - (5) 100 percent of the cost of any extra work associated with the Water Main Improvements within the amount allowed under Section 6.C and any costs for extra work that have been approved in accordance with Section 6.D of this Agreement, so long as such extra work has been approved the Water District consistent with Section 6.B of this Agreement.
- C. The City shall provide the Water District with properly executed invoices and other appropriate documents segregating and identifying the contractor's payments, equipment, materials, and labor expended on the Water Main Improvements, plus the Water District's proportionate share of the unallocated Project costs, plus the Water District's proportionate of the City's actual costs incurred in support of the Water Main Improvements, plus the cost of any extra work associated with the Main Improvements.
- D. Approved invoices describing costs consistent with Section 5.B above and meeting the description in Section 5.C above shall be paid by the Water District within forty-five (45) days of receipt by the Water District. Notice of any potential dispute regarding payment on an invoice shall be made in writing within the same time period. Payment by the Water District shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. If the Parties are unable to cooperatively resolve the dispute, they shall engage in the dispute resolution procedures identified in this Agreement. Interest, at the simple interest rate of 2% per year, shall be charged on all past due payments until paid except for any portion of the past due payment for which it is determined that the Water District is not responsible.

## SECTION 6. CHANGES AND CONTRACTOR CLAIMS

- A. 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 engineering and/or construction contract amounts shall be limited to costs covered by a modification, change order, or extra work order approved as described below.
- B. No change shall be permitted to the approved construction, scheduling, or sequencing plans for the Water Main Improvements unless approved by the Water District.
- C. Should it be determined that any change from the Project contract plans and specifications is required that would result in an increased cost to the Water District of

\$2,500 or less, the City shall provide the Water District with no less than 24-hours' notice of the proposed change. If the Water District approves the change or does not respond before the expiration period of the notice period, the City is authorized to make the change. If the Water District notifies the City that the Water District disapproves the change within the notice period, the City shall have no authority to make the change.

- D. Any change in the Project that would result in an increased cost to the Water District in excess of \$2,500 and any change disapproved by the Water District under Section 6.C above shall not be authorized unless and until a binding Letter of Agreement describing the changed scope of work and the estimated change in the Water Main Improvements cost has been signed by both the City's Public Works Director or his/her designee and the Water District's General Manager or his/her designee. The Water District and the City will work diligently together in securing the execution of said binding Letter of Agreement so as not to hold up the City's contractor from carrying out the work.
- E. Each Party, in the event of a claim by the construction contractor, shall be responsible for its share of the claim filed by the contractor arising out of that Party's proportionate responsibility for the claim.

#### SECTION 7. TERM OF THE AGREEMENT

This Agreement, unless terminated sooner as provided for in Section 20, shall be in full force and effect commencing on the date of execution of this Agreement and terminating when the Water Main Improvements have been accepted by the Water District and the Water District has paid the City in full, unless terminated sooner as provided in this Agreement. Termination of this Agreement shall have no effect on the obligations of either Party to maintain the improvements.

#### SECTION 8. INDEMNIFICATION AND DEFENSE

- A. The City shall defend, indemnify, and hold harmless the Water District, its officers, elected officials, employees, and agents from any and all costs, claims, judgments, or awards of damages of any nature whatsoever resulting from acts or omissions of the City, its officers, elected officials, employees, or agents associated with this Agreement.
- B. The Water District shall defend, indemnify, and hold harmless the City, its officers, elected officials, employees, and agents from any and all costs, claims, judgments, or awards of damages of any nature whatsoever resulting from acts or omissions of the Water District, its officers, elected officials, employees, or agents associated with this Agreement.
- C. In the event of the concurrent negligence of the City and the Water District, each shall be liable for its own percentage of fault. The entities' responsibility to indemnify each other includes the obligation to defend the other and to pay any judgment or award and all chargeable costs and reasonable attorney's fees.
- D. Each party shall individually assume all risk and liability for the specifications, materials requirements, identified work methods and engineering requirements related to his project for which each party is solely responsible for providing.

## SECTION 9. NO THIRD-PARTY BENEFICIARY

The City, by this Agreement, does not assume any contractual obligations to anyone other than the Water District. The Water District, by this Agreement, does not assume any contractual obligations to anyone other than the City. There is no third-party beneficiary to this Agreement.

## SECTION 10. INSURANCE COVERAGE

- A. The City and the Water District shall each maintain at all times during the course of this Agreement a general liability insurance policy with a policy limit of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.
- B. The City shall require the contractor(s) performing services on the Project to procure and maintain for the duration of the Project's construction contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work associated with this Agreement, with both the City and the Water District named as an additional insured. Coverage shall be at least as broad as the following:
- C. The City shall require each contractor to provide a certificate of insurance, with the additional insured endorsement outlining the required coverage. The City shall provide a copy of the certificate of insurance to the Water District.

*The Contractor shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, neither the City nor the Water District shall be deemed or construed to have assessed the risks that may be applicable to the contractor under this Agreement. The contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form. If coverage is approved and purchased on a "claims made" basis, the contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the work which is the subject of this Agreement.*

*Insurance coverage shall be at least as broad as stated below and with limits no less than:*

- A. *General Liability. Coverage shall be at least as broad as Insurance Services Office form number CG 00 01 Ed. 11-88 covering COMMERCIAL GENERAL LIABILITY. \$1 million combined single limit per occurrence, and for those policies with aggregate limits, a \$2 million aggregate limit.*
- B. *Automobile Liability. Coverage shall be at least as broad as Insurance Services Office form number CA 00 01 Ed. 12/90 covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9. \$1 million combined single limit per accident.*

C. *Workers' Compensation; Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law.*

D. *Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy.*

E. *Builder's Risk/Installation Floater: The contractor shall procure and maintain during the life of the Contract, or until acceptance of the project by the City and the Water District, whichever is longer, "All Risk" Builders Risk or Installation Floater Insurance at least as broad as ISO form number CP0020 (Builders Risk Coverage Form) with ISO form number CP0030 (Causes of Loss – Special Form) including coverage for collapse, theft and property in transit. The coverage shall insure for direct physical loss to property of the entire construction project, for 100% of the replacement value thereof. The policy shall be endorsed to cover the interests, as they may appear, of the City and the Water District, Contractor and subcontractors of all tiers with the City and the Water District listed as loss payees.*

*In the event of a loss to any or all of the work and/or materials therein and/or to be provided at any time prior to the final close-out of the Agreement and acceptance of the Project by the City and the Water District, the contractor shall promptly reconstruct, repair, replace or restore all work and/or materials so destroyed. Nothing herein provided for shall in any way excuse the contractor or its surety from the obligation of furnishing all the required materials and completing the work in full compliance with the terms of the Agreement.*

*Explosion & Collapse, Underground Damage (XCU) Endorsement. \$1,000,000 combined single limit per occurrence, and for those policies with aggregate limits, a \$2,000,000 aggregate limit. Evidence of Insurance must specifically state coverage is included.*

*Any deductibles or self-insured retention's must be declared to, and approved by, the City and the Water District. The deductible and/or self-insured retention of the policies shall not limit or apply to the contractor's liability to the City and the Water District and shall be the sole responsibility of the contractor.*

*The insurance policies required in this Agreement are to contain and be endorsed to contain the following provisions:*

*With respect to all Liability Policies except Workers Compensation:*

*a. The City and the Water District, its officers, officials, employees, agents and consultants are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the contractor in connection with this Agreement.*

b. *The contractor's insurance coverage shall be primary insurance as respects the City and the Water District, their officers, officials, employees, agents, and consultants. Any insurance and/or self-insurance maintained by the City or the Water District, their officers, officials, employees, agents and consultants shall not contribute with the contractor's insurance or benefit the contractor in any way.*

c. *The contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.*

d. *A Per Project Aggregate shall apply to the General Liability policy.*

*Unless otherwise approved by the City and the Water District:*

1. *Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.*

2. *Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+; VII.*

*If at any time the foregoing required policies shall fail to meet the above minimum requirements, the contractor shall, upon notice to that effect from the City and the Water District, promptly obtain a new policy, and shall submit the same to the City and the Water District, with the appropriate certificates and endorsements, for approval.*

*The contractor shall include all subcontractors as insured under its policies, or shall furnish separate certificates of insurance and policy endorsements from each subcontractor. Insurance coverages provided by subcontractors, as evidence of compliance with the insurance requirements of this contractor shall be subject to all of the requirements stated herein.*

## SECTION 11. DISPUTE RESOLUTION

- A. In the event that a dispute arises which the Parties do not cooperatively resolve, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either Party, and shall be conducted prior to the institution of any lawsuit arising under this Agreement. The Parties agree to share the cost of mediation equally.
- B. This Agreement has been made pursuant to, and shall be construed according to, the laws of the State of Washington. In the event that mediation is unsuccessful and either Party finds it necessary to institute proceedings to enforce any provision of this Agreement, such proceedings shall be submitted to arbitration before a mutually-acceptable arbitrator from Judicial Arbitration and Mediation Services, Inc. (JAMS) or Judicial Dispute Resolution LLC (JDR). If the Parties are unable to mutually agree on an arbitrator, one shall be appointed by the Presiding Judge of Pierce County Superior Court.

SECTION 12. NON-DISCRIMINATION

The City and the Water District certify that they are Equal Opportunity Employers.

SECTION 13. ASSIGNMENT

Neither the City nor the Water District shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

SECTION 14. NOTICE

Except where otherwise indicated in this Agreement, any formal notice or communication to be given by the City to the Water District under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

LAKESWOOD WATER DISTRICT  
11900 Gravelly Lake Drive SW  
P.O. Box 99729  
Lakewood, WA 98496-0729

Attn: Randall M. Black, General Manager

Except where otherwise indicated in this Agreement, any formal notice or communication to be given by the Water District to the City under this Agreement shall be deemed properly given, if delivered, or if mailed postage prepaid and addressed to:

CITY OF LAKESWOOD  
6000 Main Street SW  
Lakewood, WA 98499-5027

Attn: Don Wickstrom, Public Works Director

The name and address to which notices and communications shall be directed may be changed at any time, and from time to time, by either the City or the Water District giving written notice thereof to the other as herein provided.

SECTION 15. PROJECT RECORDS

During the progress of the Project and for a period not less than six (6) years from the Water District's final payment to the City, all records and accounting pertaining to the Project shall be kept available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the Project shall be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the six-year retention period.

## SECTION 16. CITY AND WATER DISTRICT AS INDEPENDENT CONTRACTORS

The City is, and shall at all times be deemed to be, an independent contractor. The Water District is, and shall at all times be deemed to be, an independent contractor. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the City and the Water District or their agents or employees. The City and the Water District shall each independently retain all authority for the rendition of services, standards of performance, control of personnel, and other matters incidental to the performance of services by the City and the Water District pursuant to this Agreement.

Nothing in this Agreement shall make any employee of the City a Water District employee or any employee of the Water District a City employee for any purpose, including, but not limited to, the withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges accorded the City or the Water District employees by virtue of their employment.

## SECTION 17. WAIVER

No waiver by either Party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any other term or condition or of any subsequent breach, whether of the same or a different provision of this Agreement.

## SECTION 18. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement of the Parties and may not be modified or amended except as provided herein. Any prior understandings, whether written or oral, are expressly excluded. No executed agreements previously executed by one or both of the Parties are effected by this Agreement.

## SECTION 19. AMENDMENT

Provisions within this Agreement may be amended with the mutual consent of the Parties hereto. No additions to, or alteration of, the terms of this Agreement shall be valid unless made in writing, formally approved, and executed by duly authorized agents of both Parties.

## SECTION 20. TERMINATION

A. The City has the right to terminate this Agreement by providing written notice to the Water District if the City determines not to undertake the Project or to discontinue the Project, in which case the City shall be responsible for costs incurred by the Water District associated with the Utility Improvements prior to the City's notice of termination, and the Water District shall only be responsible for costs reasonably incurred by the City that are directly attributable to the Water Main Improvements prior to the City's notice of termination.

B. The Water District has the right to terminate this Agreement by providing written notice to the City prior to the award of the construction contract, in which case the Water

District shall be responsible for all costs reasonably incurred by the City in executing the necessary contract changes to delete the Water Main Improvements from the Project.

- C. After award of the construction contract by the City, the Water District may terminate this Agreement only upon 30 days' prior written notice to the City. In that event, the Water District shall be responsible for all costs reasonably incurred by the City through the date 30 days from the date of the Water District's notice to the City, and all bona fide costs reasonably claimed by the contractor in deleting the Water Main Improvements from the Project.

SECTION 21. FILING

Both Parties shall file copies of this Agreement, together with the motions of the Lakewood Council and Water District Board approving and ratifying this Agreement with the Lakewood City Clerk and the Water District General Manager after execution of the Agreement.

SECTION 22. SEVERABILITY

If any provisions contained in this Agreement are held illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**IN WITNESS WHERE OF**, the Parties have caused this Agreement to be executed on this 15<sup>th</sup> day of April, 2013.

CITY OF LAKEWOOD

LAKEWOOD WATER DISTRICT

Heidi Waechter  
Heidi Waechter, Interim City Manager

Randall M. Black  
Randall M. Black, General Manager

Attest:

Alice Bush  
Alice Bush, MMC, City Clerk

Christie K. Butler  
Christie K. Butler, GM Executive Assistant

Approved as to Form:

Matthew S. Kaser  
Matthew S. Kaser, Acting City Attorney

Andrew W. Maron  
Andrew W. Maron, District Attorney