

CONFORMED COPY  
200902270802 12 PGS  
02/27/2009 2:54pm \$0.00  
SNOHOMISH COUNTY, WASHINGTON

**INTERLOCAL AGREEMENT**

**Snohomish County and Mukilteo Water District  
2009**

**THIS AGREEMENT** between the Mukilteo Water District, a special purpose municipal corporation (the District) and Snohomish County, a political subdivision of the State of Washington, (the "County") is dated this 24<sup>th</sup> day of February, 2009.

WHEREAS, the County owns and operates the Snohomish County Airport, also known as Paine Field; and

WHEREAS, property located on Paine Field is under development by a private contractor, and the County must provide utility service to that property development; and

WHEREAS, the County is located within the District and will receive water and wastewater service from the District after the County has installed certain utilities as more fully described on Exhibit A, which is attached hereto and incorporated by reference (the "Work"); and

WHEREAS, the District is experienced in awarding and managing water and wastewater installations as described in the Work, and the County has requested the District to oversee and manage the Work; and

WHEREAS, the District is willing to oversee and manage the Work on behalf of the County on the following terms and conditions;

NOW, THEREFORE, the District and the County agree:

**1. DISTRICT RESPONSIBILITY.**

A. The District shall manage and oversee all aspects of the Work, according to District standards and policies and the law of the State of Washington, including, but not be limited to:

- i. The District shall retain a consulting engineer to design the Work according to the District's adopted standards and specifications for the Work and to prepare cost estimates, all subject to the County's review and approval before bids are solicited for the Work.
- ii. The District shall prepare a public works contract, including general terms and technical specifications, consistent with the District's standard public works construction contract and the law of the State of Washington.
- iii. The District shall solicit bids for the Work according to the public works laws applicable to the District. The District shall evaluate bids for the Work and use its sole discretion to determine the lowest responsible, responsive bid for the Work. The District reserves to itself the sole discretion to determine whether to reject or accept any and all bids. The District shall award a contract to the lowest responsible,

responsive bidder as determined by the District. Before awarding a contract for the work, the District shall submit the bids received in response to the solicitation for the County's review and approval of the apparent low bidder, which approval shall not be unreasonably withheld.

- iv. The District shall manage the installation of the Work and may retain a construction manager, who may be the District's consulting engineer, to assist with the management of the installation of the Work. Management and oversight of the Work shall include all activities of an owner normally associated with a public works contract, including but not limited to:
  - a. inspecting or testing the Work for compliance with the contract's terms and specifications;
  - b. reviewing and deciding upon requests for change orders; provided that any change order for more than 15% of the contract price or that extends time for performance by more than 15% of the contract time shall be submitted to the County for review and approval, which approval shall not be withheld;
  - c. preparing all pay estimates and making all payments as provided in the public works contract; and
  - d. preparing and maintaining all records normally prepared for public works contracts, including, but not limited to, records relating to inspections, progress payments, change orders, retainage, close out and taxes.
- v. The District shall prepare legal descriptions for any permanent and temporary easements required on private property for the construction of the water and sewer mains.

## **2. COUNTY RESPONSIBILITY.**

A. The County shall reimburse the District for all actual costs reasonably incurred by the District in performing the District's responsibilities under this Agreement, which costs shall include but not be limited to the following:

- i. The cost of all professional services incurred with respect to the Work, such as engineering, legal, and environmental services.
- ii. The actual construction contract cost, as adjusted by change orders, to perform the Work.
- iii. If the District's contractor uncovers any materials while doing work related to completion of the Work requiring special handling and/or disposal under any local, state or federal laws or regulations (including, but not limited to, hazardous waste, dangerous waste, toxic waste or contaminated soil) the County will be responsible for all costs incurred in handling and/or disposing of such materials.
- iv. If the Work cannot be completed after construction starts because of (a) unusual or unforeseen circumstances or (b) the County's failure to approve a necessary change

order in timely manner, then the County agrees to pay any actual construction costs necessary to return the construction site to its former condition or, if the Work is on County property, to a condition satisfactory to County.

- v. Taxes and fees related to the Work.
- vi. A management fee of 7% shall be added to each bill submitted to the County for overhead and for unreimbursed administrative costs.

B. The District shall invoice the County monthly and all payments shall be due within 30 days from the date of the District's invoice to the County performed and, if not paid when due the amount owed shall accrue simple interest at the rate of one percent per month.

C. The County shall provide all environmental review for the Work in compliance with local, state and/or federal law, and the County shall be responsible for obtaining all permits required to perform the Work, except for those permits that are the responsibility of the contractor under the public works contract.

D. The County may observe performance of the Work, but it shall not communicate directly with the contractor. Requests for information or suggestions concerning the Work shall be made to the District's construction manager.

E. The County shall allow the District, or the District's agents, reasonable access to County property when necessary to perform, manage or oversee the Work.

F. The County shall obtain all easements/licenses required for the construction and maintenance and operation of the water and sewer mains.

G. The County shall, at its sole expense, defend any claims brought by the contractor performing the Work, or any subcontractor, or the engineer; provided that the District shall indemnify the County for such cost of defense that resulted from the District's default, failure of performance or negligent conduct associated with the Work.

### **3. INDEMNIFICATION AND HOLD HARMLESS.**

A. The County agrees to protect, defend and indemnify the District, its officers, officials, employees and agents from any and all costs, claims, claims for delay, judgments and/or awards of damages, arising out of or in any way resulting from the default, failure of performance, or negligent conduct associated with the Work by the County, its employees, subcontractors or agents.

B. The County agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of The County's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the District only, and only to the extent necessary to provide the District with a full and complete indemnity of claims made by the County's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

C. The County shall release the District for any claims related to the wastewater utilities installed as part of the Work arising after title to such facilities has been transferred to the County; provided, however, that the District shall assign to the County any rights of the District under any maintenance bonds provided by the public works contractor for such utilities, and any rights available to the District under law or contract with respect to the public works contractor or the design professional who designed or installed such utilities.

D. If either Party incurs any costs including attorney fees to enforce the provisions of this article and prevails in such enforcement action all such costs and fees shall be recoverable from the losing Party.

#### **4. CONTRACTOR INDEMNIFICATION OF COUNTY AND INSURANCE.**

A. The District shall require the contractor installing the Work to have the County named as an additional insured on all policies of insurance to be maintained by contractor(s) under the terms of any contract(s) for the Work, with the District contractor installing the Work required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance, and Workers Compensation insurance. The contractor's insurance shall be primary to the County's insurance.

B. The District shall require the contractor performing the Work to indemnify, defend, and save harmless the County and its officers, agents, or employees from any claim, real or imaginary, filed against the County or its officers, agents, or employees alleging damage or injury arising out of the contractor's performance of the Work.

C. The District shall require the contractor performing the Work to be solely and completely responsible for safety and safety conditions at the job site, including the safety of all persons and property during performance of the work. The contractor shall be required to comply with all applicable District and State regulations, ordinances, orders, and codes regarding safety, and any specific requirements of the County applied generally to all construction projects undertaken by the County.

#### **5. TERMINATION.**

A. If a party fails to comply with any material provision(s) of this Agreement the other party may terminate this Agreement, in whole or in part, for default upon thirty (30) days written notice to the defaulting party. Any extra costs, expenses or damages incurred by the non-defaulting as a result of the termination for default shall be borne exclusively by the party in default. The rights and remedies of this provision are in addition to any other rights or remedies provided to the non-defaulting party by law or under this Agreement. Any termination of this Agreement for default shall not relieve the defaulting party of any obligation, which may arise out of work already performed prior to such termination.

B. The County's failure to secure all necessary funding to complete the Work for the Project will constitute a failure to comply with the material provisions of this Agreement, in accordance with the termination provisions set forth above.

C. The District may terminate this Agreement if the County rejects the District's plans and specifications for the Work or the District's selected low bidder for the Work; provided that the County shall reimburse the District for all unreimbursed costs reasonably incurred by the District up to the date of termination.

## 6. GENERAL PROVISIONS.

A. The County shall convey the water utilities installed as part of the Work to the District by bill of sale, and the District shall retain the rights of exclusive use, regulation, and control of the water utilities and full ownership of such utilities.

B. This is an integrated agreement containing the complete agreement of the parties pertaining to the Work and supersedes all prior discussions or agreements. This Agreement may be amended only in writing, signed by the authorized representative(s) for each party.

C. Nothing contained herein is intended to create any rights in any third party, or to form the basis for any liability on the part of the parties to this Agreement, or their officials, officers, employees, agents or representatives, to any third party.

D. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of both parties.

E. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall continue in full force and effect if such remainder would then continue to serve the purposes and objectives of the parties.

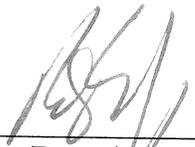
G. In the event of a contractual dispute between the Parties pertaining to the Work, the Parties shall attempt to resolve the matter informally. If the Parties are unable to resolve the matter informally, the matter shall be forwarded for discussions to the General Manager of the District and Chief Executive Officer of the County, or their respective designee(s). If this process fails to resolve the dispute within thirty (30) days after such referral, a party may pursue any legal remedy available or the Parties may agree to submit the matter to mediation or other alternate dispute resolution. If the Parties submit the matter to alternate dispute resolution and the matter is not resolved, a party shall be entitled to pursue any legal remedy available in a court of law.

H. Any notice required in furtherance of this Agreement shall be given to the General Manager of the District or the Chief Executive Officer of the County at their respective business office addresses.

I. Any legal action to enforce any right or obligation under this Agreement shall be initiated in Snohomish County Superior Court.

J. The County shall be responsible for the normal operation and maintenance of the onsite wastewater system during the construction of the new system.

**SNOHOMISH COUNTY**

  
\_\_\_\_\_  
County Executive

PETER B. CAMP  
Executive Director  
2/24/09

Peter B. Camp  
Name (print)

2/24/09  
Date

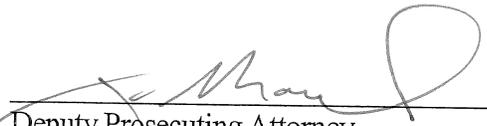
**MUKILTEO WATER DISTRICT**

  
\_\_\_\_\_  
President, Board of Commissioners

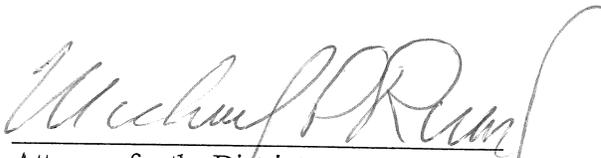
Thomas H. Rainville  
Name (print)

7/9/08  
Date

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Deputy Prosecuting Attorney

**APPROVED AS TO FORM**

  
\_\_\_\_\_  
Attorney for the District

COUNCIL USE ONLY	
Approved:	<u>2-23-09</u>
Docfile:	<u>D-3</u>

**MWD Interlocal Agreement**

**EXHIBIT A**

Page 1 of 5

**SNOHOMISH COUNTY AIRPORT  
WATER AND SEWER SERVICES TO KORRY ELECTRONICS**

**SEWER SYSTEM**

Approximately 450 linear feet of gravity sewer main and appurtenances west of development to existing lift station \$ 85,600

Existing Lift Station Improvements including coating wet well, upgrading electrical control, telemetry, wet well hatch, generator, and sound attenuation enclosure \$248,100

Approximately 1,600 linear feet of 8-inch HDPE or fusible PVC force main installed in existing 14-inch asbestos-cement force main \$111,300

Approximately 550 linear feet of 8-inch gravity sewer and appurtenances north of development to 620 Building \$ 99,100

Approximately 1,000 linear feet of 8-inch gravity sewer and appurtenances west from Commodore Road to Giddens Building \$180,000

**WATER SYSTEM**

Approximately 800 linear feet of 12-inch water main and appurtenances \$135,900

**TOTAL ESTIMATED COST \$860,000**

Prepared February 6, 2009

**Snohomish County Airport reserves the right to value engineer, or to eliminate, any of the work elements above if competitive bids exceed the estimated cost of a work element.**

# MWD Interlocal Agreement

## EXHIBIT A

**Mukilteo Water District  
Preliminary Budgetary Estimate of Cost  
Paine Field Water Sewer**

Item No.	Item	Description, Comments & Calculations	Quantity	Units	Unit Cost	Amount	Schedule Subtotals W/O Mobilization
1	Mobilization	W/ Cleanup & Demobilization @ 8% of other items.	1	L.S.	\$ 45,056	\$ 45,056.00	
<b>Schedule A - Gravity Sewer West of Korry Development to Lift Station</b>							
2	8-Inch Gravity Sewer Line	Pipe @ 20/LF + Installation & testing @ \$10/LF => 30/LF	450	L.F.	\$ 30	\$ 13,500.00	
3	48-Inch Gravity Manholes	Photos indic some minor tree removal - Est \$5/LF	2	Ea.	\$ 4,500	\$ 9,000.00	
4	Clearing and Grubbing	Ave. Depth - 10 ft to invert, 11 ft. excav., est 3.5 ft. wide => 11X3.5/27=> 1.53 Cu Yd/LF. Excav @ \$15/Cu Yd => \$22.95/lf, haul 50% out @ \$10/cu. Yd => \$7.65/LF, B.F. repl. Matl @ \$30/Cu Yd => \$22.96/LF, Backfill Operation @ \$10/LF => \$10.00/LF, Bedding Matl - Same cost as repl mtl & Incl in volume. Total = \$63.56/LF	450	L.F.	\$ 5	\$ 2,250.00	
5	Excavation & Backfill	Assume gravel surface restoration - 4-inch deep X 10 ft. wide X 450 ft. long => 500 sq yd w/ .20 T/sq yd @ \$30/T => \$16.05/sq yd	450	LF	\$ 64	\$ 28,800.00	
6	Surface Restoration		500	Sq Yd	\$ 6	\$ 3,000.00	\$ 56,550.00
<b>Schedule B - Lift Station Improvements</b>							
7	50 KW Diesel Generator w/ Enclosure	Install Soft Starts for 20 HP Pump Motors - Will require new panel on stand outside of dry well and associated wiring and new service entrance	1	L.S.	\$ 50,000	\$ 50,000.00	
8	Upgrade Electrical Control Panel, including new Telemetry System	Direct Payment to PUD by Contractor. Placeholder for bidding	1	L.S.	\$ 90,000	\$ 90,000.00	
9	Modify Electrical Service Entrance to new Panel	Estimated Cost ~ \$5,000.	1	L.S.	\$ 10,000	\$ 10,000.00	
10	Replace Wet Well Lid With Cover With 3 X 6 Hatch Opening	Size - 8-Ft Diam by 14.5 ft. deep - 12 ft. inside. Area ~ 400 sq ft. @ \$5 to clean out, \$ 3 to blast, \$6 to recoat => \$14/sq. ft. => \$5,600 -	1	L.S.	\$ 5,000	\$ 5,000.00	
11	Clean and Recoat Interior of Wet Well	Assume SDR 9 pipe, pulled through directly without spacers. Est pipe cost @ \$40/LF with fusing, Installation @ \$5/LF. Fittings @ ends for Conn @ \$250 /ea => \$.30/LF ==> \$45.30/LF	1600	L.F.	\$ 45	\$ 72,000.00	\$ 160,600.00
<b>Schedule C - Force main</b>							
12	8-Inch HDPE Force Main Installed In Existing 14-Inch Pipe		1600	L.F.	\$ 45	\$ 72,000.00	\$ 72,000.00





# MWD Interlocal Agreement

## EXHIBIT A

Page 5 of 5

