

INTERLOCAL AGREEMENT
WHATCOM COUNTY – LAKE WHATCOM WATER AND SEWER DISTRICT
DESIGN AND CONSTRUCTION OF JOINT WATER PROJECT

WHEREAS, the Public Works Department of the Whatcom County, 5280 Northwest Drive, Bellingham, Washington 98226 (“County”) and Lake Whatcom Water & Sewer District, 1010 Lakeview, Street, Bellingham, Washington 98226 (“District”) desire to exchange certain engineering and construction services to the mutual advantage of each jurisdiction; and

WHEREAS, the County and District have an existing 25-year franchise agreement, effective September 27, 2005, granting the District the right and authority to enter upon County roads, rights-of-way and other County property as designated hereinbefore, for the purpose of constructing its water mains and all necessary appurtenances connected therewith, and for repairing such mains and appurtenances, and for operating and maintaining said mains and appurtenances; and

WHEREAS, the County and District have an existing 50-year franchise agreement, effective October 7th, 1971, granting the District the right and authority to enter upon County roads, rights-of-way and other County property as designated hereinbefore for the purpose of constructing the District’s sewer force mains and all necessary appurtenances connected therewith, and for repairing such mains and appurtenances, and for operating and maintaining said mains and appurtenances; and

WHEREAS, Whatcom County has entered into a professional consulting engineering agreement with Wilson Engineering, LLC, to design the County’s road reconstruction and stormwater improvements for Cable Street; and

WHEREAS, as a part of this road reconstruction project, existing water mains and services lines will be replaced. During road reconstruction, the District’s existing water mains will be abandoned in place and replaced with new mains along with new service lines from the new main to existing water meters; and

WHEREAS, it is in the interest of both parties to combine the County road reconstruction project and the District replacement of portions of existing water mains and services lines within the project limits into one design and construction effort. The replacement portion of the water main will be approximately 1400 feet long; and

WHEREAS, RCW 39.34 allows municipalities to enter into Interlocal Agreements to set forth the conditions of providing services to one another; and

WHEREAS, it is in the best interest and economy of each party hereto to enter into this Interlocal Agreement,

NOW THEREFORE, THE WHATCOM COUNTY AND LAKE WHATCOM WATER AND SEWER DISTRICT AGREE AS FOLLOWS:

1) Cable Street Reconstruction Project.

- A. The District will reimburse the County for all expenses related to design and construction of replacement portions of the water main.
- B. The County will pay its consultants for design and construction administration of the road construction work.

- C. The District will provide design information regarding the replacement portions of the water lines.
- D. The consultant will package the results of the joint road and water main design into a single construction contract bid document for the entire Cable Street Reconstruction Project.
- E. The County shall construct the replacement water utilities in Cable Street, but the District shall own said utilities.
- F. The County will advertise for construction bids and award a construction contract under the County bidding requirements.

2) **Right-of-Way and Permits.** The County has obtained necessary rights-of-way, easements, permits and approvals to facilitate the road construction project. The District's replacement water utilities shall be included in the District's current franchise agreements with the County. These relocated utilities, which are used exclusively by the District, shall be the property of the District.

3) **Construction Contract Bid Document.** It is mutually agreed that the single prepared construction document will list bid items for the County's road construction work and bid items for construction of the District's replacement portions of the water lines on a single bid schedule. The County will act as the lead agency during the bidding and award of the contract, and will award the contract to the lowest responsible, responsive bidder of the total road construction project in accordance with County's bidding requirements. County agrees to defend, indemnify, and hold harmless the District from any and all claims, suits, or actions at law or in equity that may arise from the County bidding, award construction, or administration of the contract. Upon acceptance of the project as complete by the District Board of Commissioners, this indemnification provision shall no longer be in effect for subsequent claims, suits, or actions at law or in equity arising from the County's actions or failures to act.

4) **Shared Construction Costs.** The District shall reimburse the County for actual construction costs associated with replacing the utilities in the amount of the total final costs associated with Cable Street Reconstruction, CRP No. 999022, all of Bid Schedule B – Installation/Relocation of Water Line, and a portion of Bid Schedule A – Roadway, Bid Item 4 – Traffic Control. The portion of Traffic Control shall be defined as the percentage Schedule B in relation to the awarded total project cost (Schedule A plus Schedule B). See equation below.

District Portion of Traffic Control:

Bid Item 4 Traffic Control Amount * (Schedule B / (Schedule A + Schedule B))

5) **Payment of Construction Contract.** A single contract will be between County and Contractor, and all payments to the Contractor shall be made by the County. County will verify all schedule items for payment. District will reimburse County for its portion of shared schedule items relating to the replacement portions of the water lines installed, within 30 days of receipt of billing from County. The County agrees to provide sufficient supporting documentation with said invoice to allow the District to adequately review it for compliance with this Agreement.

6) **Construction Administration.** County will be the lead agency in administering the entire contract, and will perform all construction phase engineering and documentation for the project. The District shall perform construction phase inspection for installation of the replacement portions of the water lines installed. The District shall reimburse the County for construction phase administration costs in the amount of ten percent (10%) of the final total costs associated with Cable Street Reconstruction, CRP No. 999022, all of Bid Schedule B.

- 7) **Shared Construction Phase Engineering and Inspection Costs.** District agrees to pay all construction phase engineering and inspection costs for the replacement portions of the water lines as installed by the County during the construction project. The County may provide an additional inspector for a joint inspection effort, but the County will absorb cost for its own supplemental inspector, if any.
- 8) **Term.** This Agreement shall be binding upon the parties hereto, their successors and assigns and shall continue in full force and effect until the issuance of final payment by the District to the County under the agreement and all one-year warranty requirements have been fulfilled as required by the construction contract documents.
- 9) **Responsible Persons.** The person responsible for the administration of this Agreement on behalf of Whatcom County shall be the Director of Public Works. The person responsible for administration of this Agreement on behalf of the District shall be the General Manager.
- 10) **Indemnification and Hold Harmless.** Neither of the parties to this Interlocal Agreement shall be deemed to assume any liability for the negligence of the other party, its officers or employees, nor for any defective or dangerous condition of the other party's real or personal property and each party hereto mutually agrees, covenants, and promises to hold the other party harmless and to defend and indemnify the other party against any claims for damages, actions at law, suits in equity, or other legal proceedings resulting from the negligence of the such party or from any defective or dangerous condition of the such party's real or personal property.

Neither County nor District shall assume any liability for the direct payment of any salary, wages, or other compensation to any other of the party's personnel performing services hereunder or for any other liability not expressly assumed herein.

- 11) **Ownership and Maintenance of Facilities.** The District shall own the water main whose construction is the subject of this agreement. The District shall pay for operation, maintenance and repairs of said facilities.

12) **Dispute Resolution**

- a) **Arbitration.** The Parties mutually covenant to work cooperatively to timely resolve any issues that may arise between the Parties concerning this agreement. However, any dispute or claim shall be submitted to mandatory, conclusive and binding arbitration under the rules and procedures of Whatcom County Mandatory Arbitration Rules (WCMAR). The parties shall jointly stipulate to an arbitrator, or one will be selected in accordance with WCMAR. The arbitrator's award shall not be limited by otherwise applicable MAR rules. The prevailing party shall be entitled to reasonable attorney's fees and costs. The arbitrator's decision may only be appealed pursuant to RCW 7.04.
- b) **Governing Law and Venue.** The Parties agree that any dispute shall be governed by the law of the State of Washington and shall be heard in Whatcom County.

- 13) **District as Additional Insured.** The County shall require the construction contractor who is ultimately awarded the contract to provide the District with a certificate of insurance and endorsement specifically naming the District as an additional insured prior to the contractor commencing work on the construction project. The contractor will provide at least \$1,000,000.00 in general liability coverage and shall include automobile insurance.

14) **Administration.** The parties do not intend to create any new or separate legal or administrative entity by this agreement but, rather, intend for this mutual Agreement to govern the District's financial support for the project. The terms and conditions contained herein reflect the voluntary participation of the parties.

15) **Relationship to Other Agreements.** The entire agreement between the parties hereto relative to the Cable Street Reconstruction Project is contained in this Agreement. This Interlocal Agreement is in addition to, and is not intended to replace or substitute for any other agreement between the Whatcom County and Lake Whatcom Water and Sewer District. Those other agreements continue in effect according to the terms of those agreements.

DATED this 14th day of FEBRUARY, 2007

BILL HUNTER ASSISTANT GENERAL
MANAGER FOR JAMES NEHER
GENERAL MANAGER

LAKE WHATCOM WATER AND SEWER DISTRICT

Bill Hunter
James Neher, General Manager

IN WITNESS WHEREOF, the parties have executed this agreement in Bellingham, Washington, to exchange certain engineering and construction services on the day and year herein indicated.

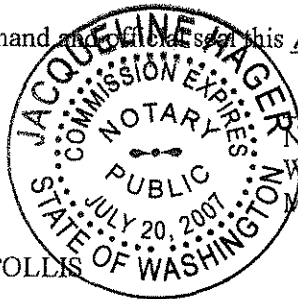
DATED this 14th day of February, 2007, by Lake Whatcom Water and Sewer District.

Deb Kingsley Lambert
Deb Kingsley Lambert, President, Board of Commissioners

STATE OF WASHINGTON)
) ss
COUNTY OF WHATCOM)

On this day personally appeared before me D. Kingsley Lambert, to me known to be the President of the Board of Commissioners of Lake Whatcom Water and Sewer District, the water district that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the water district, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said district.

WITNESS my hand and official seal this 14 day of February, 2007.



Jacqueline Hager
NOTARY PUBLIC in and for the State of
Washington: Residing at Bellingham
My Commission Expires: 7/20/07

Approved as to form:
RESICK HANSEN & FOLLIS
Brian L. Hansen
Brian L. Hansen, Attorney for
Lake Whatcom Water and Sewer District

EXHIBIT "A"
Cable Street Reconstruction Interlocal Agreement
Description and Scope of Work

Introduction:

The proposed project reconstructs the road with an enhanced state-of-the-art drainage system, bike lanes, and sidewalks. Tying into the water quality swales constructed last year, treatment facilities for 110 acres of urban land use will be constructed by the project activities. In the preliminary scoping of the proposed Cable Street reconstruction, design staff realized that impairing any access to Sudden Valley or Lake Whatcom Boulevard would be a transportation and disruptive burden for the Geneva neighborhood, as well as commuters that use this route on a daily basis. The project limits are defined by the Cable Street intersection with Lake Whatcom Boulevard on the east, and the Lakeview Street intersection with Cable Street on the west. Cable Street is a road that was built for rural access well before much of the surrounding urbanization had occurred. After design staff determined that the proposed work would create a bottleneck on the only collector road in the area, it was determined to maximize any additional public work within the County-owned right-of-way. By combining resources with private utilities and performing more work within the footprint of the roadway, public resources could be conserved by cooperating with potential project partners. Besides the direct public cost savings, combining construction activities could reduce future disturbance and delay of traffic associated with managing failing infrastructure for years to come.

Purpose:

This agreement is intended to define a formal working relationship between Whatcom County and the Lake Whatcom Water & Sewer District (District) in the Cable Street joint reconstruction project. The County is taking the responsibility for design, contract administration, and construction management. The terms of the agreement provide for the reimbursement of all costs related to the waterline construction, a percentage of the traffic management, and the construction administration. The cost of the waterline work could be roughly 10-15% of the overall project cost. Combining this work provides a larger total fee for the contractor and hopefully will lower overall unit costs for both the County and the District.

Objective:

Construction of a new Cable Street road section and drainage enhancements, while maintaining existing capacity with one-lane each way for traffic, creating a bike lane in each direction, construction of sidewalks down both sides of the street, and upgrading pedestrian facilities at intersections and existing crosswalks. Construction management will be focused on maintaining public safety, providing the contractor with a safe and efficient work area to manage construction activities, and maintaining core services to the public impacted by the project.

Schedule:

The current plan is to perform construction in the Lake Whatcom work window for grading: May 1, 2007 until September 1, 2007. It is expected that the road closure will be posted on site with a 2-week notification sign to be displayed from April 15, 2007 until May 1, 2007. Private utilities that are impacted by the project will work at their discretion through existing franchise agreements in place with the County or through the right-of-way use permit process as administered by Whatcom County Planning & Development Services.

EXHIBIT "B"
Cable Street Reconstruction Interlocal Agreement Budget Estimate

Note: Actual project costs will be based upon bids received from contractors, and the bid award will be approved by the Whatcom County Council before the lowest responsible bid is accepted.

Item Description	Estimated cost	Estimated County portion	Estimated Water District portion
Traffic Control*	\$50,000	\$45,000	\$5,000
Construction Management**	\$100,000	\$90,000	\$10,000
Waterline Construction***	\$200,000	\$0	\$200,000
Sales Taxes	\$18,060	\$0	\$18,060
Totals	\$368,410	\$135,000	\$233,060

- * As indicated in the interlocal agreement, the Lake Whatcom Water & Sewer District (District) will pay a portion of the traffic control as a percentage of the waterline cost versus the total contract award price.
- ** The District shall reimburse the County for construction phase administration costs in the amount of ten percent (10%) of the final total construction management costs associated with this project.
- *** The District will pay 100% of the water main installation construction costs as well as any applicable taxes.