

**INTERLOCAL AGREEMENT FOR PROVISION OF  
ROAD RELATED MAINTENANCE SERVICES  
TO BE PERFORMED BY  
KING COUNTY ROAD SERVICES DIVISION**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011. The parties ("Parties") to this Agreement are King County, a political subdivision of the State of Washington ("County") and the City of Bellevue, a State of Washington municipal corporation ("City").

**RECITALS**

- A. The County proposes to proceed with 2011 County Guardrail Program, hereinafter referred to as the "Project".
- B. The City owns public roads and traffic devices which require maintenance.
- C. The City is desirous of contracting with the County for the performance of certain road related services such as the design and installation of guardrail systems in the City.
- D. The City and the County have previously entered into a Cooperative Purchasing Agreement for various items including services using the County's competitively awarded contract. The installation of the guardrail systems for the City will be through the County's contract for guardrails.
- E. The County is agreeable to performing such road related services on the terms and conditions hereinafter set forth and in consideration of the mutual covenants and agreements herein contained.
- F. The County and the City can achieve cost savings and benefits in the public's interest by performing certain work for the City during construction of the Project, namely the design and installation of guardrail systems within the City at the City's expense, hereinafter referred to as the "City Work". The Scope of Work for the City Work is attached as Exhibit "A".
- G. Pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into this Agreement.

**AGREEMENT**

NOW, THEREFORE, it is hereby covenanted and agreed by and between the parties hereto as follows:

1. Design

The County shall provide plans and specifications for the City Work for inclusion in the County Contract Bid Documents for the Project. The County shall incorporate a complete and final set of the plans and specifications for the City Work into the Contract Bid Documents for the Project.

2. Bidding

2.1 The County shall incorporate a complete and final set of the plans and specifications for the City Work into the Contract Bid Documents as a deductive alternate in such manner as to allow, to the extent possible, identification of cost allocations between the parties.

2.2 The County shall furnish the City with the bid prices for the City Work for the City's approval. Within two weeks of receiving the bid prices, the City shall notify the County in writing that the City either approves or rejects the City's portion of the contract. The County shall not proceed with the City Work until the County has received approval from the City in writing. If bids are received which, in the estimation of the City, are not acceptable for the City's portion, all or a portion of the City Work shall be deleted from the contract. Bid awards shall be made to the lowest responsible bidder for the total project, subject to applicable laws and regulations.

3. Construction Administration

3.1 The County shall provide the engineering, administrative, inspection, and clerical services necessary for the execution of the City Work. In providing such services, the County Engineer may exercise all the powers and perform all the duties vested by law in the Engineer.

3.2 The City may furnish an inspector to verify proper compliance with requirements in the contract plans and specifications for City Work. The City inspector shall not communicate directly with the Contractor on matters regarding contract performance of the City Work. The City's inspector shall advise the County of any deficiencies in the City Work. The City inspector shall have no authority to bind the County to any adjustments in contract time or price for the Project.

3.3 The City shall notify the County, in writing, of any changes it wishes to make in the plans and specifications that affect the City Work, which changes shall be made, if determined to be feasible by the County. The City shall promptly provide the County with written documentation describing the requested change(s). The County will notify the City of any changes required by the County, which substantially change the nature of the City Work and shall obtain the City's written approval of such changes, with such approval not being unreasonably withheld by the City. The County shall give written notice to the City prior to the commencement of the work. This Agreement shall be amended in writing to incorporate changes in the Scope of Work or Cost Estimate. The City Project Manager and County Traffic Engineer are authorized signatories for this purpose. Any and all costs related to the change(s) in

City Work, including but not limited to, the County's internal administrative costs and the costs associated with any delays or impacts to the County's contractor, shall be borne by the party proposing the change(s).

- 3.4 The County shall provide the City with written notice of physical completion of the City Work. Upon such notice, the City's inspector shall perform final inspection of the City Work. The City shall, within seventy-two (72) hours exclusive of holidays and weekends of its final inspection, provide to the County a written notice of acceptance of the City Work, or alternatively, provide an itemized and detailed written response to the County as to why acceptance of the City Work cannot be given. If the City fails to respond to the County, the City will be deemed to have given final acceptance of the City Work within ten (10) calendar days of the City's receipt of the notice of physical completion of the City Work from the County. Upon the City's acceptance of the City Work, the County shall be relieved of any and all responsibility and/or liability for the City Work and the condition of the City facilities, provided, however, the County shall assign to the City all of the material warranties as defined in section 1-05.10 of the 2010 Standard Specifications for Road, Bridge and Municipal Construction under the Project contract as to the City Work.

#### 4. Payment

- 4.1 The City shall reimburse the County for actual costs reasonably incurred by the County in performing the City Work, which costs shall include but not be limited to:
- 4.1.1 The contract price, as adjusted by change orders agreed to in writing by the City, to perform the City Work; and
- 4.1.2 The County's internal costs incurred during construction of the project (*i.e.*, all engineering, clerical, administrative, materials testing, surveying, and inspection services costs and all payroll additives) directly attributable to the City Work.
- 4.2 In the event the County's contractor uncovers any materials while performing the City Work and such materials require 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 City will be responsible for all costs incurred in handling and/or disposing of such materials.
- 4.3 All payments shall be due within 30 days from the date the County invoices the City for City Work performed on the Project, and when due shall accrue simple interest at the rate of one percent per month.

#### 5. Indemnification and Hold Harmless

- 5.1 Each Party hereto agrees to protect, defend and indemnify the other Party, 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 Party's default, failure of performance, or negligent conduct associated with this Agreement, by the Party, its employees, subcontractors or agents.

- 5.2 Each Party 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 each Party's immunity under Washington's Industrial Insurance act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.
- 5.3 Claims shall include, but not be limited to, defects or mistakes in plans, specifications and/or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.
- 5.4 The provisions of this section shall survive the expiration or earlier termination of this Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

## 6. Termination/Duration

- 6.1 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 party 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.
- 6.2 The City's failure to secure all necessary funding to complete the City 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.
- 6.3 This Agreement is effective upon signature by both parties, and shall remain in effect for one calendar year or until payment of all sums due hereunder are received by the County.

## 7. Other Provisions

- 7.1 The City shall assume full financial responsibility for conforming to all permit and other regulatory requirements or legal obligations relating to the City Work, which arise or take effect on or subsequent to the physical completion of the Project.
- 7.2 This Agreement contains the entire written agreement of the parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by the authorized representative(s) for each party.
- 7.3 Nothing contained herein is intended to, nor shall be construed 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.
- 7.4 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.
- 7.5 If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, 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.
- 7.6 Each party shall maintain records that accurately reflect all actions taken and services provided pursuant to this Agreement, and all direct and indirect costs incurred in the performance of this Agreement. Such records and documents shall be subject to inspection, review or audit by King County, the City and/or federal/state and local officials so authorized by law, at the requesting party's sole expense. Such records shall be made available for inspection or audit during the record keeper's regular business hours within a reasonable time after the record keeper's receipt of a request for inspection of the same. These rights and obligations shall exist during the performance of the Agreement and continue for six (6) years after the termination or natural expiration of the Agreement, whichever first occurs.
- 7.7 In the event of a contractual dispute between the Parties regarding this Agreement, 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 City Manager of the City and the Director of King County's Department of Transportation, 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.
- 7.8 In the event that either party deems it necessary to institute legal actions or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in King County Superior Court of the State of Washington. This Agreement shall be interpreted and construed in

accordance with the laws of the State of Washington. The City hereby consents to the personal jurisdiction of the King County Superior Court of the State of Washington.

8. Indemnification of City and Insurance

- 8.1 The County shall require the contractor building the Project to have the City 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 County contractor building the Project required to maintain Commercial General Liability Insurance, Commercial Automobile Insurance and Workers Compensation.
- 8.2 The County shall require the contractor building the Project to indemnify, defend, and save harmless the City and its officers, agents, or employees from any claim, real or imaginary, filed against the City or its officers, agents, or employees alleging damage or injury arising out of the contractor's participation in the Project.
- 8.3 The County shall contractually require the contractor building the Project 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 contractually required to comply with all applicable County and State regulations, ordinances, orders, and codes regarding safety.

IN CONSIDERATION of the mutual benefit accruing herein, the parties hereto agree that the work as set forth herein will be performed by the County under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date last written below.

KING COUNTY

CITY OF BELLEVUE

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

Brad King  
\_\_\_\_\_  
City Manager - Deputy

\_\_\_\_\_  
Date

9-12-11  
\_\_\_\_\_  
Date

Approved as to Form

Approved as to Form

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

Helene P. Roach  
\_\_\_\_\_  
City Attorney

## Exhibit A

### Scope of Work

The City requests King County Road Services Division to provide design, specifications, advertisement, construction and construction engineering and other matters pertinent to the inclusion of the City guardrail project (“City Work”) into the King County 2011 Guardrail Program (“Project”).

- The City has identified the need to upgrade and install two separate guardrail systems along 112<sup>th</sup> Avenue NE just north of NE 24<sup>th</sup> Street (see map below).
- The County shall prepare plans and specifications for the City Work for inclusion in the County’s 2011 guardrail contract.
- Per the contract, the contractor determines the order of work. Therefore, a specific schedule for the City Work will be determined by the contractor. The County shall notify the City of this schedule once it has been determined.
- The cost estimate for the City Work is approximately \$30,000. Per Section 4 of the Agreement, the City shall pay actual costs incurred by the County in completing the City Work.
- Additional guardrail maintenance or guardrail repair work due to unforeseen circumstances or as emergency response may be included upon agreement by both the City and the County.

