

**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 _____, 2012. The parties ("Parties") to this Agreement are King County, a political subdivision of the State of Washington ("County") and the City of Auburn, a State of Washington municipal corporation ("City").

RECITALS

- A. The City owns public roads and traffic devices which require maintenance.
- B. The City wishes to contract with the County for the performance of certain road maintenance and repair services such as striping and pavement markings; bridge inspections and related maintenance repair; and emergency related maintenance and repair services.
- C. The County is agreeable to performing the maintenance and repair services on the terms and conditions hereinafter set forth and in consideration of the mutual covenants and agreements herein contained.
- D. The Parties can achieve cost savings and benefits in the public's interest by having the County perform the maintenance and repair services for the City at the City's expense.
- E. Pursuant to RCW 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

- 1. Work
 - 1.1 Scope of Work. The County Road Services Division shall perform the maintenance and repair services described on the attached Exhibit 1, Scope of Work.
 - 1.2 Modification of Work. If the City desires to modify the Scope of Work, it shall notify the County. If the County agrees, the Parties shall prepare an amended Scope of Work, which will be attached hereto as Exhibit 2. The amended Scope of Work shall bear the signature of the Road Services Division Director for the County and the Director of Public Works for the City, authorizing the amended work.
- 2. County Personnel Standards

The County is acting hereunder as an independent contractor so that:

- a. County employees performing maintenance and repair services hereunder shall be for all purposes employees of the County;
- b. Control of County personnel standards of performance, discipline, and all other aspects of employment shall be governed entirely by the County.

3. Compensation

- 3.1 Costs. The City shall pay the County for actual costs (direct labor, employee benefits, equipment rental, materials and supplies, utilities, permits, and administrative overhead costs) for the maintenance and repair services performed by the County. Administrative overhead costs shall be charged as a percentage of direct labor costs.
- 3.2 Billing. The County will bill the City for the cost of work performed. The bill will reflect actual costs and administrative overhead, as described in Section 3.1 above. Payments are due within 30 days of the City's receipt of said invoice.

4. Permits

The City is responsible for obtaining any permits or other authorizations that may be necessary for the County to perform the maintenance and repair services under this Agreement.

5. County Responsibilities

- 5.1 County Status. The County will act as a contractor only and will not purport to represent the City professionally.
- 5.2 County Performance. The County shall perform the maintenance and repair services requested by the City as described in the Scope of Work. The County will furnish all necessary labor, supervision, machinery, equipment, materials, and supplies to perform the maintenance and repair services requested by the City in the Scope of Work.
 - 5.2.1 The County understands that the City has appropriated \$185,000 for this work. In order to ensure the City does not exceed its appropriation authority, the City and the County agree that the City will not request, and the County will not perform any work that would result in the County billing the City in excess of this amount until additional funds are appropriated.
- 5.3 Timing of Work. The County will make every effort to recognize pertinent City deadlines for completion of the requested maintenance and repair services, and will notify the City of any hardship or other inability to perform the work requested, including postponement of work due to circumstances requiring the County to prioritize its resources toward emergency-related work.

6. Duration

This Agreement is effective upon signature by both parties, and shall remain in effect until completion of the 2012 work and payment of all sums due hereunder. Either party may terminate this Agreement by a written notice received by the other party at least five business days before the date of termination.

7. Force Majeure

The County's performance under this Agreement shall be excused during any period of force majeure. Force majeure is defined as any condition that is beyond the reasonable control of the County, including but not limited to, natural disaster, severe weather conditions, contract disputes, labor disputes, epidemic, pandemic, delays in acquiring right-of-way or other necessary property or interests in property, permitting delays, or any other delay resulting from a cause beyond the reasonable control of the County.

8. Dispute Resolution

- 8.1 In the event of a dispute between the Parties regarding this Agreement, the Parties shall attempt to resolve the matter informally.
- 8.2 If the Parties are unable to resolve the matter informally, the matter shall be decided by the Director of the King County Road Services Division and the Public Works Director of the City. If the Parties are unable to reach a mutual agreement, either Party may refer the matter to non-binding mediation.
- 8.3 Unless otherwise expressly agreed to by the Parties in writing, both the County and the City shall continue to perform all their respective obligations under this Agreement during the resolution of the dispute.
- 8.4 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. In the event any party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in a court of competent jurisdiction in King County Washington.

9. Notice

Any notice, including notice of termination, or information required to be given to the Parties under this Agreement may be sent to the following addresses unless otherwise specified:

City:
City of Auburn
Director of Public Works
25 W Main Street

County:
King County Department of Transportation
Roads Services Division
Division Director

Auburn WA 98001-4998

KSC-TR-0313
201 S. Jackson St
Seattle, WA 98104-3856

10. Liability

The City and the County agree to defend, indemnify and hold harmless each other, their respective officials, agents and employees, from and against any and all claims, damages, injuries, liabilities, actions, fines, penalties, costs and expenses (including reasonable attorney fees) that arise out of or are related to the negligent acts or omissions of the indemnifying party and its officials, agents, employees acting within the course and scope of their employment and in the performance of said Party's obligations under this Agreement or the exercise of a Party's rights and privileges under this Agreement. In the event any such liability arises from the concurrent negligence of the indemnifying Party and the other Party, or any of their respective actors, the indemnity obligation of this section shall apply only to the extent of the negligence of the indemnifying Party and its actors.

The foregoing provisions specifically and expressly intend to constitute a waiver of each party's immunity under industrial insurance, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. This waiver has been mutually negotiated.

11. Applicable Laws

Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

12. Authority

Each individual executing this Agreement on behalf of the City and the County represents and warrants that such individuals are duly authorized to execute and deliver the Agreement on behalf of the City or the County.

13. Audits and Inspections

The records and documents pertaining to all matters covered by this Agreement shall be retained and be subject to inspection, review or audit by the County or the City during the term of this Agreement and for three (3) years thereafter.

14. Entire Agreement and Amendments

This Agreement contains the entire agreement of the parties hereto and supersedes any and all prior oral or written representations or understandings. This Agreement may only be amended by mutual, written agreement between the parties, provided that the Scope of Work may be amended as described in Section 1.2 above.

15. No Third Party Rights

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.

16. Waiver of Breach

Waiver of any breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

17. Headings

The headings in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

18. Invalid Provisions

If any provision of this Agreement shall be held invalid, the remainder of the Agreement shall not be affected if such remainder would then continue to serve the purposes and objectives of the parties.

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

KING COUNTY

CITY OF AUBURN

King County Executive

City Mayor

Date

Date

Approved as to Form

Approved as to Form

King County Deputy Prosecuting
Attorney

City Attorney

EXHIBIT 1 **Scope of Work**

City Striping and Pavement Markings

The City requests citywide replacement striping, raised pavement markings (RPMs) and thermoplastics services in 2012. The City will identify specific locations that will be striped twice in 2012. Locations for thermoplastics and raised pavement markings will also be provided by the City.

Schedule

- Since striping, RPMs and thermoplastics installations are weather dependent services, specific scheduling date(s) will be mutually determined between the City representative, Pablo Para and the County representative, George Dudley.

Cost Estimate

- Without an accurate inventory of striping, RPMs and thermoplastics in the City, the County is unable to provide a cost estimate.
- The City's budget for these services is \$125,000.
- The County will therefore do approximately \$125,000 worth of striping, RPMs and thermoplastics.
- The City agrees that the County cannot guarantee that all striping, RPMs and thermoplastics in the City can be accomplished within the City's budget.
- If the County cannot accomplish all the citywide striping, RPMs and thermoplastics within the City's budget, the City may increase the budget necessary to complete the requested work.

Bridge Inspections and Related Maintenance Repair Work

The City requests bridge inspections per the 2012 bridge schedule for eleven city bridges per the National Bridge Inspection Standards as published in the Code of Federal Regulations, 23 CFR 650 Subpart C and the State of Washington Bridge inspection Manual. In addition, the City may requests bridge maintenance repair work under this Agreement as a result of the inspections. The County will provide cost estimates for any maintenance repair work requested by the City.

Schedule

- The bridge inspections will occur in the summer or fall of 2012.
- Any related bridge maintenance repair work will be scheduled as mutually agreed by the County and the City.

Cost Estimate

- The cost estimate is approximately \$10,000 for the inspections of eleven city-owned bridges in 2012.
- The cost estimate for any related bridge maintenance repair work will be provided upon the city's request to have the County perform such repair work.

Emergency Call Out Services

The City requests the provision of emergency related maintenance/repair work including, but not limited to the following:

- Traffic signal related maintenance/repair work for signal pole knockdowns, signal controller failures, and others.
- Bridge maintenance/repair work such as clearing wood and log debris and others.

Schedule

Emergency call out services will be scheduled and done based on availability of County crews as this service is anticipated to be needed during time of emergency such as a flooding or a storm that may similarly impact County roads and facilities.