

**AN INTERLOCAL AGREEMENT BETWEEN
THE CITY OF KIRKLAND, WASHINGTON AND
THE CITY OF REDMOND, WASHINGTON**

**FOR MUTUAL COOPERATION IN A PUBLIC WORKS PROJECT AT
THE INTERSECTION OF 132ND AVE NE AND NE 100TH STREET
THROUGH INCORPORATION OF THE PARTNER AGENCY'S WORK
INTO THE LEAD AGENCY'S WORK, AS IDENTIFIED HEREIN**

THIS AGREEMENT is entered into between the City of Kirkland ("Kirkland") and the City of Redmond ("Redmond"), both Washington municipal corporations, individually a "Party" and collectively the "Parties," pursuant to Chapter 39.34 RCW, the Interlocal Cooperation Act.

RECITALS

- A. Whereas, it is in the Parties' mutual best interest to coordinate and integrate their work, when possible, to realize efficiencies and reduce disruption to the public; and
- B. Whereas, the Parties share a mutual interest in the improvements to the intersection of 132nd Avenue NE and NE 100th Street; and
- C. Whereas, based upon the circumstances, either Kirkland or Redmond could be the lead agency for the project;

Now, therefore, the Parties agree as follows:

AGREEMENT

1. LEAD AGENCY AND PARTNER AGENCY

Based upon the circumstances of the particular project described in Exhibit A, such as scope and/or schedule, and upon the mutual agreement of the Parties, it shall be agreed that Kirkland shall have primary responsibilities for contractor selection, contract management, project management, and facilitating the integration and completion of the work ("Lead Agency"). Redmond shall be the Partner Agency ("Partner Agency"). The roles and responsibilities of the Lead Agency and the Partner Agency are provided herein.

2. LEAD AGENCY PROJECT AND PARTNER AGENCY WORK

The Lead Agency is designing and will construct a public work summarized in Exhibit A (“Project”). The Partner Agency shall pay for fifty percent (50%) of the public work and associated costs as detailed in Exhibit B.

3. COORDINATION AND COOPERATION

- a. The Parties shall cooperate, and they shall coordinate efforts to cause the Project to be constructed pursuant to a process and schedule consistent with this Agreement and developed mutually by the designated representatives of the Parties.
- b. The parties recognize that Exhibit B shows traffic signal system improvements in Redmond right-of-way. Kirkland will make reasonable efforts to relocate the traffic signal system into Kirkland right-of-way prior to final design. However, in the event that traffic signal system will need to remain within Redmond right-of-way, the parties will enter into a separate license agreement or other alternative to authorize those improvements.

4. DESIGN AND CONSTRUCTION PROCEDURE

a. Partner Agency Plans

The Lead Agency shall prepare and provide plans, specifications, details, cost estimates, and a bid item schedule (“Project Plans”) to the Partner Agency. The Partner Agency shall review the Project Plans and provide comments to the Lead Agency within 21 calendar days. The Project Plans shall be prepared by a qualified engineer selected by the Lead Agency or, if mutually agreed to, by the Partner Agency’s consulting engineer for the Project. The Project Plans must include Project Work as summarized in Exhibit A, attached hereto and incorporated herein. The estimated cost of the Project and associated shared costs are stated in Exhibit B, attached hereto and incorporated herein. The designated representatives of the Parties may approve written amendments to Exhibit A and/or Exhibit B, which, after approval, shall be deemed to be amendments to Exhibits A and Exhibit B without physical attachment to this Agreement. The Kirkland Designated Representative shall be the Kirkland Director of Public Works, and any amendments shall be routed in Kirkland’s enterprise resource planning system (Munis). The Redmond Designated Representative shall be the Redmond Public Works Director.

b. Competitive Bid and Partner Agency Work

The Lead Agency shall call for bids for the Project on behalf of both parties. Shared cost items are detailed in Exhibit B. The Lead Agency shall provide the Partner Agency with copies of the final bid solicitation and copies of all bids

received. The Partner Agency shall notify the Lead Agency within 3 days as to whether the Partner Agency agrees to proceed with construction based on the amount of the bids and whether the Partner Agency has any objection to the award of the construction contract to the low bidder. If the bids exceed the engineer's estimate for the work or the amount budgeted by either Party for Project Construction, either Party may decide, in its sole discretion, not to proceed with construction. If either Party has reasonable objection to the contractor submitting the lowest bid, the contractor's bid will not be accepted and the next lowest bid may be considered. The party objecting to the contractor submitting the lowest bid will be responsible for costs of defending a bid protest.

c. Project Contracting and Construction

The Lead Agency's Contractor for the Project ("Project Contractor") shall perform the Project Work, except as provided otherwise in this Agreement. The Lead Agency shall serve as the Partner Agency's agent for the Project. As the Partner Agency's agent, the Lead Agency shall generally manage and oversee the Project, however the Partner Agency shall have an authorized Project Manager for its portion of the project. The Lead Agency will coordinate with the Partner Agency regarding the progress of the Project. The Lead Agency shall have final decision-making authority, after consultation with the Partner Agency, for all work by the Project Contractor for the Project, except as expressly identified herein. The Lead Agency shall be responsible for all inspection and testing of the Partner Agency work, including materials for the Project, unless otherwise detailed in Exhibit A. The Partner Agency shall provide the Lead Agency all applicable material, work, and testing requirements. The Lead Agency shall incorporate the Partner Agency requirements into any applicable contract documents. The Partner Agency shall be responsible and pay for any and all excess costs incurred by the Lead Agency as a direct result of Partner Agency's failure to provide applicable requirements. To the extent that Exhibit A identifies that the Partner Agency is responsible for inspection, testing, or observation, the Partner Agency shall be responsible and pay for any and all excess costs incurred by the Lead Agency as a direct result of Partner Agency's failure to timely and properly inspect, test, and/or observe the Partner Agency Work performed by the Project Contractor.

d. Partner Agency Inspections

The Partner Agency will provide construction observation services for the Project Work, as determined necessary by the Partner Agency, unless otherwise specified within the Exhibits. Whenever onsite, Partner Agency personnel will report to the Lead Agency's Project Manager. If the Partner

Agency has issues or concerns with the Project Contractor, it must bring such issues or concerns to the immediate attention of the Lead Agency's Project Manager. The Partner Agency shall not direct the Project Contractor to perform any work. Partner Agency personnel shall complete documentation related to the Partner Agency's observation or inspection that is required by the Lead Agency, or for Partner Agency record-keeping purposes. The Lead Agency shall manage all construction documentation pursuant to a process and procedure determined by the Parties prior to commencement of construction of the Project.

e. Change Orders and Field Work Directives

The Lead Agency may approve field work directives and change orders for the Project Work; provided, however, that the Lead Agency must obtain the Partner Agency's prior written consent to a change order as follows.

- 1) No prior consent is required for changes regarding traffic closures or to address an emergency.
- 2) Provided there is no material change in workmanship, product, or nature of the Partner Agency Work, no prior consent is required for changes that either reduce costs to the Partner Agency or where the change in cost to the Partner Agency is less than two (2) percent of the Partner Agency's contract share.
- 3) For changes that will cause the costs to the Partner Agency to increase between two (2) and five (5) percent of Partner's Agency's contract share, then the Lead Agency must obtain the Partner Agency's consent. If the Partner Agency does not provide a response within two (2) working days, then the Partner Agency's consent will be presumed.
- 4) For changes that will cause the costs to the Partner Agency to increase over five (5) percent of Partner's Agency's contract share, then the Lead Agency must obtain the Partner Agency's consent. If the Partner Agency does not provide a response within five (5) working days, then the Partner Agency's consent will be presumed.
- 5) Notwithstanding the foregoing, for changes that will cause a material change in workmanship, product, or nature of the Partner Agency Work or where fifty (50) percent of the Partner Agency's contingency has already been allocated, then the Lead Agency must obtain the Partner Agency's consent. The Lead Agency must provide a response within five (5) working days, but no consent will be presumed in the absence of a timely response.

For any changes requiring the Partner Agency's consent, the Partner Agency shall not withhold its consent unreasonably. If the Partner Agency withholds

its consent unreasonably, then the Partner Agency shall be responsible to pay for all liability or damages incurred by the Lead Agency because of the Partner Agency's unreasonable withholding of consent.

Regardless of the type of change or the dollar amount of the change order, the Lead Agency shall provide the Partner Agency with copies of all requests for change orders and all executed change orders related to the Partner Agency Work and associated shared costs, with such documentation provided either by paper or e-mail notification at the Lead Agency's first opportunity.

f. Payments to Contractor

The Lead Agency shall make all payments to the Project Contractor.

g. Final Acceptance

Prior to acceptance of the Project by the Lead Agency, the Partner Agency must first accept the Project Work that will become assets of the Partner Agency. The Partner Agency shall not withhold its acceptance unreasonably. After acceptance, the Partner Agency assets shall become the property of the Partner Agency. The Lead Agency shall assign all warranties related to the Partner Agency Work to the Partner Agency.

h. Claims

1. *Claims by Project Contractor or Consultants.* Should any claims by the Lead Agency's Project Contractor or consultants arise, the Lead Agency shall handle and administer such claims. The Partner Agency shall reimburse the Lead Agency fifty percent (50%) of all Lead Agency costs associated with handling of such claims. The Lead Agency shall immediately notify the Partner Agency when such a claim is made and shall keep the Partner Agency informed of the processing and progress of any claim. The Lead Agency will request, and the Partner Agency may provide, guidance and input regarding any proposed settlement terms of such a claim. The Lead Agency must obtain the Partner Agency's approval in advance of any settlement or prosecution of a claim. If the Partner Agency and the Lead Agency cannot agree as to the prosecution or settlement of a claim related to the Partner Agency Work, the Partner Agency may prosecute or defend the claim and the Lead Agency will assign the claim to the Partner Agency and cooperate with the Partner Agency on such claims. If the Partner Agency so elects to accept the Lead Agency's assignment of such claims, the Partner Agency agrees to pay fifty percent (50%) all costs of prosecution or defense and to defend, indemnify, and hold harmless the Lead Agency from all claims, injuries, damages, losses,

or suits, including reasonable attorney fees, that the Lead Agency suffers directly arising from the Partner Agency's decision to prosecute or defend the claim rather than to settle.

2. *Claims by a Third-Party.* If either party receives from a third-party, not including the Project Contractor or Consultants, a claim for damages related to the Project Work, the party receiving such claim shall immediately notify the other party. The receiving party shall handle and administer such claims in the same manner as it would handle any other claims for damages, and the receiving party shall keep the other party informed of the processing and progress of any claim.
3. In the event one or both of the Parties wish to pursue any claim or action against the Project Contractor or a person who is not a party to this Agreement, the other party will cooperate in good faith in prosecuting such claim or action. This provision in no way requires sharing in the costs of pursuing such claim.

5. PAYMENT

- a. The Parties shall be responsible for and bear the cost of their respective officers, officials, employees, agents, consultants and contractors, including consulting engineering costs, as well as incidental expenses, except as specifically provided otherwise in this Agreement.
- b. The Partner Agency shall reimburse and pay the Lead Agency for all actual costs incurred by the Lead Agency, its agents, consultants, and contractors, including consulting engineers, who perform work or services related to the Project, at a rate of fifty percent (50%), including but not limited to design, bid preparation and bidding, together with a proportional share of the Project's Schedule(s) bid item costs ("Construction Costs," as detailed in Exhibit B), construction management, and compaction and material testing.
- c. The Parties shall charge staff time for all work related to the Project, and all such staff costs of both parties shall be considered actual costs of the Project, with each party responsible for payment of fifty percent (50%) of such actual costs. The Parties shall provide each other supporting documentation for these costs.
- d. The costs associated with amendments to the Project Work will be shared equally by the Parties at a rate of fifty percent (50%) each, unless the amendment is specifically to benefit one party in which case it will be based on proportional costs.

- e. The Lead Agency shall submit to the Redmond Designated Representative, Redmond's City Engineer, quarterly progress billings for fifty percent (50%) of the actual costs of the Project and associated shared costs, including the Lead Agency's staff costs. If requested by the Partner Agency, the Lead Agency will meet with the Partner Agency to review and discuss any billing. The Partner Agency shall be entitled to deduct Partner Agency's staff costs incurred during the billing period from the total amount of the Lead Agency's invoice, and shall remit the balance to the Lead Agency. If requested by the Lead Agency, the Partner Agency will meet with the Lead Agency to review and discuss any deductions. The Partner Agency shall pay the billing within forty-five (45) days of receipt.
- f. If the Partner Agency in good faith disputes any amount due under a billing, the Partner Agency must promptly notify the Lead Agency and provide the specific basis of the dispute. If the Lead Agency disputes the deduction made by the Partner Agency, the Lead Agency shall promptly notify the Partner Agency and provide the specific basis of the dispute. If such dispute cannot be resolved promptly through good-faith discussions between the Parties, the Partner Agency must timely pay the undisputed portion, and the parties shall diligently proceed to resolve the disputed amount in a manner consistent with Section 7, below.

6. INDEMNIFICATION AND INSURANCE

- a. The Lead Agency shall require the Project Contractor to obtain and keep in force during the term of the Project contract, liability and property damage insurance policies consistent with the Lead Agency's standard requirements for public works insurance policies. The Lead Agency shall require the Project Contractor to name the Partner Agency and its officers, officials, employees, and agents as additional insureds on all such policies of insurance to the same extent as the Lead Agency. If the Lead Agency's standard insurance requirements change significantly from the requirements in existence at the time this agreement is executed, the Lead Agency will inform the Partner Agency in writing.
- b. The Lead Agency shall require the Project Contractor to defend, indemnify, and hold harmless the Partner Agency and its officers, officials, employees, and agents from any and all claims, injuries, damages, losses, or suits, including attorneys' fees, arising out of or in connection with the Contractor's participation in the Project, to the same extent as the Lead Agency and consistent with the Lead Agency's standard indemnification provisions for public works contracts.

- c. Each Party agrees to defend, indemnify, and hold harmless the other Party and its officers, officials, employees, and agents from any and all claims, injuries, damages, losses, or suits, including reasonable attorneys' fees, arising out of or in any way resulting from that Party's own tortious acts, errors, or omissions that may arise in connection with its performance under this Agreement. A Party will not be required to defend, indemnify, or hold harmless the other Party if the claim, injury, damage, loss, or suit is caused by the sole negligence of the other Party. Where such claims, injuries, damages, losses, or suits result from the concurrent negligence of the Parties, the indemnity, defense, and hold harmless provisions herein shall be valid and enforceable against the Indemnifying Party only to the extent of the Indemnifying Party's own negligence. Each of the Parties agrees that its obligations under this Section 6 extend to any claim, injury, damage, loss, or suit brought by, or on behalf of, any of its employees or agents. For this purpose, each of the Parties, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Title 51 RCW. The obligations of this Section shall survive termination of this Agreement.
- d. If either Party incurs any costs, including attorneys' fees or expert witness fees, to enforce this Agreement and prevails in such enforcement action, all such costs and fees shall be recoverable from the losing Party.

7. DISPUTE RESOLUTION

- a. Negotiations. In the event that any dispute arises between the Parties as to the interpretation or application of any term of this Agreement or as to the validity of any claim made by either Party against the other as a result of this agreement, either Party may make a written request for a meeting between senior representatives of each party within a reasonable time.
- b. Mediation Participation. In the event that the Parties are unable to resolve the dispute through negotiations or if the parties waive the negotiation process, the Parties agree to participate in a nonbinding, neutral evaluation and mediation of their dispute at a mutually agreeable location prior to commencing legal action. Either Party may request that any dispute be submitted to neutral evaluation and mediation at any time upon the giving of written notice to the other Party.
- c. Selection of Mediator. Upon the giving of notice by either Party as provided above, the Parties shall attempt to select a neutral person to evaluate and mediate the dispute. If, after thirty (30) days, the Parties cannot agree to any of the persons named, or if acceptable persons are unable to serve, or if for any reason the appointment of a neutral person cannot be made, either Party may

terminate the dispute resolution process or the Parties may, by agreement, seek other means of resolution.

- d. Conflicts of Interest. Each Party shall promptly disclose to the other any circumstances known by it that would cause justifiable doubt as to the independence or impartiality of any individual under consideration or appointed as a neutral mediator. Any such individual shall promptly disclose such circumstances to the Parties. If any such circumstances are disclosed, the individual shall not serve as neutral mediator unless both Parties agree in writing.
- e. Compensation of Mediator. The neutral mediator's charges shall be established at the time of appointment. Unless the Parties agree otherwise, the fees and expenses of the neutral mediator shall be divided equally and each Party shall bear its own costs and expenses.
- f. Mediation Session. The mediation session is intended to provide each Party with an opportunity to present its best case and position to the other Party and the neutral mediator and for the Parties to receive opinions and recommendations from the neutral mediator. The neutral mediator shall facilitate communications between the Parties, identify issues, and generate options for settlement. The neutral mediator also shall discuss with each Party separately the neutral mediator's opinion and evaluation of the strengths and weaknesses of that Party's position. The terms of any settlement made by the Parties as the result of the mediation shall be set out in a written addendum to this agreement.
- g. Confidentiality. The dispute resolution process identified in this paragraph is a compromise negotiation for purposes of judicial rules of evidence. The Parties agree to maintain in confidence all offers, promises, conduct, and statements, oral or written, made in the course of the mediation by either of the Parties, their agents, employees, experts, representatives or attorneys, or by the neutral mediator, and agree that the same shall be deemed negotiations in pursuit of settlement and compromise and not admissible or discoverable in subsequent legal proceedings pursuant to Washington Evidence Rule 408. The neutral mediator shall be disqualified as a trial or deposition witness, consultant, or expert of either Party.
- h. Reservation of Rights. In the event that the Parties are unable to resolve the dispute through the dispute resolution process established in this Section 7, the Parties reserve any and all other rights and remedies available to each of them regarding such dispute.

8. DESIGNATED REPRESENTATIVES; NOTICES AND COMMUNICATIONS

The Designated Representatives of the Parties shall be the following employees, or their designees:

City of Kirkland
Public Works Director
123 Fifth Avenue
Kirkland, Washington 98033

City of Redmond
Public Works Director
15670 NE 85th Street
Redmond, Washington 98073

All notices and other formal communications shall be mailed or delivered to the Designated Representatives. The Parties may change their respective Designated Representative by written notification to one another.

9. OTHER PROVISIONS

- a. This Agreement constitutes the entire and exclusive agreement between the Parties relative to the Project Work described herein and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.
- b. There are not third-party beneficiaries to this Agreement. No person or entity other than a Party to this Agreement shall have any rights under this Agreement or any authority to enforce its provisions, and any such rights or enforcement must be consistent with and subject to the terms of this Agreement.
- c. 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.
- d. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion thereof, shall not affect the validity of the remaining provisions of this Agreement and any invalid provision shall be ineffective only to the extent of such invalidity, illegality, or unenforceability. In such case, the parties shall in good faith modify or substitute such invalid provision consistent with the original intent of the parties.
- e. This Agreement may be signed in counterparts, and, if so signed, shall be deemed one integrated document.

CITY OF KIRKLAND

CITY OF REDMOND

City Manager of Kirkland

Mayor of Redmond

Approved as to form:

Approved as to form:

City of Kirkland Attorney

City of Redmond Attorney

EXHIBIT A

PROJECT WORK SCOPE

An all new full traffic signal system with signal poles, mast arms and heads, signal cabinet, cameras and full electronics for APS, video detection and ITS capability. Surface features include new curb ramps, crosswalks, street-level bicycle lanes, sidewalk replacement as necessary, and left turn lane improvements. Roadway resurfacing and modifications to the existing surface water system will be performed as required by Kirkland and Redmond City standards, as applicable.

Right-of-way acquisition is not expected for this project.