

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

**FOR MUTUAL COOPERATION IN A PUBLIC WORKS PROJECT
ALONG 119TH AVENUE NE FROM APPROXIMATELY NE 159TH STREET
IN BOTHELL TO THE SHARED CITY LIMITS WITH KIRKLAND
THROUGH INCORPORATION OF THE BOTHELL PARTNER AGENCY'S
WORK INTO THE KIRKLAND LEAD AGENCY'S WORK, AS IDENTIFIED
HEREIN**

THIS AGREEMENT ("Agreement") is entered into between the City of Kirkland ("Kirkland") and the City of Bothell ("Bothell"), 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 public works roadway safety improvements to 119th Ave NE in the cities of Kirkland and Bothell; and
- C. Whereas, based upon the circumstances, Kirkland will be the lead agency and Bothell will be the partner agency for the roadway safety improvements.

Now, therefore, the Parties agree as follows:

AGREEMENT

1. LEAD AGENCY AND PARTNER AGENCY

Based upon the circumstances of the particular public works roadway safety improvements project described in Exhibit A ("Project"), attached hereto and incorporated herein, 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 improvements ("Lead Agency"). Bothell 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 has designed and will construct the Project. The Partner Agency shall pay for the portion of the Project to be performed within its jurisdiction and associated costs, including those related to design, all as detailed in Exhibit B, attached hereto and incorporated herein.

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 agree that Exhibit A shows the Project work which is rechannelization via paint striping and removals of existing striping along 119th Avenue NE from approximately NE 159th Street in Bothell to the shared city limits with Kirkland; and in Kirkland from the shared city limits with Bothell to NE 144th Street.

4. DESIGN AND CONSTRUCTION PROCEDURE

a. Project Plans

The Project plans summarized in Exhibit A describe the work to be done in the Lead Agency's jurisdiction and the work to be done in the Partner Agency's jurisdiction. The estimated cost of the work to be done in the Partner Agency's jurisdiction are stated in Exhibit B. 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. The Bothell Designated Representative shall be the Bothell Public Works Director. The Designated Representatives shall serve as the Administrators of this Agreement for purposes of the Interlocal Cooperation Act.

b. Competitive Bid

The Lead Agency has called for bids for the Project on behalf of both parties and has awarded the Project contract to the lowest responsive and responsible bidder ("Project Contractor"). The Partner Agency is satisfied with the Project contract award and agrees with the Lead Agency that the process leading to the award of such contract and the contract itself comply with all applicable public works statutes.

c. Project Contracting and Construction

The Project Contractor shall perform the Project work, except as provided otherwise in this Agreement. The Lead Agency shall serve as the Project Manager and 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 for all work by the Project Contractor for the Project, except as expressly identified herein. However, no work shall be completed within Bothell without Partner Agency approval. The Lead Agency shall be responsible for all inspection of the Project Work.

d. Partner Agency Inspections

The Partner Agency will provide construction observation services for the Project Work within the Partner Agency's jurisdiction, as determined necessary by the Partner Agency. If the Partner Agency has issues or concerns with the Project Contractor, it shall 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 provide a minimum of five (5) working days' notice and meet in the field with the Partner Agency's Project Manager to confirm the layout of the Project work within Bothell prior to the Project Contractor commencing work.

e. Change Orders

- 1) The Lead Agency may approve change orders for the Project Work with Bothell; provided, however, that the Lead Agency must obtain the Partner Agency's prior written consent to a change order. If such written consent is not provided by the Partner Agency within five (5) working days of the request, the Parties agree that no further Project work will be performed within Bothell absent the further agreement of the Parties. The Partner Agency shall provide a response within five (5) working days, but no consent will be presumed in the absence of a timely response.
- 2) 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 work located within the Partner Agency's jurisdiction will be deleted and Partner Agency shall remain responsible for its share of Project costs incurred or irrevocably committed as of such date of deletion.

- 3) 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 portion of the Project within the Partner Agency jurisdiction 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 portion of the Project Work within the Partner Agency jurisdiction that will become assets of the Partner Agency. The Partner Agency shall not withhold its acceptance unreasonably. After acceptance, the portion of the Project Work within the Partner Agency jurisdiction shall become the property of the Partner Agency. The Lead Agency shall assign all warranties related to the Project Work within the Partner Agency's jurisdiction to the Partner Agency.

h. Claims

The following only applies to work located within the Partner Agency's jurisdiction and claims related to such work.

- 1) *Claims by Project Contractor or Consultants.* Should any claims by the Project Contractor or another third party arise, the Lead Agency shall handle and administer such claims. The Partner Agency shall reimburse the Lead Agency for all Lead Agency costs associated with handling of such claims on a pro-rated basis in accordance with this Agreement unless a claim relates solely to work located within one jurisdiction and not both jurisdictions. 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, which in general it is expected would be on a pro-rated basis in

accordance with this Agreement unless a claim relates solely to work located in one jurisdiction but not both jurisdictions. Notwithstanding any of the foregoing, and in the absence of any contributory negligence by the other agency, the Lead Agency shall be responsible for claims related solely to that portion of the work in Kirkland and the Partner Agency shall be responsible for any claims related solely to that portion of the work in Bothell.

- 2) 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 portion of the Project located within its jurisdiction, 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 inspection.
- c. The Lead Agency shall charge staff time for all work related to the Project located within the Partner Agency's jurisdiction, and all such staff costs shall be considered actual costs of the Project. The Lead Agency shall provide supporting documentation for these costs.
- d. The costs associated with amendments to the Project Work that involve work located within each Party's jurisdiction will be paid for by each respective Party.
- e. The Lead Agency shall submit to the Partner Agency's Designated Representative, quarterly progress billings for the actual costs of the Project and associated shared costs, including the Lead Agency's staff costs, for work located within the Partner Agency's jurisdiction. 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 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 shall 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 shall 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 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 Project 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. To the extent permitted by law, 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 Bothell
Public Works Director
18415 101st Ave NE
Bothell, Washington 98011

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. TERM AND TERMINATION

- a. The Term of this Agreement shall be for a period of one year following its execution or the completion of the Project, whichever occurs sooner; provided, however, that its insurance, indemnification, and confidentiality provisions will be of continuing effect.
- b. This Agreement may be terminated for convenience by either Party upon the giving of at least 30 days of prior written notice; provided, however, that if this Agreement is terminated by the Lead Agency for convenience, the Partner Agency shall not be responsible for any costs hereunder; and provided, further, however, that if this Agreement is terminated by the Partner Agency for convenience, the Partner Agency shall be responsible for its costs incurred or irrevocably committed in accordance with Exhibit B.
- c. Either party may terminate this Agreement for cause effective immediately following a 14-day opportunity to cure period beginning when such notice of intent to terminate is provided by one party to the other party.

10. NO SEPARATE ENTITY CREATED

This Agreement does not create any separate legal or administrative entity.

11. PROPERTY

No acquisition, holding, or disposing of real or personal property is anticipated under this Agreement.


12. 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 no 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 BOTHELL


Julie Underwood (Sep 5, 2024 15:11 PDT)


Julie Underwood
Deputy City Manager of Kirkland




Kyle Stannert
City Manager of Bothell

Approved as to form:

Approved as to form:


Kevin Raymond (Sep 5, 2024 12:18 PDT)

Darcey Eilers
Kirkland City Attorney



Eileen Keiffer
Bothell City Attorney

EXHIBIT A

PROJECT WORK SCOPE

Re-channelize 119th Avenue NE from approximately NE 159th Street to the city limits shared by the Parties to narrow the travel lanes to address safety and speeding issues. This will be accomplished by removing existing paint striping and restriping with new paint lines.

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

EXHIBIT B
COST OF PROJECT WORK WITHIN CITY OF BOTHELL LIMITS

Item	Qty	Unit	Unit Price	Amount
Remobilize	1	LS	\$7500.00	\$7,500
6-IN White Wide Shoulder Line	2500	LF	\$0.65	\$1,625
6-IN White Shoulder Stripe Removal	2500	LF	\$2.95	\$7,375
4-IN Double Yellow Center Line	1200	LF	\$0.65	\$780
Raised Pavement Marker, Type 2	60	EA	\$50.00	\$3,000
Total				\$20,280.00
Contract administration (9.8%)				\$1,987.44
Contingency (10%)				\$2,028.00
Grand total				\$24,295.44



EXHIBIT A: PROJECT WORK

Total white edge line removals: ~7600 feet
Total white edge line installation: ~7700 feet
Total double yellow centerline installation: ~3500 feet

Bothell white edge line removals: ~2500 feet
Bothell white edge line installation: ~2500 feet
Bothell double yellow centerline installation: ~1200 feet

NE 159th St

Remove existing shoulder stripe on both sides of the road, reinstall both shoulder stripes so they are each ~2' closer to center of road

Install double yellow centerline, maintain consistent 9' wide lanes. Include gaps in centerline across side streets (which are called out)









