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**72nd AVENUE W REPAVING PROJECT
INTERLOCAL AGREEMENT
Between
EDMONDS SCHOOL DISTRICT NO. 15
And
CITY OF LYNNWOOD**

THIS INTERLOCAL AGREEMENT (“Agreement”) is entered into between Edmonds School District No. 15, a Washington municipal corporation (“District”), and the City of Lynnwood (“City”), a Washington municipal corporation, (referred to individually as “Party” and collectively as “Parties”), to provide for the City’s participation in the District’s project that includes the repaving of portions of 72nd Avenue West in the City (“Project”).

RECITALS

WHEREAS, Chapter 39.34 RCW (Interlocal Cooperation Act) permits local government units to make the most efficient use of their powers by enabling them to cooperate with other government entities on the basis of mutual advantage and thereby to provide services and facilities in a manner pursuant to forms of governmental organizations that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

WHEREAS, the City operates, maintains and repairs a system of streets within the City’s public right-of-ways, including 72nd Avenue West; and

WHEREAS, the District owns and operates educational facilities within the City, and is currently planning for the construction of a school facility project, known as the Lynndale Elementary School Project, on real property that abuts on 72nd Avenue West (“Lynndale Elementary Project”); and

WHEREAS, the District’s Lynndale Elementary Project will require the District to construct and install certain street frontage and roadway improvements within the 72nd Avenue West right-of-way, including the repaving of a certain portion of that right-of-way; and

WHEREAS, the City has determined that it would be an efficient and effective use of public funds, and is in the best interests of the public, to have other portions of the 72nd Avenue West roadway receive a grind and overlay, at the same time that the District performs its work on and improvements to 72nd Avenue West; and

WHEREAS, the District is willing to have this additional work performed on 72nd Avenue West, as part of the District’s Lynndale Elementary Project, in accordance with the site plan and other materials attached to this Agreement as **Exhibit A** (the “72nd Avenue West Repaving Project”); and

1
2 WHEREAS, the Parties desire to enter into this Agreement for the purpose of
3 defining their respective rights, obligations, costs and liabilities regarding the 72nd
4 Avenue West Repaving Project; and
5

6 WHEREAS, the District and the City have taken appropriate action to approve
7 entering into this Agreement.
8

9 NOW, THEREFORE, in consideration of the terms, conditions and covenants
10 contained herein, the Parties agree as follows:
11

12 **TERMS**
13

14 Section 1. Requirements of Interlocal Cooperation Act.
15

16 1.1 Purpose. The Recitals set forth above are an important and integral part
17 of this Agreement and are hereby incorporated by reference. The purpose of this
18 Agreement is to establish a formal arrangement under which the City will pay the District
19 for the costs of the 72nd Avenue West Repaving Project, in connection with the District's
20 Lynndale Elementary Project that includes repaving other portions of 72nd Avenue West,
21 and for the District's performance of that work.
22

23 1.2 No Separate Entity. The Parties agree that no separate legal or
24 administrative entity is necessary to carry out this Agreement. This Agreement is being
25 administered in accordance with RCW 39.34.030(4), as provided in paragraph 1.4 below.
26

27 1.3 Ownership of Property. Except as expressly provided to the contrary in
28 this Agreement, any real or personal property used or acquired by either Party in
29 connection with the performance of this Agreement will remain the sole property of such
30 Party, and the other Party shall have no interest therein, nor does this Agreement limit the
31 District's ability to comply with its statutory obligations regarding the use and disposition
32 of school property pursuant to Ch. 28A.335 RCW. The Parties do not intend, during the
33 term of and pursuant to this Agreement, to jointly acquire or hold any real or personal
34 property.
35

36 1.4 Administrators. Each Party to this Agreement shall designate an
37 individual ("Administrator"), which may be designated by title or position, to oversee and
38 administer that Party's participation in this Agreement. The Parties' initial
39 Administrators shall be:
40

District's Administrator:
Director of Capital Projects
20420 68th Avenue W.
Lynnwood, WA 98036-7400

City's Administrator:
Deputy Public Works Director
19100 44th Avenue W.
P.O. Box 5008
Lynnwood, WA 98046-5008

41

1 Section 2. Term. This Agreement shall be effective when it has been (i) executed
2 by both of the Parties, as indicated by the last date written below; and (ii) either filed with
3 the County Auditor or posted on at least one of the Parties' websites. Unless terminated
4 in accordance with Section 3 below, or unless amended by a writing signed by both
5 Parties in accordance with Section 10 below, this Agreement shall remain in effect until
6 the District and the City have granted final acceptance of the work that comprises the
7 72nd Avenue West Repaving Project. The City shall deliver a certificate of completion to
8 the District upon completion of the 72nd Avenue West Repaving Project.
9

10 Section 3. Termination. Either Party may terminate this Agreement with or
11 without cause by providing the other Party with 30 days' written notice of its intent to
12 terminate. Termination or expiration shall not alter the City's payment obligations for
13 services already rendered or funds encumbered for the 72nd Avenue West Repaving
14 Project consistent with this Agreement.
15

16 Section 4. Obligations of the City. The City shall:
17

18 4.1 Provide the District with funds in the amount of \$60,000.00 for the 72nd
19 Avenue West Repaving Project within 45 days of the City of Lynnwood Public Works
20 Department's issuance of the right of way permit granting the District permission to
21 proceed with construction within the City's right of way.
22

23 4.2 Respond in a timely manner to requests from the District for information
24 necessary for the 72nd Avenue West Repaving Project, including providing the City's
25 approval of final acceptance of that Project.
26

27 Section 5. Obligations of the District. The District shall:
28

29 5.1 Assume full responsibility for the construction of the 72nd Avenue West
30 Repaving Project, including but not limited to, securing all necessary consultants,
31 contractors, subcontractors, processing all change orders, and procuring permits
32 necessary for the work. The Project shall be constructed and performed in accordance
33 with all state and local laws, regulations, policies and standards. All construction
34 contracts shall be procured through a formal competitive bidding process consistent with
35 applicable State law. The District shall be solely and exclusively responsible for ensuring
36 the compliance of said bidding process with all applicable procedures required under
37 state and local regulations.
38

39 5.2 Submit to the City a written invoice for the 72nd Avenue West Repaving
40 Project consistent with Section 4.1.
41

42 5.3 Upon the District's determination that the 72nd Avenue West Repaving
43 Project is complete, provide the City with a written notice of that determination and a
44 request that the City grant its final acceptance of the Project.
45

1 5.4 Respond reasonably to information requests submitted by the City or its
2 agents regarding the 72nd Avenue West Repaving Project.
3

4 Section 6. Release, Indemnification and Hold Harmless Agreement. Each
5 Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or
6 omissions, and those of its own agents, employees, representatives or subcontractors, to
7 the fullest extent required by laws of the State of Washington. Each Party agrees to
8 protect, indemnify and save the other Party harmless from and against any and all such
9 liability for injury or damage to the other Party or the other Party's property, and also
10 from and against all claims, demands, and causes of action of every kind and character
11 arising directly or indirectly, or in any way incident to, in connection with, or arising out
12 of work performed under the terms hereof, caused by its own fault or that of its agents,
13 employees, representatives or subcontractors; provided, that if any such claims, demands,
14 and causes of action are caused by or result from the concurrent negligence or fault of the
15 Parties, then each Party's obligation under this Section shall apply only to the extent of its
16 negligence or fault.
17

18 Each Party specifically promises to indemnify the other Party against claims or
19 suits brought under Title 51 RCW by its own employees, contractors, or subcontractors,
20 and waives any immunity that the Party may have under that title with respect to, but
21 only to, the limited extent necessary to indemnify the other Party. This waiver has been
22 mutually negotiated by the Parties. Each Party shall also indemnify and hold the other
23 Party harmless from any wage, overtime or benefit claim of any of the first Party's
24 employees, agents, representatives, contractors or subcontractors performing services
25 under this Agreement. Each Party further agrees to fully indemnify the other Party from
26 and against any and all costs of defending any such claim or demand to the end that the
27 other Party is held harmless therefrom.
28

29 Section 7. Governing Law. This Agreement and all questions concerning the
30 capacity of the parties, execution, validity (or invalidity), and performance of this
31 Agreement, shall be governed by the laws of the State of Washington. This Agreement
32 has been negotiated and drafted by both parties and is not to be construed in favor of
33 either party.
34

35 Section 8. Dispute Resolution. In the event of a dispute between the parties
36 arising under this Agreement, the Mayor of the City and the Superintendent of the
37 District shall meet to attempt to resolve the dispute within thirty (30) days' notice from a
38 Contract Administrator of the existence of a dispute. In the event the Mayor and
39 Superintendent are unable to resolve the dispute within sixty (60) days' notice from the
40 Contract Administrator of the dispute, the parties shall submit the dispute to a mutually
41 agreed upon private arbitrator for a binding resolution. In the event the parties cannot
42 agree on an arbitrator, one will be appointed by the Presiding Judge of the Snohomish
43 County Superior Court, with costs of arbitration borne equally. The prevailing party shall
44 be entitled to recover reasonable attorneys' fees and costs related to said arbitration.
45

1 Section 9. No Employment Relationship Created. The Parties agree that nothing
2 in this Agreement shall be construed to create an employment relationship between the
3 District and any employee, agent, representative or contractor of the City, or between the
4 City and any employee, agent, representative or contractor of the District.
5

6 Section 10. Notices. All notices or other communication required or permitted
7 by this Agreement must be in writing and be personally delivered, delivered by
8 recognized overnight courier service or given by mail or email. All notices that are given
9 pursuant to this Agreement shall be deemed given (i) if personally delivered, when hand
10 delivered, (ii) if delivered by courier service, when deposited with the courier service,
11 (iii) if mailed, when deposited in the United States mail, postage prepaid, by registered or
12 certified mail, return receipt requested, and (iv) if by email, the same day as verified by
13 electronic confirmation of receipt; provided that any verification that occurs after 5 p.m.
14 on a business day, or at any time on a Saturday, Sunday or holiday, will be deemed to
15 have occurred as of 9 a.m. on the following business day. Notices to the District shall be
16 sent to the following address:
17

18 **Edward J. Peters**
19 **Director of Capital Projects**
20 **20420 68th Avenue West**
21 **Lynnwood, Washington 98036-7400**
22 **Phone: 425-431-7170**
23 **Email: peterse@edmonds.wednet.edu**
24

25 Notices to the City shall be sent to the following address:
26

27 **City of Lynnwood**
28 **Deputy Public Works Director / City Engineer**
29 **19100 44th Avenue W.,**
30 **P.O. Box 5008**
31 **Lynnwood, WA 98046-5008**
32

33 Section 11. Integration/Modification. This document constitutes the entire
34 embodiment of the Agreement between the Parties on the subject matter of this
35 Agreement, and supersedes all prior or contemporaneous agreements or understandings
36 between the Parties. This Agreement may only be modified or amended by a written
37 amendment signed by the Parties.
38

39 Section 12. Record Keeping. The District and the City shall maintain records
40 necessary to carry out the purposes of this Agreement in accordance with generally
41 accepted accounting principles. Such records shall be available during normal working
42 hours for the review of the respective parties, their accounting representatives or the State
43 Auditor.
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45 Section 13. Assignment. Nothing herein shall be interpreted to create any right
46 or liability with respect to any person or entity not a signatory to this Agreement. All
47 rights and obligations of either party to this Agreement are not assignable.

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Section 14. No Agency Relationship. The parties are independent entities and nothing in this Agreement creates any agency relationship.

Section 15. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provisions.

EDMONDS SCHOOL DISTRICT NO. 15

CITY OF LYNNWOOD

By: _____

DocuSigned by:
By: N. Smith
Nicola Smith, Mayor

Date: _____

Date: 1/13/2017

APPROVED AS TO FORM:

APPROVED AS TO FORM:

(Name, Title)

DocuSigned by:
Rosemary Larson 1/13/2017
Rosemary Larson, City Attorney

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EXHIBIT A

SITE PLAN

[See attached.]