

EVERETT SCHOOL DISTRICT NO. 2

Snohomish County, Washington

July 8, 2003

RESOLUTION NO. 771

A resolution of the Board of Directors ("Board") of Everett School District No. 2 ("District") to authorize the District to enter into an agreement ("Agreement") with the City of Everett ("City").

WHEREAS, the District owns a grass play field in north Everett on the city block between Rockefeller Avenue and Oakes Avenue from 25th Street to 26th Street ("Lincoln Field"); and

WHEREAS, the District intends to renovate Lincoln Field; and

WHEREAS, the City owns a sewer line that runs north and south through the middle of Lincoln Field ("Sewer Main"); and

WHEREAS, the Sewer Main is located in a vacated street right-of-way, for which the City has no recorded easement rights, and if the Sewer Main remained in its current location, future repairs would require excavation in the turf area, with resulting disruption of schedules, inconvenience and loss of use; and

WHEREAS, while the District takes Lincoln Field out of service for renovation, the City can abandon the Sewer Main and construct a new sewer line located outside of the boundary of Lincoln Field, with minimal or no disruption or loss of use to the users of Lincoln Field; and

WHEREAS, the City and the District can save costs by sharing some expenses and can provide better functionality to their respective facilities, thus benefiting the public, by discontinuing the use of the vacated street right of way in the middle of Lincoln Field as a sewer main facility location.

NOW, THEREFORE, BE IT RESOLVED that the actions of the District's Superintendent, Carol A. Whitehead (and her authorized designees), in negotiating and executing the Agreement are hereby ratified, affirmed and approved;

AND FURTHER RESOLVED that the District approves of the terms and conditions of the Agreement;

AND FURTHER RESOLVED that the District should enter into the Agreement with the City;

AND FURTHER RESOLVED that the District's Superintendent, Carol A. Whitehead (or her authorized designees), be, and she hereby is, authorized and directed to enter into the Agreement with the City on behalf of the District and take such other and further actions as may be necessary or appropriate to fulfill the District's obligations under the Agreement.

ADOPTED this 8th day of July, 2003.

EVERETT SCHOOL DISTRICT NO. 2
a political subdivision of the State of
Washington

By Karen Madsen
Karen Madsen, President

By Kristie Dutton
Kristie Dutton, Vice-President

By Sue Cooper
Sue Cooper, Member

By Paul Roberts
Paul Roberts, Member

By Roy Yates
Roy Yates, Member

ATTEST:

By Jeffrey S. Kealey
Secretary for the Board Pro Tem

MEMORANDUM OF AGREEMENT REGARDING SEWER WORK IN THE VICINITY OF LINCOLN FIELD

This Agreement is by and between the City of Everett ("City"), and the Everett School District No. 2 ("District")

WHEREAS, the District owns a grass play field in north Everett on the city block between Rockefeller Ave and Oakes Ave from 25th St to 26th St. ("Lincoln Field"); and

WHEREAS, the District intends to renovate Lincoln Field in the summer and fall of 2003 with backstops, bleachers, drainage system, and an artificial turf playing surface (the "Renovation Project"); and

WHEREAS, the City owns a sewer line that runs north and south through the middle of Lincoln Field ("Existing Sewer Main"); and

WHEREAS, the Existing Sewer Main is located in a vacated street right-of-way, for which the City has no recorded easement rights, and if the Existing Sewer Main remained in its current location, future repairs would require excavation in the turf area, with resulting disruption of schedules, inconvenience and loss of use; and

WHEREAS, while the District takes Lincoln Field out of service for renovation, the City can abandon the Existing Sewer Main by intercepting the sewerage flow at 25th St and constructing a new sewer line ("New Sewer Main") East along 25th St. and connecting to an existing fifteen inch diameter sewer main in the alley East of Oakes Ave. (the "Sewer Project"), with minimal or no disruption or loss of use to the users of Lincoln Field; and

WHEREAS, the City and the District can save costs by sharing some expenses and can provide better functionality to their respective facilities, thus benefiting the public, by discontinuing the use of the vacated street right of way in the middle of Lincoln Field as a sewer main facility location;

NOW, THEREFORE, the City and the District agree as follows:

1. DURATION

The term of this Agreement shall be from the date signed by both parties to the later of December 31, 2004 or the date the Sewer Project is complete, unless earlier terminated pursuant to this Agreement.

2. CITY RESPONSIBILITIES

The City will design and construct the Sewer Project by October 15, 2003. The City shall be responsible for obtaining all permits and shall pay for all costs associated with the Sewer Project

3. DISTRICT RESPONSIBILITIES

A. The District shall reimburse the City for one half of the actual, final costs of the Sewer Project, up to a maximum of Thirty Five Thousand and 00/100 Dollars (\$35,000.00), within thirty days' of completion of the Sewer Project and receipt by the District of an invoice and summary of costs incurred

for the work performed by the City. Actual, final costs shall include all direct costs and reasonable indirect costs.

B. The School district hereby grants the City license for access to inspect and repair the Existing Sewer Main as necessary until completion of the Sewer Project or termination of this agreement, whichever comes first, and agrees to execute such documents as may be reasonably necessary to effect the license.

4. ADMINISTRATION

A. This Agreement does not create a special entity.

B. Two representatives, one designated by each party ("Designated Representative"), shall administer and implement this Agreement. The Designated Representatives shall be responsible for communications between the parties and shall act as central points of contact for the Project. Each Designated Representative is also responsible for coordinating the various jurisdiction, agency, or department staff members as it relates to the scope of this Agreement. The initial Designated Representatives are listed in Attachment A. Each party may change its Designated Representative by notice to the other Party. Each party shall inform the other party of changes in telephone, mail, email or other contact information. Attachment A may be updated to reflect changes of Designated Representatives or changes in contact information for such Representatives, but such changes shall not constitute a material change to this Agreement and therefore shall not require authorization by each Party's legislative body.

5. PROPERTY

Upon completion of the Sewer Project the City shall abandon the Existing Sewer Main in Lincoln Field and allow the District to remove all or portions of it at the District's sole discretion.

6. INDEMNIFICATION

To the maximum extent permitted by law, the District and the City shall defend, indemnify and hold harmless the other and of all of its officials, employees, principals, and agents from all claims, demands, suits, actions, and liability of any kind whatsoever that arise out of, are connected with, or are incident to any errors, omissions or negligent acts of the indemnifying party, its employees and agents in performing the indemnifying party's obligations under this Agreement; provided, however, if any such claims, demands, suits, actions or liability are caused by or result from the concurrent negligence of the parties or their respective agents or employees, this defense and indemnity obligation applies only to the extent of the negligence of the indemnifying party or its employees or agents. The parties agree that their obligations under this paragraph extend to claims made against one Party by the other Party's own employees. For this purpose, the parties, by mutual negotiation, hereby waive, as respects the other party only; any immunity that would otherwise be available against such claims under the industrial insurance provisions of Title 51 RCW. In the event either party incurs attorney's fees, costs or other legal expenses to enforce the provisions of this section against the other party all such fees, costs and expenses shall be recoverable by the prevailing party.

7. DISPUTE RESOLUTION

The District and the City will work collaboratively to resolve disagreements arising from activities performed under this Agreement. Disagreements will be resolved promptly and at the lowest level of hierarchy. The following is a guide intended to resolve issues at the lowest organizational level.

- (A) Designated Representatives for each agency shall communicate regularly to discuss the status of the task to be performed and to resolve any issues or disputes related to the successful performance of this Agreement. The Designated Representatives will cooperate in providing staff support to facilitate the performance of this Agreement and the resolution of any issues or disputes arising during the term of this Agreement.
- (B) Designated Representative shall notify the others in writing of any problem or dispute that the Designate Representative believes should be resolved. The Designated Representative shall meet within five (5) business days of receiving the written notice in an attempt to resolve the dispute.

In the event, the Designated Representatives cannot resolve the dispute; the District's Associate Superintendent, Finance and Operations (or designee) and the City's Mayor (or designee) shall meet and engage in good faith negotiations to resolve the dispute.

- (C) The parties agree that they shall have no right to seek relief under this Agreement in a court of law until and unless each of these procedural steps is exhausted.

8. TERMINATION

Notwithstanding Section 1, unless and until work on the Sewer Project has commenced, any Party may terminate this Agreement hereto with advance written notice sufficient to permit the remaining parties hereto to reasonably assume the responsibilities being performed by the terminating Party. Such termination shall not effect the termination of any other agreement between any or all the parties hereto. Any costs incurred prior to proper notification of termination will be borne by the parties in accordance with the terms of this Agreement.

9. MISCELLANEOUS

A. AGREEMENT, AMENDMENTS, AND ADDENDA

This Agreement and its Attachments, including modifications of the scope, funding, or responsibilities of the parties, may be amended by written mutual agreement of the parties, which must be preceded by any required or appropriate City Council and School Board authorization.

B. ENTIRE AGREEMENT

This Agreement, including its Recitals and Attachments, embodies the parties' entire agreement on the matters covered by it, except as supplemented by subsequent amendments to this Agreement. All prior negotiations and draft written agreements are merged into and superseded by this Agreement.

C. SEVERABILITY

If any portion of this Agreement is found to be unenforceable by a court of competent jurisdiction, the remaining terms and provisions unaffected thereby shall remain in full force and effect.

D. GOVERNING LAW AND VENUE

The laws of the State of Washington shall govern this Agreement. The venue of any legal proceeding between the parties arising out of this Agreement shall be Snohomish County, Washington.

E. EFFECTIVE DATE


This Agreement is effective when the parties sign it, after authorization by each Party's respective governing body.

F. NOTICES

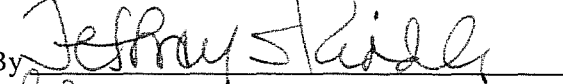
The parties shall notify in writing the Designated Representatives, per Attachment A.

CITY OF EVERETT

EVERETT SCHOOL DISTRICT NO. 2

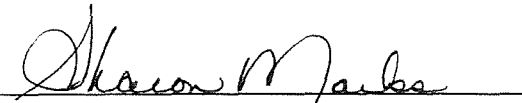
By 
Frank E. Anderson, Mayor

Dated: 7/31/03

By 
Carol Whitehead, Superintendent

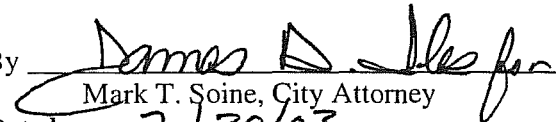
Dated: 7/18/03

ATTEST:

By 
Sharon Marks, City Clerk

Dated: 7/31/03

APPROVED AS TO FORM:

By 
Mark T. Soine, City Attorney

Dated: 7/30/03

ATTACHMENT A

Designated Representatives Contact Information:

Everett School District No. 2

Michael Gunn, Director of Facilities and Planning.

3715 Oakes Ave

Everett, Wa 98201

Tel: (425) 388-4730

Fax: (425) 388-4740

E-mail: mgunn@everett.wednet.edu

City of Everett Public Works

Tom Thetford, Utilities Director

3200 Cedar St

Everett Wa 98201

Tel: _____

Fax: _____

E-mail: _____
