



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

May 2, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an IGA with Sunrise Water Authority for the extra paving of SE Sunnycreek Lane, SE Melbrook Way, and SE 119th Court, within the Sunrise Water Authority's current project.

Purpose/Outcomes	IGA to complete all the paving for SE Sunnycreek Lane, SE Melbrook Way, and SE 119 th Court within Sunrise Water Authority's existing project.
Dollar Amount and Fiscal Impact	\$58,349.28.
Funding Source	Funding provided by the Road Fund.
Duration	Effective upon execution and terminates on July 31, 2019.
Previous Board Action	No Previous Board Action.
Counsel Review	This contract has been reviewed by County Counsel on April 4, 2019.
Strategic Plan Alignment	1. Build public trust through good government. 2. Build a strong infrastructure.
Contact Person	Rick Nys, Development Engineering Supervisor 503-742-4702

BACKGROUND:

Sunrise Water Authority ("Sunrise") is replacing the water main in SE Sunnycreek Lane, SE Melbrook Way, and SE 119th Court. The work to replace the mains only require that Sunrise patch the affected road areas. The entire road surface for these streets are in very bad conditions. By completing this IGA, all streets in this project area will be paved completely, with Sunrise assuming 71.8% of the cost to repave the surface, and the County contributing the remaining 28.2% (\$58,349.28). The entire project cost is estimated to be \$148,690.65, with the County's contribution limited to \$58,349.28.

RECOMMENDATION:

Staff recommends the Board approve this IGA with the Sunrise Water Authority.

Respectfully submitted,

Rick Nys, Development Engineering Supervisor

**INTERGOVERNMENTAL AGREEMENT BETWEEN
SUNRISE WATER AND CLACKAMAS COUNTY
RELATING TO SUNNYCREEK LN WATER MAIN PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into between Sunrise Water Authority, a domestic water district authority under ORS chapter 450 ("Sunrise Water"), and Clackamas County, a corporate body politic ("County"), collectively referred to as the "Parties" and each a "Party."

RECITALS

- A. This Agreement is entered into pursuant to ORS 190.010, which confers authority on local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agencies have authority to perform.
- B. Sunrise Water plans to commence a water transmission line construction project (the "MAIN REPLACEMENT PROJECT") that will include construction within SE Sunnycreek Ln, SE Melbrook Way, SE 119th Ct and all side roadways in an area identified in **Exhibit A** to this Agreement (the "Project Area"). Ordinarily, County standards would require a party undertaking a project such as the Main Replacement Project to complete a half-street grind and inlay on the side of the roadway over the waterline trench.
- C. County previously identified the need to improve the entire roadway within the Project Area with an asphalt overlay.
- D. Sunrise Water and County have determined it is in the public interest to cooperate in the planning and execution of the Main Replacement Project to provide for a full-width asphalt overlay, rather than a half-street grind and inlay, within the Project Area.

AGREEMENT

Now, therefore, based on the foregoing, the Parties agree as follows:

- 1. Term.** This Agreement becomes effective as of the last date of signature by a Party indicated below. Unless terminated earlier pursuant to Section 5 of this Agreement, this Agreement will expire upon the completion of each and every obligation of the Parties set forth in this Agreement.
- 2. Sunrise Water's Obligations.**
 - a. Preliminary Scope of Work. Sunrise Water will contract for the Preliminary Scope of Work set out in **Exhibit B**. Sunrise Water's procurement process will require bidders to itemize costs for the categories set out in the Preliminary Scope of Work, as applicable. All contracts awarded for the

Main Replacement Project will itemize the costs for the categories set out in the Preliminary Scope of Work.

- b. Management of the Main Replacement Project. Except as provided in Section 3 of this Agreement, Sunrise will manage the Sunnycreek Ln Main Project and administer the associated engineering, design and construction contracts.
- c. Payment Obligations. Except as provided in this Agreement, Sunrise Water will be responsible for all costs associated with the Main Replacement Project.
- d. Contracts. Prior to bid, Sunrise Water shall provide copies of the procurement materials to the County for review and approval. The procurement materials shall incorporate those specifications for materials and workmanship provided by the County pursuant to Paragraph 3(a) of this Agreement. Procurement materials and contracts entered into by Sunrise Water in connection with the Main Replacement Project will identify County as an intended third-party beneficiary of the asphalt overlay work and as a co-insured.

3. County's Obligations.

- a. Preliminary Scope of Work. County agrees to the Preliminary Scope of Work set out in Exhibit B. Within five (5) business days after the effective date of this Agreement, County will provide Sunrise Water with specifications for materials and workmanship to be used in Sunrise Water's procurement materials and contracts for work associated with the asphalt overlay contemplated in the Preliminary Scope of Work.
- b. Approval of Procurement Materials. Within five (5) business days after Sunrise Water provides copies of procurement materials pursuant to Paragraph 2(d) of this Agreement, County will approve the procurement materials, provide requested revisions to the procurement materials, or reject the procurement materials. County's approval of the procurement materials will not be withheld unreasonably. This section shall apply in the same manner to any change order to the approved contract.
- c. Project Coordination. County will assign a project representative to coordinate paving-related design requirements, to assist in developing bid items and quantities, and to assist Sunrise Water when necessary to provide responses to requests for information from bidders and contractors. County will provide engineering review and comments, as required.
- d. Project Inspections and Testing. Sunrise is responsible for all costs associated with asphalt overlay and related road work design review, field

inspection and material testing. County will inspect the overlay and transition areas, including field quality control and quantity measurement, at its expense. County will provide material testing of overlay material, if required. County will provide submittal review for overlay and related materials in coordination with the Sunrise project manager.

- e. Payment Obligations. County will reimburse Sunrise Water for amounts paid to contractors as provided in the Preliminary Scope of Work attached as **Exhibit B**, according to the terms set out below in Section 4 of this Agreement. Unless otherwise agreed to in writing by the Parties, the County's payment obligations shall not exceed \$56,921.28.

4. Payment. Sunrise Water will submit invoices for payment directly to County's project coordinator listed in Section 7 of this Agreement on a monthly basis for actual costs incurred by Sunrise Water, in accordance with the cost allocation provided in the Preliminary Scope of Work attached as **Exhibit B**. Such invoices must include a description of the Main Replacement Project work associated with the invoices, and itemize expenses as necessary to support cost allocation designations. County shall make payment within thirty (30) calendar days from receipt of Sunrise Water's invoice.

5. Termination.

- a. Sunrise Water and County, by mutual written agreement, may terminate this Agreement at any time.
- b. Either Sunrise Water or County may terminate this Agreement by written notice on or before January 10, 2020, in the event Sunrise does not initiate procurement for the Main Replacement Project by December 31, 2019.
- c. Either Sunrise or County may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party

has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party brings correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

- d. Sunrise Water or County shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- e. Nothing herein shall prevent the Parties from meeting to mutually discuss the Project.
- f. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

6. Indemnification.

- a. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend Sunrise Water, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to person or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents or its subcontractors or anyone over which the County has a right to control.
- b. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, Sunrise Water agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of Sunrise Water or its officers, elected officials, owners, employees,

agents, or its subcontractors or anyone over which Sunrise Water has a right to control.

7. Party Contacts.

- a. Dan Fraijo or his designee will act as liaison for Sunrise Water for the Project.

Contact Information:

Dan Fraijo
Sunrise Water
10602 SE 129th Ave
Happy Valley, OR 97086
(503) 761-0220
dfraijo@sunrisewater.com

- b. Duffy Gehrts or his designee will act as liaison for County for the Project.

Contact Information:

Duffy Gehrts
Clackamas County Engineering
150 S Beavercreek Rd
Oregon City OR 97045
(503) 804-8271
duffy@clackamas.us

- c. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

8. General Provisions.

- a. **Oregon Law and Forum.** This agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- b. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
- c. **Non-Exclusive Rights and Remedies.** Except as otherwise provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different

times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- d. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- e. **Access to Records.** The Parties acknowledge and agree that each Party shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.
- f. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- g. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- h. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.

- i. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Independent Contractor. Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- k. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or Sunrise.

- I. **No Assignment.** No party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.

- m. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile, or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute and original.

- n. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

- o. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

[Signatures on the following page]

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Sunrise Water

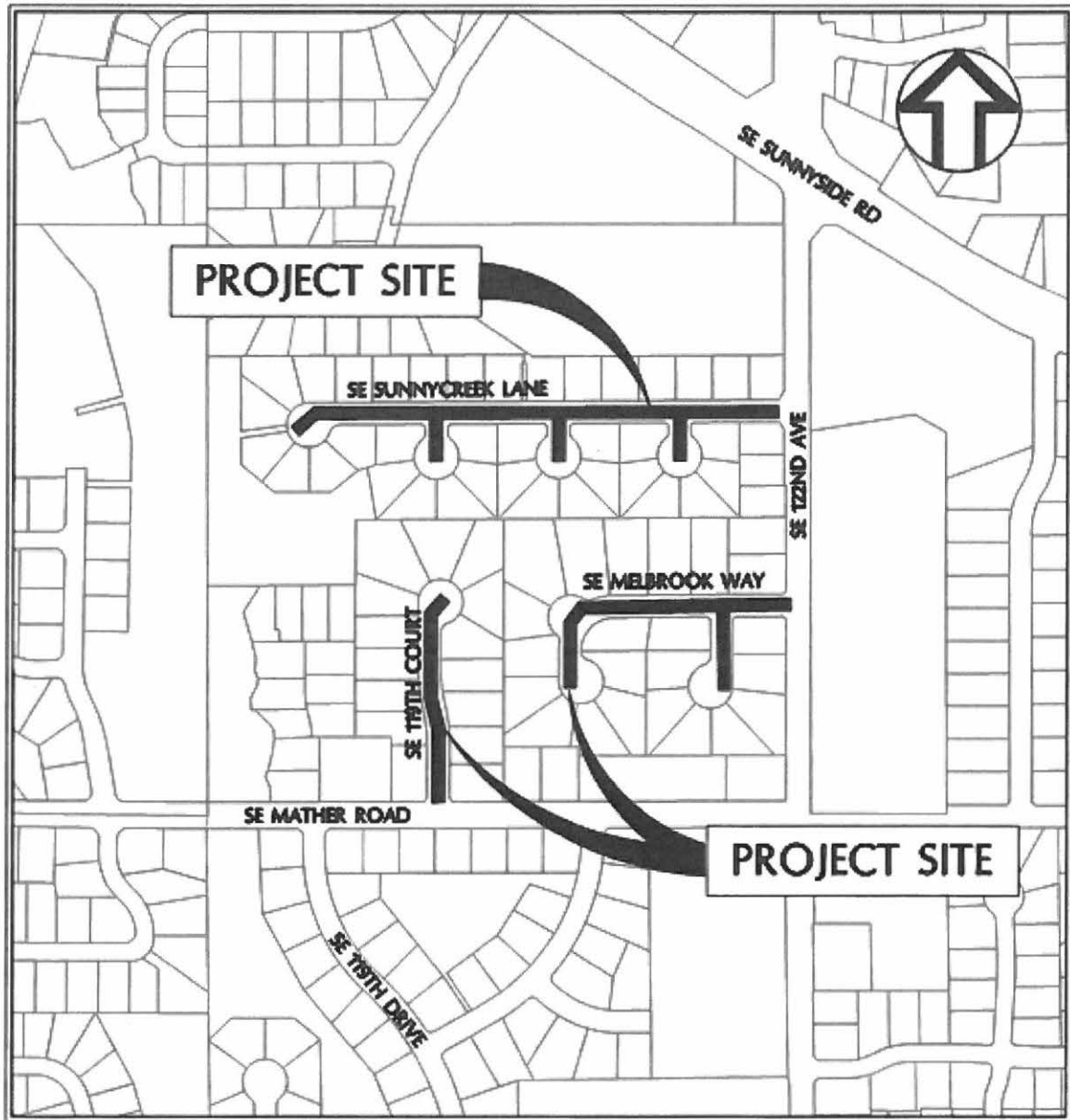
By: _____

By: Walt [Signature]

Date: _____

Date: 4/23/19

EXHIBIT A
PROJECT AREA



PROJECT SITE MAP
NOT TO SCALE

EXHIBIT B

PRELIMINARY SCOPE OF WORK

Project Component	Sunrise Cost Responsibility	County Cost Responsibility
Trench saw cut	100%	0%
Temporary trench patch during waterline construction	100%	0%
Permanent trench patch, 3" thick, no T-cut	100%	0%
Waterline installation, including design, procurement, contract labor and materials, contract administration	100%	0%
0" to 2" grind for pavement transition at ends of the overlay and on sides of streets at curb	100%	
2-inch thick, 1/2-inch dense, Level 3 asphalt overlay, full road width	71.8%- \$148,690.65	28.2%- \$58,349.28
Flagging and traffic control	100%	0%
Compaction testing for asphalt overlay	100%	0%

P0756244.v3

CHANGE ORDER



PO Box 3767

Wilsonville, OR 97070

Contact: Derek Osterholme

Phone: 503 612-9284

Email: dereko@dtexcavation.com

Job Name: Sunnycreek Waterline ReplacementJob Location: Clackamas, OREngineer:Plans Dated:Addenda:Quote To: Sunrise Water AuthorityContact: Elizabeth EdgarPhone: (503) 761-0220Email: eedgar@sunrisewater.comEst #: 2441812Est Rev #:

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
310	Clackamas: 2" Overlay	4,561.00	SY	12.48	56,921.28
326	2" MH Riser Rings	12.00	EACH	119.00	1,428.00
GRAND TOTAL					\$58,349.28

NOTES:

QUALIFICATIONS:

Respectfully,

Derek Osterholme