

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: A-5

DATE: October 8, 2009

SUBJECT: Interlocal Agency Agreement between the City of Sultan and the Sultan School District - Sixth Street Improvement Project

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to authorize the Mayor to sign the Interlocal Agency Agreement (Attachment A) with the Sultan School District to provide a maximum of \$5,000 to support roadway improvements to Sixth Street.

The proposed Agreement is in accordance with the Hearing Examiner's August 26, 2009 conditions of approval on the School District's conditional use permit (CUP_09-02) to relocate the Sky Valley Options High School to the existing Mountain View Christian Fellowship church building on Sixth Street.

STAFF RECOMMENDATION:

Authorize the Mayor to sign an Interlocal Agency Agreement (ILA) with the Sultan School District not to exceed \$5,000 to repair Sixth Street and address the street's poor existing condition.

SUMMARY:

The District proposes to relocate the Sky Valley Options (SVO) High School to the Mountain View Church building at 211 Sixth Street.

Sixth Street south of Alder Avenue is a standard, asphalt paved city street. The half block of Sixth Street between Alder Avenue and the Mountain View Church is in substandard condition. The street has curb, gutters, and sidewalks on both sides, but an extremely poor driving surface between the curbs. The street may have been paved at one time. It is now mostly potholed gravel.

The evidence indicates the SVO will approximately double the weekday traffic volumes on Sixth Street north of Alder. Evidence shows the street's poor condition is a current problem not a problem that will be newly created by the SVO traffic. As a general rule,

developers cannot be required to fund off-site improvements which would cure an existing community deficiency.

However, developers can be required to fund improvements which would offset the impact that their project would impose on an existing community deficiency. Any such requirement must be based on evidence demonstrating that the proposed project would exacerbate the problem. The remedy must be roughly proportional to the amount of the impact and it must be reasonable.

To mitigate the impacts of the SVO, the District offered to pave two travel lanes from Alder Avenue north to the site boundary. The City is responsible for the portion of the problem that currently exists. Under a proposed agreement the School District and City will partner to prepare and pave two-10 foot travel lanes on Sixth Street from Alder to the Mountainview property line.

The City will be responsible for the portion of the project to prepare the road surface for paving. This includes:

- Removing sod and debris
- Grinding the existing pavement down
- Adding crushed rock as needed
- Grading the street surface from curb-to-curb between Alder Avenue and the site.
- Paying the School District within six (6) weeks of receiving an invoice for the actual cost of the city's obligation not to exceed \$5,000

The District will be responsible for:

- Grading the two driving lanes (approximately 10 feet on either side of the center line) and place additional base gravel if necessary to match the new and existing paved surfaces.
- Placing three inches of asphalt paving, according to city specifications, on the two - 10 foot driving lanes.
- Bidding the project following appropriate state, federal and agency purchasing policies
- Entering into a contract for services with the successful bidder.
- Providing project management including inspecting the project during construction, reviewing invoices and prevailing wages
- Processing and paying all invoices
- Invoicing the City for the actual cost of the City's share not to exceed \$5,000 once the work has been completed and accepted by the District

FISCAL IMPACT:

The funds are available from the Street Fund following the City Council's approval to amend the 2009 budget to transfer funds from the Police Equipment Replacement Fund on October 8, 2009.

ALTERNATIVES:

1. Authorize the Mayor to sign the ILA with the Sultan School District to support roadway improvements to Sixth Street. This alternative implies the City Council supports partnering with the Sultan School District to repair the existing deficiencies in Sixth Street.
2. Do not authorize the Mayor to sign the ILA with the Sultan School District to support roadway improvements to Sixth Street. This alternative implies the City Council has questions or concerns regarding the existing conditions on Sixth Street and/or the City's obligations to make repairs.

RECOMMENDED ACTION:

Authorize the Mayor to sign an Interlocal Agency Agreement (ILA) with the Sultan School District not to exceed \$5,000 to repair Sixth Street and address the street's poor existing condition.

COUNCIL ACTION:

DATE:

INTERLOCAL AGREEMENT
SULTAN SCHOOL DISTRICT #311 AND THE CITY OF SULTAN
RELATING TO ROADWAY IMPROVEMENTS TO SIXTH STREET

THIS AGREEMENT, is made and entered into this _1st day of October, 2009, by and between the Sultan School District #311, a municipal corporation of the State of Washington (hereinafter "District") and the City of Sultan (hereinafter "City") regarding roadway improvements to Sixth Street.

WHEREAS, the District has received a conditional use permit (CUP09-02) from the City to relocate the Sky Valley Options High School to the existing Mountain View Christian Fellowship church building on Sixth Street; and

WHEREAS, the half block of Sixth Street between Alder Avenue and the Mountain View Christian Fellowship Church ("Church") is in substandard condition; and

WHEREAS, Sixth Street has curb, gutters, and sidewalks on both sides, but an extremely poor driving surface between the curbs and is now mostly potholed gravel; and

WHEREAS, developers cannot be required to fund off-site improvements which would cure an existing community deficiency; and

WHEREAS, developers can be required to fund improvements which would offset the impact that their project would impose on an existing community deficiency; and

WHEREAS, any such requirement must be based on evidence demonstrating that the proposed project would exacerbate the problem and the remedy must be roughly proportional to the amount of the impact and it must be reasonable; and

WHEREAS, the Hearing Examiners August 26, 2009 decision on CUP09-02 states the Sky Valley Options High School will double the weekday traffic on Sixth Street north of Alder and will exacerbate the current pavement condition; and

WHEREAS, to mitigate the impacts of the Sky Valley Options High School on Sixth Street north of Alder, the District will pave two travel lanes from Alder Avenue north to the site boundary; and

WHEREAS, the city is responsible for repairing the portion of the road deterioration on Sixth Street that currently exists;

WHEREAS, it is in the best interest of the citizens of Sultan and residents of the Sultan School District for the agencies to partner together to limit expenses and duplication of effort;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1.0 PURPOSE

By entering into this Agreement the parties intend to work cooperatively to address pavement conditions on Sixth Street between Alder Avenue and the south property line of the

Mountain View Christian Fellowship Church where it joins Sixth Street. The City agrees to reimburse the District for a proportionate share of the cost of roadway improvements to address current pavement conditions. The District will make the necessary street improvements on Sixth Street north of Alder to address the impacts of the Sky Valley Options High School on the roadway.

2.0 SCOPE OF SERVICES TO BE PERFORMED

The District will be responsible for:

- Grading the two driving lanes (approximately 10 feet on either side of the center line) on Sixth Street between Alder Avenue and the Church property line and placing additional base gravel if necessary to match the new and existing paved surfaces.
- Placing three inches of asphalt paving, according to city specifications, on the two - 10 foot driving lanes.
- Bidding the project following appropriate State, Federal and agency purchasing policies
- Entering into a contract for services with the successful bidder.
- Providing project management including inspecting the project during construction, reviewing invoices and prevailing wages
- Processing and paying all invoices
- Invoicing the City for the actual cost of the City's share not to exceed \$5,000 once the work has been completed and accepted by the District

The City will be responsible for reimbursing the District up to \$5,000 but not more than the actual cost for the following portion of the project:

- Removing sod and debris
- Grinding the existing pavement down
- Adding crushed rock as needed
- Grading the street surface from curb-to-curb between Alder Avenue and the site.
- Paying the School District within six (6) weeks of receiving an invoice for the actual cost of the city's obligation not to exceed \$5,000

3.0 COMPENSATION

The City shall pay the District not more than the lesser of a total of five thousand dollars (\$5,000) or actual costs incurred for the services described in this Agreement. This is the maximum amount to be paid under this Agreement.

The District shall submit an invoice to the City after such services have been performed, and the City shall make a payment within six (6) weeks after the submittal of the approved invoice.

4.0 TIME OF PERFORMANCE

The District shall complete the work described in this Agreement by December 31, 2009.

5.0 TERMINATION

Either party may terminate this agreement for any reason by providing written notice to the other party thirty (30) days prior to the effective date of termination, in which case the City shall compensate the District on a pro-rata basis for costs of services provided during the period the agreement remains in effect.

6.0 DISPUTES

Any factual dispute between the City and the District that relates to this Agreement shall be referred for resolution to the Mayor, or his/her designee, and the Superintendent of the District, or his/her designee. In the event the dispute cannot be resolved between the parties to each party's mutual satisfaction, the issue may be submitted to mediation. Both parties agree to utilize this process prior to the institution of any legal action to enforce the terms and conditions of this agreement. The cost of mediation shall be borne equally by the parties.

7.0 RECORDS

The District will keep records regarding the project in conformance with State records retention guidelines. The District will provide the City with detailed records showing the City's invoiced share of the project. The City may request to view the project file maintained by the District with reasonable notice to the District

8.0 LEGAL REQUIREMENTS

Both parties shall comply with all applicable federal, state, and local laws in performing the obligations under this Agreement.

9.0 INDEMNIFICATION AND LIABILITY

9.1 The City shall protect, save harmless, indemnify and defend, at its own expense, the District, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of the City's performance of this Agreement, including claims by the City's employees or third parties, except for those damages caused solely by the negligence or willful misconduct of the District, its elected and appointed officials, officers, employees, or agents.

9.2 The District shall protect, save harmless, indemnify, and defend at its own expense, The City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of the District's performance of this Agreement, including claims by the District's employees or third parties, except for those damages caused solely by the negligence or willful misconduct of the City, its elected and appointed officials, officers, employees, or agents.

9.3 In the event of liability for damages of any nature whatsoever arising out of the performance of this Agreement by the City and the District, including claims by the City's or the District's own officers, officials, employees, agents, volunteers, or third parties, caused by or resulting from the concurrent negligence of the District and the City, their officers, officials, employees and volunteers, each party's liability hereunder shall only be to the extent of that party's negligence.

9.4 No liability shall be attached to the City or the District by reason of entering into this Agreement except as expressly provided herein. The City shall hold the District harmless and defend at its expense any legal challenges to mitigation measures imposed at the City's request and/or arising out of RCW 82.02.020 or RCW 82.02.070.

10.0 APPLICABLE LAW AND VENUE

This Agreement shall be construed under the laws of the State of Washington. Venue of any legal action brought to enforce any of the terms and conditions of this Agreement shall be Snohomish County, Washington.

11.0 PREVAILING PARTY ATTORNEY'S FEES

In any legal action brought to enforce any of the terms and conditions of this Agreement, the prevailing party in said legal action shall be entitled to reasonable attorney's fees and costs incurred.

12.0 NOTICE

Any notice to be given to the under this agreement shall be either mailed or personally delivered to:

Superintendent
Sultan School District #311
514 4th Street
Sultan, WA 98294-9474

Mayor
City of Sultan
PO BOX 1199
Sultan, WA 98294-1199

13.0 ENTIRE AGREEMENT

This document comprises the entire Agreement between parties and supersedes any provision not contained herein.

In witness whereof, the parties have executed this Agreement.

CITY OF SULTAN

Sultan School District

By: _____
Carolyn Eslick, Mayor

By: _____
Dan Chaplik, Superintendent

ATTEST/AUTHENTICATED

By: _____
City Clerk

APPROVED AS TO FORM

By: _____
Office of the City Attorney