

**MIDWAY SEWER DISTRICT
RESOLUTION NO. 2015-14**

**RESOLUTION DECLARING PERSONAL PROPERTY SURPLUS TO THE NEEDS OF
THE DISTRICT, AUTHORIZING THE SALE OF SURPLUS PROPERTY AND
DIRECTING THAT NOTICE BE PUBLISHED IN ACCORDANCE WITH RCW 57.08.015**

Background:

1. Midway Sewer District presently owns One2004 International 7400 SBA 6x4 (Camel) Flush Truck VIN # 1HTWGADTO4J016993 "Equipment."
2. The District has purchased a replacement Flush Truck and the Flush Truck is surplus to the needs of the District.
3. The District has negotiated a sale of the Flush Truck to Highline Water District on the terms attached as **Exhibit A** "Apparatus Sales Agreement."

Resolution: NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of Midway Sewer District as follows:

1. The Flush Truck is declared to be surplus to the needs of the District, and
2. The General Manager is directed to publish notice of the sale in compliance with RCW 57.08.015.
3. The General Manager is authorized to execute the Apparatus Sales Agreement and deliver the Flush Truck to Highline Water District in accordance with the terms of the Agreement.

Adoption: ADOPTED by the Board of Commissioners of Midway Sewer District , at a regular open public meeting of such Board on the _ day of June 24, 2015, the following Commissioners being present and voting:

MIDWAY SEWER DISTRICT

By _____
JACK W. HENDRICKSON

By _____
JAMES BAILEY

By _____
GEORGE LANDON

By _____
SCOT SANBORN

By _____
VINCENT H. KOESTER

APPARATUS SALES AGREEMENT

This Agreement ("Agreement") is entered into by and between MIDWAY SEWER DISTRICT, a municipal corporation ("Seller"), and HIGHLINE WATER DISTRICT, a municipal corporation ("Buyer") (individually a "Party" and collectively the "Parties") for the purposes set forth below.

RECITALS

1. Seller owns the Apparatus identified in the Bill of Sale attached hereto as **Exhibit A** ("Apparatus").
2. Buyer desires to purchase the Apparatus in accordance with the terms of this Agreement.

AGREEMENT

To carry out the purposes of this Agreement and in consideration of the benefits to be received by each party, the Parties agree as follows:

1. **Sale of Apparatus.** Seller agrees to sell to Buyer and Buyer agrees to buy from Seller the Apparatus consistent with the terms of this Agreement and consistent with the Bill of Sale attached hereto as **Exhibit A** which terms are incorporated herein by this reference.
2. **Training.** Seller agrees to provide Buyer's personnel with training on the operation and maintenance of the Apparatus.
3. **Consideration.**
 - 3.1. Buyer shall pay to Seller the sum of \$45,000.00, not including applicable Washington State sales tax, in cash for the Apparatus.
 - 3.2. Buyer shall make the Apparatus available to Seller to use on a temporary basis in the event of emergencies or in the event Seller's flush truck is inoperable pursuant to the terms of the Flush Truck Use Agreement attached hereto as **Exhibit B** and incorporated herein by this reference.
 - 3.3. In the event Buyer sells the Apparatus within five years of the date of transfer, Buyer shall pay to Seller a percentage of the amount that Buyer receives in excess of the \$45,000 purchase price ("Excess Proceeds").
 - 3.3.1. 90% of the Excess Proceeds if the Sale occurs in years one through two from the date of transfer.
 - 3.3.2. 80% of the Excess Proceeds if the Sale occurs in year three through five from the date of the transfer.

4. **Effective Date.**

This Agreement shall be effective on the date by which both Parties have signed the Agreement ("Effective Date").

Midway Sewer District

By: _____
Ken Kase, General Manager

DATE: _____

Highline Water District

By: _____
Matt Everett, General Manager

DATE: _____

EXHIBIT A

BILL OF SALE AND HOLD HARMLESS AGREEMENT

In consideration of Buyer's agreement to allow the District the future use of the Apparatus as identified in a separate Agreement between Buyer and Seller, the receipt and sufficiency of which are hereby acknowledged by the Parties, Midway Sewer District, a Washington municipal corporation, ("District") does hereby sell, assign, convey, transfer and deliver to Highline Water District ("Buyer") (individually a "Party" and collectively the "Parties") the following apparatus, including all owner's manuals, warranties, if any, and maintenance and repair records ("Apparatus"):

2004 International 7400 SBA 6x4 (Camel) Flush Truck VIN # 1HTWGADTO4J016993

The District hereby warrants to Buyer that immediately prior to the delivery of this Bill of Sale, the District was the owner of the full legal title to the described Apparatus and that the District had the lawful right to sell the same and that good and clear title to the Apparatus is hereby vested in Buyer free and clear of all liens, claims, encumbrances, and rights of others. The District makes no representations regarding the condition of the Apparatus or the existence of known or hidden defects. The District makes no warranty with respect to the Apparatus and Buyer has inspected the described Apparatus and has determined that the Apparatus is in a reasonable safe condition for Buyer's use. **THE APPARATUS MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.**

Buyer accepts the Apparatus "as is," and the District makes no warranty of any kind, express or implied, or arising by operation of law, by course of dealing or arising by performance, trade practice, or otherwise. The District disclaims all other warranties, including without limitation, any implied warranties of merchantability or fitness for a particular purpose. Repair or replacement of defective parts shall be the sole obligation of Buyer. In no event shall the District be liable for direct, indirect, incidental, exemplary, consequential, or special damages arising in any manner whatsoever, even if the District had been previously advised of the possibility of that damage. The District's maximum liability shall in no event exceed the price of the surplus Apparatus specified herein. No person has authority to make any claim, representation, warranty, promise, guarantee or commitment on behalf of the District that is not expressed in this agreement. THE BUYER SPECIFICALLY ACKNOWLEDGES THAT THE APPARATUS MAY NOT MEET ANY CURRENT STATE OR FEDERAL SAFETY STANDARDS.

BY SIGNING THIS AGREEMENT, THE BUYER AFFIRMS:

- 1) That the District has made Buyer aware that the Apparatus to be sold under this agreement is used and has been determined by the District to be surplus to the District's needs.
- 2) That the Buyer has been given ample opportunity to inspect the Apparatus and has in fact inspected the Apparatus referred to in this Agreement and accepts the Apparatus "as is."

EXHIBIT A

3) That the Buyer agrees to the terms of this Agreement.

IN CONSIDERATION OF RECEIVING THE APPARATUS BUYER AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM AND AGAINST THE FULL AMOUNT OF ANY AND ALL COSTS AND EXPENSES (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COURT COSTS INCIDENT TO ANY SUIT, ACTION, INVESTIGATION OR OTHER PROCEEDING), DAMAGES AND LOSSES, SETTLEMENTS, REDUCTIONS OR OTHER ADVERSE EFFECTS ARISING OUT OF OR RESULTING FROM ANY FUTURE CLAIMS RELATING TO THE APPARATUS WHILE IN BUYER'S POSSESSION AND BUYER'S USE OF THE APPARATUS.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE PURCHASER'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale and Hold Harmless Agreement to be executed and delivered in its name this ____ day of _____, 2015.

Midway Sewer District

Highline Water District

By: _____
Ken Kase, General Manager

By: _____
Matt Everett, General Manager

DATE: _____

DATE: _____

EXHIBIT B
FLUSH TRUCK USE AGREEMENT

This Agreement (“Agreement”) is entered into by and between MIDWAY SEWER DISTRICT, a municipal corporation (“MSD”), and HIGHLINE WATER DISTRICT, a municipal corporation (“HWD”) (individually a “Party” and collectively the “Parties”) for the purposes set forth below.

RECITALS

A. This Agreement is entered into under the authority of and in conformity with chapter 39.34 RCW, the Interlocal Cooperation Act.

B. HWD purchased MSD’s surplus flush truck (“Flush Truck”) and, as partial consideration for the purchase, agreed to allow MSD to use the Flush Truck on a temporary basis in the event of emergencies or in the event MSD’s flush truck is inoperable.

AGREEMENT

To carry out the purposes of this Agreement and in consideration of the benefits to be received by each Party, the Parties agree as follows:

- 1. Flush Truck Use.** HWD shall allow MSD to use the Flush Truck at times mutually agreeable to the Parties when MSD is addressing an emergency situation or when MSD’s flush truck is temporarily inoperable.
- 2. Use Restrictions.** The Flush Truck may only be used by MSD with an operator preapproved by the General Manager of HWD. The operator shall be an employee of MSD and when using the Flush Truck for MSD purposes shall be acting solely as an employee of MSD.
- 3. Flush Truck Operation Costs Routine Maintenance and Repairs.** HWD shall be responsible for ongoing maintenance and repair of the Flush Truck and shall furnish all required fuel and lubricants necessary for the day to day operation of the Flush Truck. MSD shall be responsible for the costs of consumable supplies, such as fuel, necessary for the operation of the Flush Truck when MSD is using the Flush Truck. Subject to the provisions of the property insurance referenced in Section 6 herein, if the Flush is damaged during its use by either of the Parties, the Party using the Flush Truck while such damage occurred shall be responsible to have such damage repaired to its condition prior to such damage at such Party’s sole cost and expense.
- 4. Priority of Use.** In the event of the need for simultaneous use arises, priority shall be given to HWD use. In the event of conflicting emergency uses, HWD’s general manager shall have the sole discretion to determine the priority of use.
- 5. Term.** This Agreement shall be effective on the date HWD takes ownership of the Flush Truck and shall continue for so long as HWD retains ownership of the Flush Truck, unless terminated sooner by mutual written agreement of the Parties.

6. Property Insurance. HWD agrees to provide property insurance coverage for the Flush Truck. HWD shall furnish to MSD appropriate documentation showing that such coverage is in effect and covers both District's use of the Flush Truck under the terms of this Agreement.

7. Liability Insurance. Each Party shall carry general liability insurance, in amounts and with companies satisfactory to the other Party, insuring against any claims for personal injuries and third party property damage arising out of the use, control, operation, or maintenance of the Flush Truck. Each Party shall furnish proof of such insurance to the other Party.

8. Liability. The Party using the Flush Truck assumes the risk of liability arising from or pertaining to the use of the Flush Truck. The Party using the Flush Truck shall indemnify, defend and hold the other Party harmless from and against any and all claims, costs, expenses, damage, and liabilities, including attorney's fees, arising from or pertaining to the use of the Flush Truck. Provided, however, this indemnification provision shall not apply to insured first party property damage claims relating to the Flush Truck.

9. Miscellaneous

9.1. No Separate Entity Created. This Agreement does not establish a separate legal entity, joint board, or administrative section for the purpose of acquiring, managing, or disposing of property, or any other financial obligation allowed under the Act.

9.2. Administration. Unless the Parties otherwise agree, there shall be no lead agency responsible for the administration of this Agreement. This Agreement shall be administered jointly by the general managers of the respective Parties.

9.3. Property Ownership. This Agreement does not provide for jointly owned property.

9.4. Benefits. This Agreement is entered into for the benefit of the Parties only and shall confer no benefits, direct or implied, on any third persons.

9.5. Filing/Web Site. Filing/Web Site. This Agreement shall either be filed with the County Auditor or by listing on either of the Party's websites in accordance with RCW 39.34.040.

9.6. Non-Waiver of Breach. The failure of either Party to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option conferred by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements, or options, and the same shall be and remain in full force and effect.

9.7. Assignment. Any assignment of this Agreement by either Party without the prior written consent of the non-assigning Party shall be void. If the non-assigning Party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

9.10. Modification. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of each party and subject to ratification by the legislative body of each party.

9.11. Entire Agreement. The written terms and provisions of this Agreement, together with any Exhibits attached hereto, shall supersede all prior communications, negotiations, representations or agreements, either verbal or written of any officer or other representative of each party, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the Exhibits are hereby made part of this Agreement.

9.12. Severability. If any section of this Agreement is adjudicated to be invalid, such action shall not affect the validity of any section not so adjudicated.

9.13. Notice. All communications regarding this Agreement shall be sent to the Parties at the addresses set forth below, unless notified to the contrary. Any written notice hereunder shall become effective upon personal service or three (3) business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

9.14. Effective Date. This Agreement shall be effective on the date by which both Parties have signed the Agreement ("Effective Date").

Midway Sewer District

Highline Water District

By: _____
Ken Kase, General Manager

By: _____
Matt Everett, General Manager

DATE: _____

DATE: _____

NOTICES TO BE SENT TO:

NOTICES TO BE SENT TO:

() _____ (telephone)
() _____ (facsimile)

() _____ (telephone)
() _____ (facsimile)