

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE
ALDERWOOD WATER & WASTEWATER DISTRICT CONCERNING UTILITY
CONSTRUCTION ASSOCIATED WITH THE
ASH WAY OVERLAY: 164 ST SW TO PARK & RIDE PROJECT

This INTERLOCAL AGREEMENT concerning utility construction associated with the Ash Way Overlay: 164 St SW to Park & Ride project, hereinafter referred to as the “Agreement”, is made and entered into by and between the Alderwood Water & Wastewater District, a municipal corporation of the State of Washington, hereinafter referred to as the “District,” and Snohomish County, a political subdivision of the State of Washington, hereinafter referred to as the “County”, collectively the “Parties.”

RECITALS

- A. The County has a project (TIP #B.01.20), (the “Project”), to address pavement deterioration and, where needed, pavement will be milled or pulverized and pre-leveled; paint striping, RPMs where needed, ADA access updated if not up to standards, as shown on the Vicinity Map in Exhibit A.
- B. The District has a franchise for occupancy of County rights-of-way for utility facilities and desires to have the County replace and adjust water valve boxes and sewer manholes to finished grade (AWWD Project #J2506), as further described in Exhibit B (Utility Work), during construction of the Project.
- C. The County and the District agree that it will be more efficient and mutually beneficial to both Parties for the County to complete the Utility Work during construction of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District agree as follows:

1. Requirements of Interlocal Cooperation Act

1.1 Purpose of Agreement. This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW. The purpose and intent of this Agreement is to set forth the mutual obligations, responsibilities, and rights of the County and District for performance of the Utility Work the location of which is depicted in Exhibit A and described in Exhibit B attached hereto and incorporated by this reference.

1.2 No Separate Entity Necessary. The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.

1.3 Ownership of Property. The parties agree that the District shall have ownership of the new water valve boxes and sewer manholes. Except as expressly provided to the contrary

in this Agreement, any real or personal property used or acquired by either party in connection with the performance of this Agreement will remain the sole property of such party, and the other party shall have no interest therein.

1.4 Administrators. Each party to this Agreement shall designate an individual (an “Administrator”), which may be designated by title or position, to oversee and administer such party’s participation in this Agreement. The Parties’ initial Administrators shall be the following individuals:

County’s Initial Administrator:
Matthew Feeley, P.E.
Snohomish County Public Works
3000 Rockefeller Avenue M/S 607
Everett, WA 98201
425-262-2437
Matthew.Feeley@snoco.org

District’s Initial Administrator:
Dan Scheil, P.E.
Alderwood Water & Wastewater District
3626 – 156th Street SW
Lynnwood, WA 98087-5021
425-743-4605
DScheil@awwd.com

Either party may change its Administrator at any time by delivering written notice pursuant to Section 12 of this Agreement, of such party’s new Administrator to the other party.

2. Effective Date and Duration

2.1 Effective Date. As provided by RCW 39.34.040, this Agreement shall take effect when it has: (i) been duly executed by both Parties, and (ii) either filed with the County Auditor or posted on the County’s Interlocal Agreements website.

2.2 Duration. This Agreement shall remain in effect until all obligations of the Parties are discharged, unless earlier terminated pursuant to the provisions of Sections 10 or 11 below; PROVIDED, that the Parties’ obligations after December 31st of the year in which this Agreement becomes effective, are contingent upon each Parties’ local legislative appropriation of necessary funds to fund this Agreement in accordance with applicable laws.

3. County Responsibilities

3.1 Lead Agency. Pursuant to WAC 197-11-926(1), the County shall serve as the lead agency for all aspects of planning, administration and construction, including SEPA, and to the extent applicable, NEPA review, for the Project, and shall perform the Utility Work described in Exhibit B on the District’s behalf in conjunction with the Project, the (“Services”). The County shall be responsible for compliance with the Local Agency Guidelines and the 2025 English edition of the Standard Specifications for Road, Bridge, and Municipal Construction (as modified by the County for County projects) published by the Washington State Department of Transportation (WSDOT, during the design and construction phases of the Project.

3.2 Permits. The County shall be responsible for obtaining all required agency permits needed for the Project and Utility Work, except any permits or approvals required by the District.

3.3 Plans and Specifications. The County shall include District provided plans and specifications for the Utility Work in the Project plans and specifications, PROVIDED that inclusion of the District plans and specifications does not result in any delay in the scheduled advertising date for the Project;

3.4 Engineering Review of and Right to Reject District Plans. The County reserves the right to perform engineering review of the District's plans and specifications and reject all or a portion of the District's plans or specifications the County determines are not in compliance with either County standards or the County's plans and specifications for the Project.

3.5 Preconstruction Meeting. After awarding the contract, the County will arrange a preconstruction conference with the successful contractor(s), the ("Contractor(s)") and invite the District to attend and participate.

3.6 Inspection of Project Construction. The County shall inspect the construction of the Utility Work based upon the plans and specifications approved and provided by the District. The County will provide copies to the District of all daily inspection reports for work involving the Utility Work on a weekly or other agreed upon interval. Inspection of construction by the County shall not constitute a guarantee or warranty of the adequacy of performance.

3.7 Deviation from Project Design. The County shall be responsible for obtaining District approval for all deviations from Utility Work design documentation approvals affecting the District's Utility Work, including but not limited to deviations from the approved plans, and all other approved design documentation.

3.8 Independent Contractor. The County shall perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the District. The County has the express right to direct and control the County's activities in providing the agreed Services in accordance with the specifications set out in this Agreement.

3.9 Sub-Contracting. The County may, in its sole discretion, hire one or more consultants, and/or sub-consultants, contractors and/or sub-contractors to perform some or all of the Services.

3.10 As-built Plans. The County shall provide the District a hard copy of the "as-built" plans/mark-up sheets showing the completed Utility Work, PROVIDED that construction of the Utility Work has been completed under the terms of this Agreement. If the Agreement is terminated prior to completion of the Utility Work, the County shall provide the District a hard copy of the "as-built" plan sheets of that work completed prior to the termination date.

3.11 Notification of Project Completion. The County, in accordance with Section 12 of this Agreement, shall notify the District when the Utility Work has been completed.

3.12 Correction of Deficiencies Identified by District. The County shall be responsible for correcting any deficiencies in the Utility Work identified by the District that were the result of the County's contractor not conforming to the District's approved plans.

3.13 Invoicing. The County shall be responsible for invoicing the District for the reimbursement of all actual costs incurred by the County that are associated with the Utility Work in accordance with the terms of Section 5 of this Agreement.

3.14 Project Records. The County will retain the original polypropylene plan sheets and all other Utility Work records.

4. District Responsibilities

4.1 Plans and specifications. The District shall submit, to the County, engineering plans and specifications for the Utility Work based upon the current version of the Snohomish County EDDS (Engineering and Design Standards) and the 2025 English edition of the Standard Specifications for Road, Bridge, and Municipal Construction of the Washington State Department of Transportation (WSDOT), as modified by the County for County projects. Ultimate responsibility for accuracy and completeness of the District's plans for the Utility Work rests with the District.

4.2 Franchise agreement. The District shall comply with the terms of the franchise agreement between the District and the County, including but not limited to, County design standards and specifications, and Chapter 136-40 WAC, "Standards of Good Practice-Accommodation of Utilities on County Road Right of Way".

4.3 Cooperation with the County's Contractor(s). The District shall make all reasonable efforts to cooperate with the County's Contractor(s) in facilitating the Utility Work and make necessary personnel available so as to not delay the Contractor(s)'s construction schedule. The District shall be responsible for any costs to the County for delays to the Project resulting from delays to the Utility Work that are caused by the District.

4.4 Acceptance of Project Construction. The District, within ten (10) working days after notification by the County of the completion of the Utility Work shall issue written notification to the County of any deficiencies or of acceptance of the work in accordance with Section 12 of the Agreement. If notification has not been received by the County within the ten (10) day period, the Utility Work shall be considered complete and accepted by the District as of the close of business on day ten (10).

4.5 District Provided Inspector. The District may furnish an inspector for the Utility Work. All costs for such inspection will be borne solely by the District. All contact between said inspector and the County's Contractor(s) shall be through the County's on-site representative who shall be identified at the preconstruction conference.

4.6 Future improvements, maintenance, repairs, or corrections. The cost of any future improvements, maintenance, repairs, or corrections to any utility facilities covered under the terms of this Agreement shall be the exclusive responsibility of the District from the date of acceptance of the Utility Work by the District unless covered under the contract performance period.

4.7 Reimbursement of County Costs. The costs shown in Exhibit B are estimated costs and the District shall be responsible for reimbursing the County for all actual costs associated with the Utility Work in accordance with the terms of Section 5 of this Agreement.

5. Estimate, Segregation, and Payment of Cost of Services

5.1 Estimated Cost of Services. The estimated cost of Services associated with the Utility Work are as described in Exhibit B; PROVIDED, if the successful bidder's proposal exceeds the estimated costs, the parties may adjust the estimated costs to conform to the successful bidder's proposal by written amendment. Costs for additional Services associated with changes to the Utility Work requested by the District or that are incurred as a result of deficiencies in the District's plans are in addition to those estimated costs as shown in Exhibit B and shall be paid by the District.

5.2 Invoicing and Payment. The County shall invoice the District monthly, or on any other schedule that is mutually convenient and agreed to by the parties, showing actual expenditures on the Utility Work during the previous period. Invoices shall be based on the County Contractor(s)'s payments, equipment, materials, and labor expended on the Utility Work, plus County expenditures in support of the Utility Work as described more specifically in Section 5.3 below. Invoices shall include supporting documentation of expenses incurred and be sent to the District's Administrator identified in Section 1.4 of this Agreement.

Invoices shall be paid by the District within thirty (30) days of receipt by the District without offset or deduction for any reason. Notice of any potential dispute regarding such payment request shall be made in writing within the same time period. Payment by the District shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. At the time of final audit, all required adjustments related to any potential dispute for which notice has been timely given shall be made and reflected in a final payment.

5.3 District Reimbursement of Costs for Services Performed by County Staff Consultants, Sub-Consultants, Contractors, or Sub-Contractors.

5.3.1 County Staff. The District shall reimburse the County for the costs of the Services provided by County staff on a time and materials basis plus an administrative overhead fee pursuant to Section 5.4 of this Agreement. The County agrees that only those costs directly attributed to the Services associated with the Utility Work and allowed under accepted accounting procedures will be charged to the District. By way of example, those costs directly attributed may include, but are not limited to, the following types of cost components:

- (a) Salaries, wages, benefits of all County employees engaged therein;
- (b) Travel expenses, including mileage of County employees;
- (c) Materials, when provided by the County;
- (d) County-owned machinery and equipment, for which the County equipment rental rate shall be included in computing the cost of the machinery and equipment;
- (e) Other costs and incidental expenses; including depreciation on County machinery and equipment;
- (f) The full cost to the County of rental machinery and equipment, together with any operator furnished therewith;
- (g) The cost of equipment, supplies, and related expenses when purchased by the County; and

(h) The cost of permits required from other agencies, except the District.

5.3.2 Consultants, sub-consultants, contractors or sub-contractors. The District shall reimburse the County for one hundred percent (100%) of the final cost of all contract items related to the Utility Work, as shown in the bid proposal of the successful bidder.

5.4 Administrative Costs for Services Performed by County Staff. For the purpose of fixing the compensation to be paid by the District to the County for the County performing Services, it is agreed that there shall be included in each billing, to cover administrative costs, an amount not to exceed the County administrative rate. This rate is currently set at twenty percent (20%) of the total labor cost, including benefits, to the County for only those County employees performing Services for the District under this Agreement. The administrative rate is not included in charges for materials, equipment, or payments to contractors or subcontractors. This rate may be reasonably adjusted annually to reflect changes in actual administrative costs without the need for a formal amendment of this Agreement.

5.5 Extra Work. There may be unforeseen conditions requiring immediate resolution during the construction phase of the Utility Work such as construction disputes and claims, changed conditions and changes in the construction work. Such unforeseen conditions that do not result in costs to the District in excess of the Total Cost of Utility Work in Exhibit B shall be memorialized by change orders executed under the underlying construction contract. District staff shall countersign said change orders.

Costs associated with increased construction engineering and/or construction contract amounts for the Utility Work exceeding the Total Cost of Utility Work shown in Exhibit B shall be memorialized by written amendment.

5.6 Final Invoice. Upon completion of the Project, the County shall submit a final invoice to the District in accordance with Sections 5 and 6 of this Agreement.

6. Audit and Final Invoice by County and Review and Acceptance by District of Project Completion

6.1 Audit and Final Billing. Upon completion of the Project, the County shall conduct a final audit in accordance with standards of the Washington State Department of Transportation. At the time of the final audit, all adjustments required shall be made and shall be reflected in a final billing to the District. The County shall, upon the completion of the audit, provide the District with a copy of the audit and a final invoice

6.2 Review and Acceptance. The District shall have thirty (30) days from receipt of the audit and final invoice to review and notify the County, pursuant to Section 12 of this Agreement, if it accepts or has comments on the audit and final invoice for the Project.

6.3 Deemed Acceptance. Within thirty (30) days of receipt of the audit and final billing, the District shall notify the County in writing of any objections to the audit and/or billing. If no objections are timely filed, the District shall make final payment to the County and such final payment shall constitute an acceptance by the District of the County's costs and accounting.

7. Indemnification/Hold Harmless

7.1 Indemnification/Hold Harmless. Each Party shall protect, defend, indemnify, and hold harmless the Other Party, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of any kind whatsoever (hereinafter “claims”), arising out of or in any way resulting from the Indemnifying Party’s officers, employees, agents, contractors and/or subcontractors of all tiers, consultants and/or sub-consultants, acts or omissions, performance or failure to perform this Interlocal Agreement, to the maximum extent permitted by law or as defined by RCW 4.24.115, now enacted or as hereinafter amended.

7.2 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Section 7.1 above are specifically intended to constitute a waiver of each party’s immunity under Washington’s Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor’s employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

7.3 Survival. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Insurance

Each party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and /or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self-insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

9. Compliance with Laws

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules, and regulations.

10. Default and Remedies

10.1 Default. If either Party fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default (“Default”) under this Agreement; provided, however, that if the non-performance is of a type that could not feasibly be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

10.2 Remedies. In the event of a party’s Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 10.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

11. Early Termination

11.1 Notice of Early Termination. Either party may terminate this Agreement at any time, with or without cause, upon providing not less than thirty (30) days' written notice to the other party pursuant to Section 12 of this Agreement. The termination notice shall specify the date on which the Agreement shall terminate.

11.2 Calculation of Costs Due Upon Termination. Upon early termination of this Agreement as provided in this Section 11, the District shall pay the County for all Services performed up to the date of termination, as well as the costs of all non-cancelable obligations or penalties incurred by the County as a result of the cancellation of Services. The County shall invoice the District within sixty (60) days after the date of termination of all remaining costs including non-cancelable costs. Non-cancelable obligations shall mean the County's contractual obligations for construction or equipment associated with the Project or Utility Work that either cannot be canceled or if cancellable, would require the payment of a penalty such as, but not limited to, the following:

11.2.1 The cost to the County of rental machinery and equipment, together with any operator furnished therewith if applicable;

11.2.2 The cost of equipment or supplies that can't be returned, when purchased by the County;

11.2.3 The cost or penalties incurred for the return of equipment or supplies, when purchased by the County;

11.2.4 Payment to consultants, sub-consultants, contractors or sub-contractors for work performed on behalf of the County; or

11.2.5 If the District terminates this Agreement after award of the construction contract by the County, the District shall be responsible for all costs incurred by the County in executing the necessary contract changes to delete the Project from the County's bridge replacement contract.

11.3 Payment After Termination. No payment shall be made by the District for any expense incurred or Services performed following the effective date of termination unless the District further authorizes Services in writing, or the expenses are determined to be non-cancelable obligations pursuant to Section 11.2 of this Agreement.

12. Notices

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

13. Miscellaneous

13.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

13.2 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

13.3 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

13.4 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

13.5 No Waiver. A party's forbearance or delay in exercising any right or remedy with respect to a Default by the other party under this Agreement shall not constitute a waiver of the Default at issue. Nor shall a waiver by either party of any particular Default constitute a waiver of any other Default or any similar future Default.

13.6 No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

13.7 Warranty of Authority. Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

13.8 No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

13.9 No Third-Party Beneficiaries. This Agreement and each and every provision hereof are for the sole benefit of the District and the County. No other persons or parties shall be deemed to have any rights in, under, or to this Agreement.

13.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

13.11 Records. The Parties shall maintain all records pertaining to the Project and Utility Work for a period not less than six (6) years from the final payment to the County by the District or the date the Agreement is terminated, whichever is later. The Parties shall keep all records available for either public disclosure requests pursuant to RCW 42.56 (aka the Public Records Act) or inspection and audit by the State. Copies of all records, accounts, documents or other data pertaining to the Project shall be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the Parties until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the six-year retention period.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities.

SNOHOMISH COUNTY

ALDERWOOD WATER &
WASTEWATER DISTRICT

By: _____
County Executive Date

By: _____
Board President Date

Approved as to form only:

Approved as to form only:

By: _____
Deputy Prosecuting Attorney Date

By: _____
Attorney for District Date

EXHIBIT A

Project Location Map

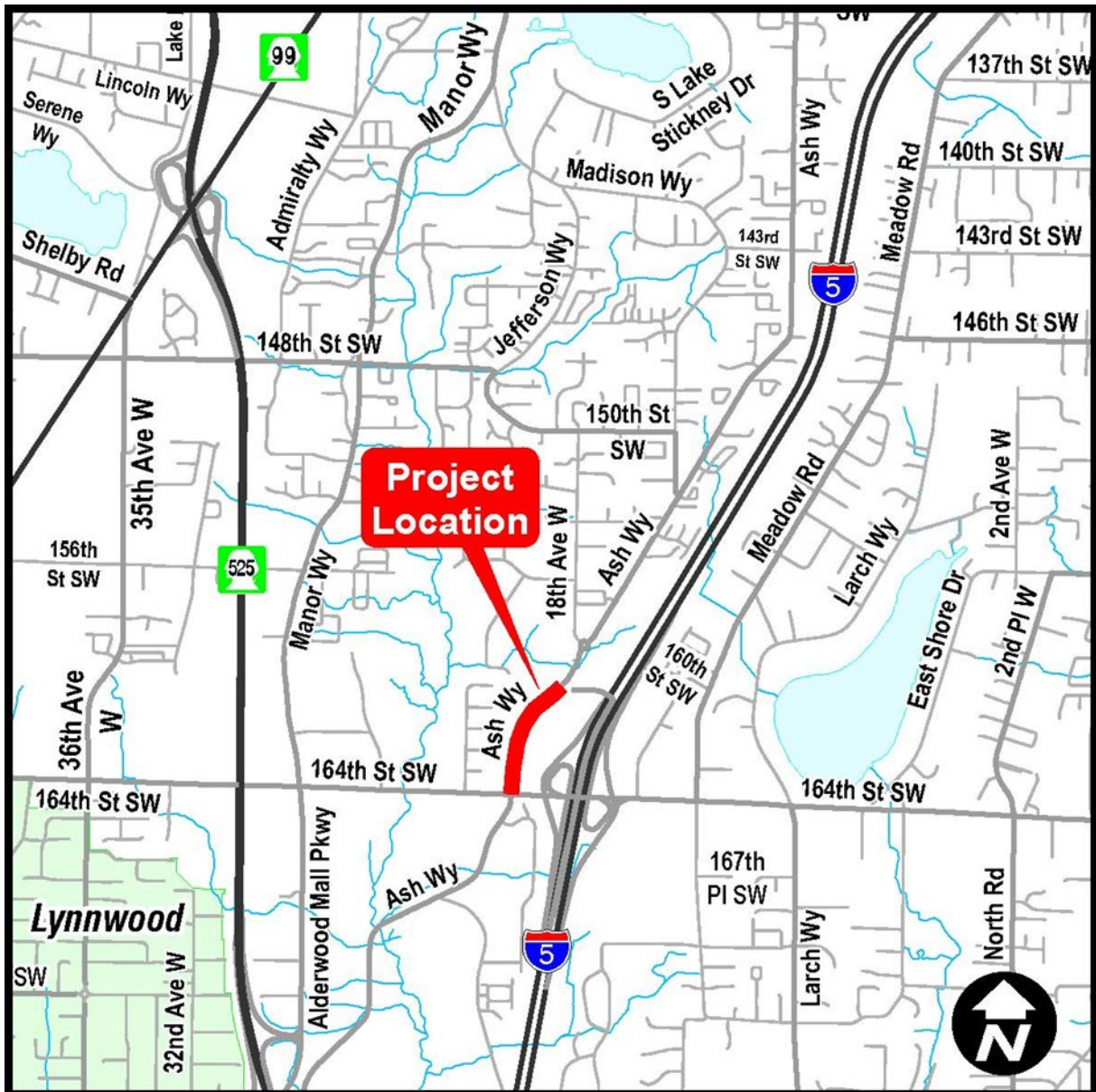


EXHIBIT B
DESCRIPTION AND ESTIMATED COSTS OF UTILITY WORK J2506

Alderwood Water & Wastewater District, in conjunction with Snohomish County Ash Way Overlay Project (164th St SW to Park & Ride), will have the County's Contractor replace and adjust water valve boxes and sewer manholes to finished grade. An estimate, scope of Utility Work and the costs associates it, based on the preliminary design, is as follows:

ITEM NO.	ITEM DESCRIPTION	SPEC REF	UNIT	QUANTITY	UNIT PRICE	AMOUNT
1	Adjust water valve box		EA	5	\$1,400	\$7,000.00
2	Adjust manhole casting		EA	2	\$1,750	\$3,500.00
3	Replace and adjust water valve box		EA	1	\$1,750	\$1,750.00
A.	Subtotal of Bid Items					\$12,250.00
B.	Sales Tax (10.5% of Line A)					\$1,225.00
C.	Subtotal of Bid Items and Tax (Line A + Line B)					\$13,475.00
D.	Contingency (20% of Line C)					\$2,695.00
E.	Subtotal of Bid Related Items (Line C + Line D)					\$16,170.00
F.	Construction Engineering and Inspection (15% of Line E)					\$2,425.50
G.	Administrative Overhead (20% of Line F)					\$485.10
H.	Subtotal (Line F + Line G)					\$2,910.60
I.	Total Estimated Project Related Costs (Line E+ Line H)					\$19,080.60

*Note: This estimate will be adjusted to conform to the successful bidder's proposal and all County expenditures invoiced to the District will be actual expenditures.

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