

**INTERLOCAL AGREEMENT  
ALDERWOOD WATER & WASTEWATER DISTRICT  
AND  
CITY OF LYNNWOOD  
REGARDING THE 196<sup>TH</sup> ST SW (SR 524) IMPROVEMENT PROJECT**

THIS INTERLOCAL AGREEMENT (“Agreement”) is made and entered into by and between the ALDERWOOD WATER & WASTEWATER DISTRICT, a public utility district (“DISTRICT”) located at 3626 156<sup>th</sup> Street SW, Lynnwood, WA, 98087 and THE CITY OF LYNNWOOD, a municipal corporation (the “CITY”), for the purposes set forth below.

Recitals

WHEREAS, the CITY is constructing roadway improvements to the 196<sup>th</sup> Street Southwest Corridor, CITY Project No. 2849 (the “Project”), in the location shown on Exhibit “A” attached hereto (the “Project Location”); and

WHEREAS, the DISTRICT operates and maintains existing water and sanitary sewer facilities in the public road rights-of-way, including the 196<sup>th</sup> Street Southwest Corridor; and

WHEREAS, the DISTRICT has identified a need to improve existing water facilities within the public right-of-way in the Project Location, as shown on Exhibit “A” (the “Utility Work”); and

WHEREAS, the CITY is the lead agency for the construction of the Project; and

WHEREAS, it is deemed to be in the best interest of the public, the CITY and the DISTRICT to include necessary items of work to accomplish the Utility Work, as requested by the DISTRICT, into the CITY’s construction contract for this Project (the “Construction Contract”); and

WHEREAS, the parties are authorized to enter into an interlocal agreement pursuant to chapter 39.34 RCW in order to jointly accomplish the Project.

NOW, THEREFORE, the CITY and DISTRICT wish to enter into this Agreement outlining the responsibility for the work and associated cost for the inclusion of the Utility Work into the Project.

**I. OBJECTIVE OF AGREEMENT**

The objective of this Agreement is to set forth the mutual obligations and rights of the CITY and the DISTRICT for the accomplishment of the Utility Work, also known as DISTRICT Project Number W2006 and described in Exhibits “A” and “B” which are attached hereto and incorporated herein by this reference, as part of the City’s Project.

## II. RESPONSIBILITIES OF THE PARTIES

A. The CITY shall act as the lead agency on the Project and will be responsible for compliance with the Local Agency Guidelines published by the Washington State Department of Transportation, during the design and construction phases of the Project. The CITY's Project Managers shall act as the administrator of this cooperative undertaking.

B. The CITY shall modify the CITY'S Design Contract to include the DISTRICT's Utility Work into CITY's plans and specifications.

C. The CITY shall (i) negotiate terms for a modification to the CITY's Construction Contract to include DISTRICT's Utility Work; including additional costs and schedule considerations; (ii) execute a Change Order or other Contract modification necessary to include Utility Work in the scope of work for the Project upon DISTRICT approval of the Change Order or other Contract modification; and (iii) administer the Construction Contract, including accountings, making payments to the Contractor, and keeping the Project records, all in accordance with applicable law.

D. The CITY, acting for and on behalf of the DISTRICT, shall provide construction management and inspection for the DISTRICT's Utility Work. The CITY shall provide copies of all daily inspection reports for work involving the DISTRICT's Utility Work on a weekly or other agreed upon interval, establishing quantities and acceptance of work on the DISTRICT's facilities.

E. The DISTRICT will amend the existing agreement between the DISTRICT and the Washington Department of Transportation (WSDOT) Utility Group for the Utility Work under this ILA.

F. The DISTRICT shall be solely responsible for all costs associated with the DISTRICT's Utility Work and shall reimburse the CITY in accordance with the terms of Section V below.

G. The DISTRICT shall make all reasonable efforts to cooperate with the CITY's Contractor in facilitating the DISTRICT's Utility Work and make necessary personnel available to prevent delaying the Contractor's construction schedule. The DISTRICT shall respond promptly to information requests submitted by the City or the City's Contractor regarding the Utility Work; operate existing valves on the DISTRICT's water system; and provide notification of water service interruption to affected properties.

H. The CITY shall provide the DISTRICT with written notification of the completion of the District's Utility Work. The DISTRICT shall, within ten (10) calendar days after date of the CITY'S notification of completion of the DISTRICT's Utility Work, provide the CITY with written notification of any deficiencies in the Utility Work or written notification of acceptance of the Utility Work. The CITY's Contractor shall correct all deficiencies as determined by the DISTRICT in the reasonable exercise of its judgment. If,

after the ten (10) day period, notification of deficiencies has not been received by CITY, the DISTRICT's Utility Work shall be considered complete and accepted by the DISTRICT.

I. The DISTRICT may, if it desires, furnish an inspector for the DISTRICT's Utility Work. Any costs for such inspection will be borne solely by the DISTRICT. All communications between said inspector and the CITY's Contractor shall be through the CITY's onsite representative who will be identified by the CITY.

J. The DISTRICT shall own and maintain the utility facilities constructed under this Agreement from the date of acceptance of the facilities by the DISTRICT. In accordance with this Agreement and the terms of the DISTRICT's franchise, the cost of any future improvements and/or maintenance, repairs, or corrections to any DISTRICT facilities covered under the terms of this Agreement shall be the exclusive responsibility of the DISTRICT unless covered under the contract performance period.

K. The Parties' duties under this Agreement shall be performed in accordance with standard operating procedures and customary practices of the Parties.

L. No provision of this Agreement shall relieve either party of its public agency obligations and or responsibilities imposed by law.

M. The CITY shall (i) require the Contractor to name the DISTRICT as additional insured on insurance furnished by the Contract Specifications and (ii) shall provide copies of insurance documentation to the DISTRICT.

### III. DURATION OF AGREEMENT

This Agreement shall become effective immediately upon the signing of all parties and filing or recording under Section XVI of this Agreement, and shall remain in effect until the DISTRICT's Utility Work has been accepted by the DISTRICT and the DISTRICT has paid the CITY in full; provided, that the respective indemnification obligations of the CITY and DISTRICT in Section VIII shall survive the expiration or termination of this Agreement. The parties anticipate that the Project will be completed by December 31, 2023.

### IV. SEPARATE ENTITY NOT CREATED

No separate legal entity is created hereby, as each of the Parties is contracting in its capacity as a municipal corporation of the State of Washington.

### V. PAYMENT

A. The DISTRICT agrees to set aside funds for payment to the CITY for the DISTRICT's Utility Work in an amount not less than the estimated of cost for the Utility Work design; cost for the Change Order or other Contract modification associated with the DISTRICT's Utility Work and for an amount necessary to reimburse the CITY for construction management, inspection and administration services related to the

DISTRICT's Utility Work. The estimated costs are shown in Exhibit "B" attached hereto and incorporated herein.

B. The CITY shall provide the DISTRICT with invoices showing expenditures on the DISTRICT's Utility Work portion of the Project. Invoices shall be based on Contractor's unit price on the DISTRICT's Utility Work. Undisputed invoices shall be paid by the DISTRICT within thirty (30) days of receipt by the DISTRICT. Payment by the DISTRICT shall not constitute an agreement as to the appropriateness of any item or acceptance of the work so represented.

C. The DISTRICT shall pay the CITY for the following costs:

- (i) 100 percent of the final cost of design of the DISTRICT's Utility Work by the CITY's design consultant for the Project; and
- (ii) 100 percent of the final cost of all contract items related to the DISTRICT's Utility Work, as shown in the Change Order or other Contract modification; and
- (iii) The cost of any extra work associated with the DISTRICT's Utility Work within the 15% contingency, and any costs for extra work that have been approved in accordance with Section VII; and
- (iv) 100 percent of the cost of administration and inspection of the DISTRICT's Utility Work by the CITY's construction management consultant(s) for the Project; and
- (v) A sum not to exceed the amount shown in Exhibit B, for reimbursement of CITY's construction management, contract administration, and overhead expenses.

## VI. TERMINATION

A. The CITY has the right to terminate this Agreement if the CITY determines not to undertake the Project or to discontinue the Project by providing written notice of termination to the DISTRICT, in which case the DISTRICT shall only be responsible for the Utility Work costs incurred by the CITY prior to the effective date of the CITY's notice of termination.

B. The DISTRICT has the right to terminate this Agreement prior to the execution of the Change Order or other Contract modification by the CITY and the CITY's Contractor. The DISTRICT shall provide written notice of termination to the CITY, in which case the DISTRICT shall be responsible for all Utility Work costs incurred by the CITY prior to the effective date of the DISTRICT's notice of termination, and all reasonable additional costs incurred by the CITY as a result of the DISTRICT's termination.

C. Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Agreement or law that either Party may have in the event that the obligations, terms and conditions set forth in this Agreement are breached by the other Party.

## VII. AMENDMENTS

This Agreement may be amended at any time by written agreement of both Parties. Such requests will only be approved if the proposed change(s) is (are) consistent with and/or achieves the goals stated in the scope and falls within the activities described in the scope.

There may be unforeseen conditions requiring immediate resolution during the construction phase of this Agreement such as construction disputes and claims, changed conditions and changes in the construction work. Reimbursement for increased construction management and/or construction contract amount shall be limited to costs covered by a modification, change order or extra work order approved by both Parties, as follows:

A. Should it be determined that any change from the contract plans and specifications is required, the CITY, through the CITY Public Works Director or his/her designee, shall have authority to make such changes up to the amount of the "Contingency" shown in Exhibit "B".

B. Any change in the work which would cause the "Grand Total" cost to exceed the amount shown in Exhibit "B", shall require an amendment to this Agreement, signed by both the CITY's Public Works Director or his/her designee and DISTRICT's General Manager or his/her designee, describing changed scope of work and estimated change in the DISTRICT's Utility Work cost. The DISTRICT shall return a signed copy of the amendment to this Agreement to the CITY within a week via either email or US Mail. Any cost incurred due to the delay of extra funds authorization from the DISTRICT will solely be the DISTRICT's responsibility.

C. Each Party, in the event of a claim by the construction Contractor, shall be responsible for its share of a claim filed by the Contractor arising out of that Party's portion of the Scope of Work. Claim expenses shared by the DISTRICT will be considered a change in the work and will follow the procedure set in Part VII.B.

## VIII. HOLD HARMLESS AND INDEMNIFICATION

A. The CITY agrees to defend, hold harmless and indemnify DISTRICT and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of the CITY's participation in this Project including any act or omissions of the CITY, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the CITY or otherwise. The CITY further agrees to defend at its own expense all suits or actions

of whatsoever nature brought against the CITY or DISTRICT, arising from the CITY's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the CITY and DISTRICT shall be shared, based upon the percentage of fault attributed to each Party as either mutually agreed or determined by the trier of fact.

B. DISTRICT agrees to defend, hold harmless and indemnify the CITY and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of DISTRICT's participation in this Project including any act or omissions of the DISTRICT, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the DISTRICT or otherwise. DISTRICT further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the CITY or DISTRICT, arising from DISTRICT's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the CITY and DISTRICT shall be shared, based upon the percentage of fault attributed to each party as either mutually agreed or determined by the trier of fact.

C. The CITY and DISTRICT hereby specifically and expressly waive any and all immunity under industrial insurance, Title 51 of the Revised Code of Washington, and agree that the foregoing waiver was mutually negotiated by the Parties. Further, the indemnification obligations of the Parties under this Agreement shall not be limited in any way by insurance or any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts; provided, however, that the Parties' waiver of immunity by the provisions of this section extends only to claims against DISTRICT by the CITY or claims against the CITY by DISTRICT and does not include, or extend to, any claims by the Parties' employees directly against either Party or claims by any third-party contractor against either Party.

#### IX. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Agreement is, for any reason, found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions.

#### X. NOTICE

Any notice required or permitted under this Agreement shall be deemed sufficiently given or served if sent to the CITY and DISTRICT at the addresses provided below.

The City of Lynnwood:

Alderwood Water & Wastewater District:

David Mach, PE  
Public Works Manager/City Engineer  
Department of Public Works  
19100 44<sup>th</sup> Ave W  
Lynnwood, WA 98036

Luke Moilanen, PE  
Engineer  
Engineering and Development  
3626 156<sup>th</sup> Street SW  
Lynnwood, WA 98087

or to such other respective addresses as either Party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

#### XI. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Parties.

#### XII. COMPLIANCE WITH REGULATIONS AND LAWS/INTERPRETATION/VENUE

The Parties shall comply with all applicable rules and regulations pertaining to them in connection with the matters covered herein. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement. Jurisdiction and venue for any action arising out of this Agreement shall be in Snohomish County, Washington.

#### XIII. ASSIGNMENT

The Parties shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other Party.

#### XIV. ATTORNEYS' FEES

If either Party shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other Party with respect to this Agreement, and in the further event that one Party shall substantially prevail in such action, the losing Party shall, in addition to all other payments required therein, pay all of the prevailing Party's reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

XV. NONDISCRIMINATION

Each of the Parties, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or the presence of any sensory, mental or physical handicap be discriminated against or receive discriminatory treatment by reason thereof.

XVI. FILING

If required, copies of this Agreement shall be filed with the Auditor’s Office of the county in Washington State in which the property or project is located, the Secretary of State of the State of Washington; and the respective Clerks of the parties hereto; Provided that as an alternative, the Agreement may be listed by subject on DISTRICT's or the CITY's web site or other electronically retrievable public source.

IN WITNESS WHEREOF this Agreement has been executed by each Party on the date set forth below:

CITY OF LYNNWOOD

ALDERWOOD WATER &  
WASTEWATER DISTRICT

DocuSigned by:  
*Nicola Smith*  
281B3CE79E884DA...  
Nicola Smith, Mayor

DocuSigned by:  
*Paul McIntyre*  
15E7F139B93C4C8...  
Paul D. McIntyre, Board President

4/26/2021  
\_\_\_\_\_  
Date

4/26/2021  
\_\_\_\_\_  
Date



## **EXHIBIT "B"**

### **196<sup>th</sup> Street SW (SR 524) Improvement Project (City Project No. 2849)**

#### **DESCRIPTION AND ESTIMATED COSTS OF UTILITY WORK**

Alderwood Water & Wastewater District, in conjunction with the City of Lynnwood's Project, will have the City's Contractor abandon-in-place existing water main and install new transmission main and appurtenances. An estimate of the scope of Utility Work and associated costs is provided below. The Construction costs shall be revised based upon the negotiated price with the City's Contractor for the project.

Line #	DESIGN Description of Bid Item	Qty.	Unit	Unit Cost	Total Costs
1	Design and Traffic Control Services	1	LS	\$ 27,097.00	\$ 27,097.00
2	Potholing	1	LS	\$ 27,900.00	\$ 27,900.00
5				SUBTOTAL	\$ 54,997.00
Line #	CONSTRUCTION Description of Bid Item	Qty.	Unit	Unit Cost	Total Costs
AWWD1	Surveying	1	LS	\$ 1,500.00	\$ 1,500.00
AWWD2	24" DI Rest. Joint Pipe, CI 51	150	LF	\$ 350.00	\$ 52,500.00
AWWD3	36" Steel Casing Pipe	80	LF	\$ 390.00	\$ 31,200.00
AWWD4	24" BFV 150 PSI	2	EA	\$ 9,000.00	\$ 18,000.00
AWWD5	Abandon Existing Water Main	150	LF	\$ 15.00	\$ 2,250.00
AWWD6	Sawcutting	1	LS	\$ 1,000.00	\$ 1,000.00
AWWD7	Shoring	2400	SF	\$ 1.00	\$ 2,400.00
AWWD8	Bank Run Gravel	222	CY	\$ 50.00	\$ 11,100.00
AWWD9	Connection to Existing Main	2	EA	\$ 6,500.00	\$ 13,000.00
AWWD10	Temporary HMA PG 58H-22	27	TON	\$ 88.00	\$ 2,376.00
AWWD11	AWWD Utility Work Traffic Control	1	LS	\$ 5,000.00	\$ 5,000.00
AWWD12	AWWD Utility Work Dewatering	1	LS	\$ 5,000.00	\$ 5,000.00
AWWD13	AWWD Utility Work ESC Measures	1	LS	\$ 5,000.00	\$ 5,000.00
20				SUBTOTAL	\$ 150,326.00
21	<b>Subtotal of Bid Items</b>				\$ 205,323.00
22	Sales Tax- Lynnwood (10.5% of Subtotal of Construction Subtotal, Line 20)				\$ 15,784.23
23	<b>Subtotal of Bid Items and Sales Tax</b>				<b>\$ 221,107.23</b>
24	Contingency (15% of Subtotal of Bid Items and Sales Tax Amount, Line 23)				\$ 33,166.08
25	<b>Subtotal of Bid Items, Sales Tax, and Contingency</b>				<b>\$ 254,273.31</b>
26	Construction Inspection & Contract Administration (Estimated as 20% of Subtotal of Construction Items, Line 20)				\$ 30,065.20
27	Administrative Overhead (Est 15% of Construction Inspection & Contract Administration, Line 26)				\$ 4,509.78
28	<b>Total Cost of Utility Work</b>				<b>\$ 288,848.29</b>