

**INTERLOCAL AGREEMENT BETWEEN
CITY OF BOTHELL AND
ALDERWOOD WATER & WASTEWATER DISTRICT
Regarding the 228th St SE Pavement Overlay Project**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into by and between the CITY OF BOTHELL, a municipal corporation (the "City"), and ALDERWOOD WATER & WASTEWATER DISTRICT, a public utility district (the "District"), for the purposes set forth below.

Recitals

WHEREAS, the City has concluded that the 228th Street SE Pavement Overlay Project (the "Project") is necessary in order to provide an acceptable level of transportation services; and

WHEREAS, the District operates and maintains existing water and sanitary sewer facilities in the public road rights-of-way; and

WHEREAS, the District holds franchises for occupancy of public road rights-of-way and is required, as a condition of its franchises and state law, to relocate and adjust its facilities at its own expense to accommodate public road improvements; and

WHEREAS, in the course of the Project, it is advantageous for the District to have the City's contractor adjust the District's existing facilities (the "Utility Work"); and

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

WHEREAS, it is advantageous for the project schedule to include the District's facility adjustments in the City's Design Contract and it is deemed to be in the best interest of the public and the District to include necessary items of work, as requested by the District, into the City's construction contract proposed for this Project; 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 work and associated cost for the adjustment of District's manhole covers and valve boxes within the Project limits.

Agreement

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 Nos. S1802 and W1802 and described in Exhibits "A" and "B" which are attached hereto

and incorporated herein by this reference.

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 Manager shall act as the administrator of this cooperative undertaking.

B. The City shall (i) have the City's Design Contract include the Utility Work into the City's plans and specifications; (ii) print and distribute the Contract Specifications and Plans; (iii) administer the advertisement for construction; and (iv) award and administer the contract, including accountings, making payments to the Contractor, and keeping the Project records.

C. The City, acting for and on behalf of the District, shall provide construction management and inspection for the District. The City will provide copies of all daily inspection reports for work involving the District's Utility Work on a weekly or other agreed upon interval. Inspection of construction activities shall not constitute a guarantee or warranty of the adequacy of performance.

D. The District shall be solely responsible for all costs associated with the Utility Work, and reimburse the City in accordance with the terms of Section V below.

E. The District shall make all reasonable efforts to cooperate with the City's Contractor in facilitating the Utility Work and make necessary personnel available so as to not delay the Contractor's construction schedule.

F. The District shall, within ten (10) calendar days after notification of completion of the Utility Work, issue notification of any deficiencies or issue writing notification of acceptance. The City's Contractor will correct the deficiencies. If, after the ten (10) day period, notification has not been received by the City, the Utility Work shall be considered complete and accepted by the District.

G. The District may, if it desires, furnish an inspector on the Project. Any costs for such inspection will be borne solely by the District. All contact between said inspector and the City's contractor shall be through the City's on-site representative who will be identified by the City.

H. The District shall maintain any 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 utility facilities covered under the terms of this Agreement shall be the exclusive responsibility of the District unless covered under the contract performance period.

I. The performances of the duties of the parties provided hereby shall be done

the standard operating procedures with standard operating procedures or the parties.

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

The captions in this Agreement are for convenience only and do not in any way limit or amend the provisions of this Agreement.

URATION OF AGREEMENT

ent shall become effective immediately upon the signing by all parties and in the Snohomish County Auditor and shall remain in effect until the Utility Work has been accepted by the District and the District has paid the City in full; provided, the City and the District in Section VIII shall survive to the expiration or termination of this Agreement. The parties anticipate that the Project will be completed by December 2018.

PARATE ENTITY NOT CREATED

legal entity is created hereby, as each of the parties is contracting in its capacity as a corporation of the State of Washington. The identity of the parties hereto is set forth hereinabove.

NANCING

The District agrees to set aside funds for payment to the City for the Utility Work amount not less than the estimate of cost for the Utility Work Design; cost for the Utility Work and for an amount necessary to reimburse the City for the Utility Work management, inspection and administration services related to the Utility Work. The Districts' estimate of costs is shown in Exhibits "A" and "B", which are attached and incorporated herein.

The City shall provide the District with properly executed invoices showing expenditures on the District's portion of the Project. Invoices shall be based on the unit price bid on the Utility Work. Invoices shall be paid by the District within (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.

The District shall pay the City for the following costs:

- (i) 100 percent of the final cost of all contract items related to the District's Utility Work, as shown in the bid proposal of the successful bidder; and
- (ii) The cost of any extra work associated with the Utility Work within the 15% contingency, and any costs for extra work that have been approved in accordance with Section VII.

D. Upon completion of the Project, a final audit shall be conducted of the Project 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. Within thirty (30) days of receipt of the audit and final billing, the District shall notify the City of any objections to the audit and/or billing. If no objections are filed, the District shall make final payment to the City and such final payment shall constitute an acceptance by the District of the City's costs and accounting.

VI. TERMINATION

A. This Agreement may be terminated in whole or in part, for convenience without cause, prior to the termination date specified in Paragraph III, upon thirty (30) days advance written notice.

B. This Agreement may be terminated by either party, in whole or in part, for cause prior to the termination date specified in Paragraph III, upon thirty (30) days advance written notice. Reasons for termination may include, but are not limited to, nonperformance; misuse of funds; and/or failure to provide related reports/invoices/statements as specified in Paragraph II.

C. If the Agreement is terminated as provided in this section: (1) each Party will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and (2) each Party shall be released from any obligation to provide further services pursuant to this Agreement. [If either of these two are applicable to this agreement.]

D. 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

A. 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.

B. There may be unforeseen conditions requiring immediate resolution during the construction phase of this agreement such as construction disputes and claims, changed conditions, and/or 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 as follows:

- i. Should it be determined that any change from the contract plans and

specifications is required, the City, through the City Engineer, shall have authority to make such changes up to the amount of the "Contingency" shown in Exhibit "B" as may be adjusted in accordance with the accepted bid price.

- ii. Any change in the work which would cause the "Grand Total" cost to exceed the amount shown in Exhibit "B", will require a Letter of Understanding, signed by both the City's Public Works Director or his/her designee and the District's General Manager or his/her designee, describing changed scope of work and estimated change in the Utility Work cost.
- iii. 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.

VIII. HOLD HARMLESS AND INDEMNIFICATION

A. The 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 the 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. The District further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the District or the City, arising from the District's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the City and the 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. The City agrees to defend, hold harmless, and indemnify the 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 District or the City, arising from the City's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the City and the 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 the 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 the District by the City or claims against the City by the 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 of Bothell and District at the addresses provided below:

City of Bothell
Khin C. Gyi, PE
Sr. Civil Engineer
Public Works Department
18415 101st Ave. NE
Bothell, WA 98011

AWWD
David MacDonald, PE
Engineer
Capital Projects Department
3626 156th 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. WAIVER OF SUBROGATION

The District and the City hereby mutually release each other from liability and waive all right of recovery against each other for any loss caused by fire or other perils which can be insured against under fire insurance contracts including any extended coverage endorsements thereto which are customarily available from time to time in the State of Washington, provided, that this paragraph shall be inapplicable to the extent that it would

have the effect of invalidating any insurance coverage of the District or the City.

XIII. COMPLIANCE WITH REGULATIONS AND LAWS

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. Jurisdiction and venue for any action arising out of this Agreement shall be in Snohomish County, Washington.

XIV. ASSIGNMENT

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

XV. ATTORNEY 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.

XVI. 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.

XVII. FILING

Copies of this Agreement shall be filed with the Snohomish County Auditor's Office, where 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 the City's web site or other electronically retrievable public source.

SIGNATURES ON FOLLOWING PAGE

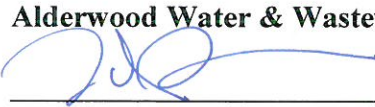
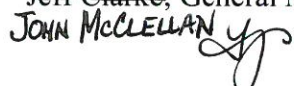
In witness whereof, this Agreement has been executed by each party on the date(s) below:

City of Bothell


Jennifer Phillips, City Manager

4/30/18
Date

Alderwood Water & Wastewater District


Jeff Clarke, General Manager (ACTING)

JOHN McCLELLAN

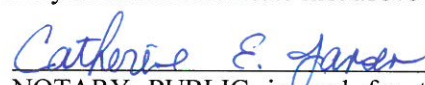
6/18/18
Date

STATE OF WASHINGTON) ss.
COUNTY OF KING)

On this 30th day of April, 2018, Jennifer Phillips, known to me to be the City Manager of the City of Bothell, a municipal corporation, personally appeared before me, acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.


Witness my hand and official seal hereto the day and year in this certificate first above written.



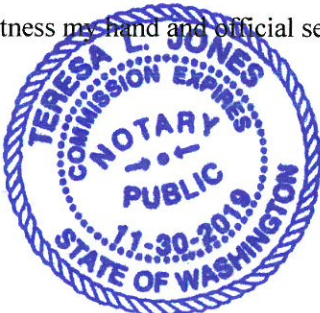

NOTARY PUBLIC in and for the State of Washington, residing at Bothell, WA.

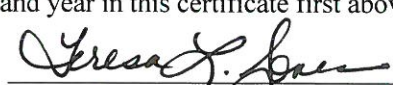
My Commission Expires: 2-8-21

STATE OF WASHINGTON) ss.
COUNTY OF KING)

On this 18th day of JUNE, 2018,  JOHN McCLELLAN, known to me to be the General Manager of Alderwood Water & Wastewater District, a municipal corporation, personally appeared before me, acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument.

Witness my hand and official seal hereto the day and year in this certificate first above written.




NOTARY PUBLIC in and for the State of Washington, residing at Everett.

My Commission Expires: 11-30-2019

EXHIBIT A

Utility Work Description

Alderwood Water & Wastewater District, in conjunction with City of Bothell's 228th Street SE Pavement Overlay Project, will have the City's Contractor adjust water valve boxes and sewer manholes to grade after pavement work is done. These are Alderwood Water & Wastewater District Project Nos. S1802 AND W1802. An estimate of the scope of Utility Work and the costs associated with it, based on the preliminary design, is as follows:

DESCRIPTION	PLAN QTY	UNIT	UNIT COST	TOTAL COST
Adjust Manhole (S.P. 7-05)	13	EA	\$ 950	\$ 12,350.00
Adjust Water Valve Box (S.P. 7-12)	51	EA	\$ 750	\$ 38,250.00
Total Improvement Costs				\$ 50,600.00

EXHIBIT B

Preliminary Cost Summary

Total Improvement Cost

50,600.00 *Am*
~~\$ 45,500.00~~

WSST per WA State Revenue Rule 171

(Contractor shall include for compensation
the amount of any taxes paid in the various
unit Bid prices or other Contract amounts)

\$ 0.00

Contingency (15% of Improvement Costs)

\$ 7,590.00

Subtotal

\$ 58,190.00

Engineering Design

\$ 0.00

Construction Management, Contract

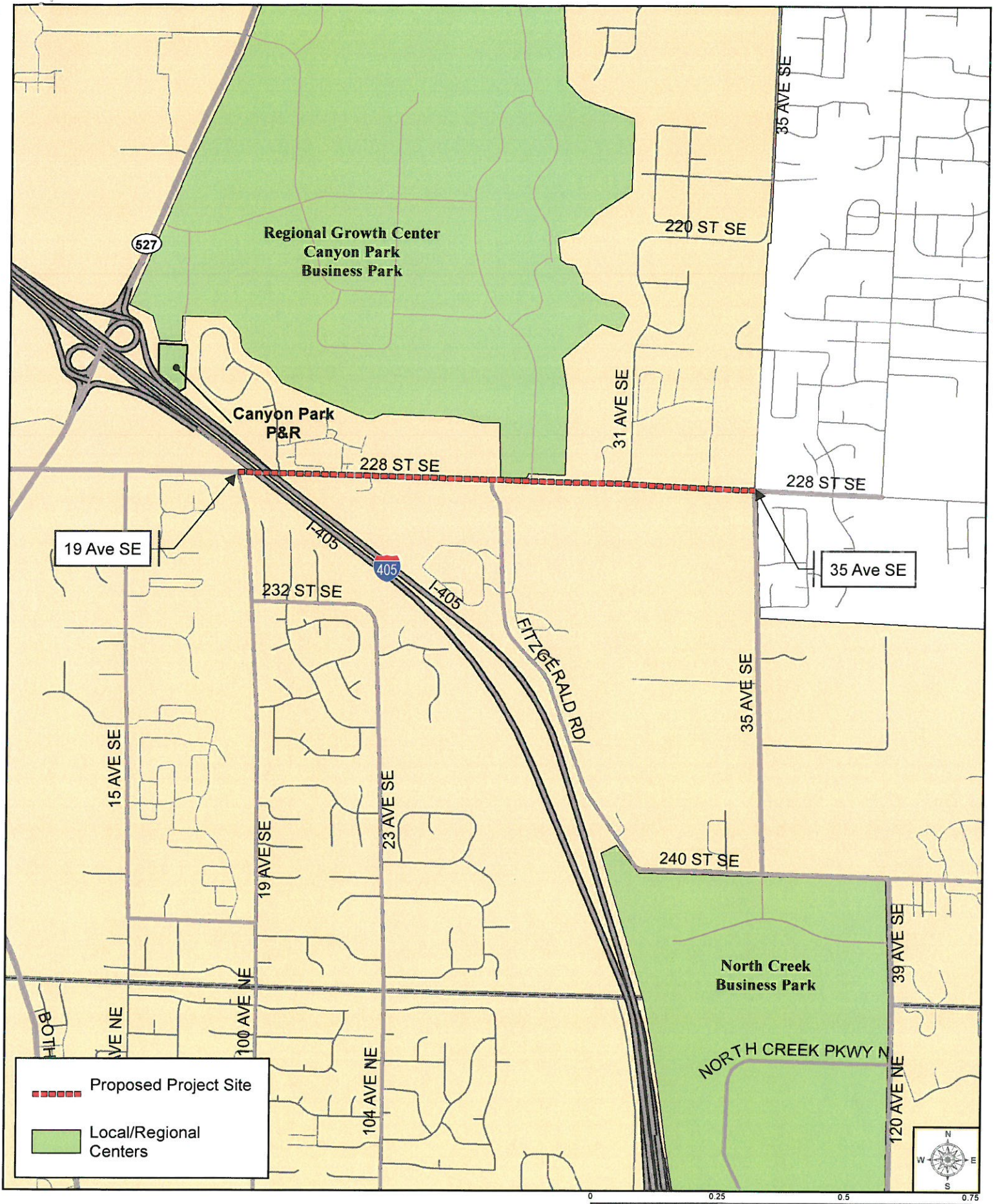
Administration, Construction Inspection, & Overhead

(Estimated at 20% of Improvement Costs)

\$ 10,120.00

Total Estimated Utility Work Costs

\$ 68,310.00



228th Street SE Overlay Project