

After recorded return to: City of Bothell - City Clerk Division
18415 - 101st Avenue NE
Bothell, WA 98011

Agencies: City of Bothell and the Alderwood Water & Wastewater District

Tax Account No.: N/A

Legal Description: N/A

Reference No. of Documents Affected: Not Applicable

Filed with the Auditor pursuant to RCW 39.34.040

Document Title: Bothell-Everett Highway & 228th Street SE Intersection Safety
Improvements Project, Federal Aid Project HSIP-2570(008)

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BOTHELL AND ALDERWOOD WATER & WASTEWATER
DISTRICT FOR CONSTRUCTION ASSOCIATED WITH
Bothell-Everett Highway & 228th Street SE Intersection Safety Improvements Project,
Federal Aid Project HSIP-2570(008)**

THIS AGREEMENT, made and entered into this 20th day of September, 2016, by and between the ALDERWOOD WATER & WASTEWATER DISTRICT, hereafter called the "DISTRICT", and THE CITY OF BOTHELL, hereafter called the "CITY," both of which are located in and existing under the laws of the State of Washington.

WHEREAS, the CITY has concluded that the **Bothell-Everett Highway & 228th Street SE Intersection Safety Improvements 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, in the course of the Project, it is advantageous for the project schedule to include the DISTRICT's facility adjustments in the CITY's construction contract; 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 Adjustments"); 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, 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 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, it is mutually agreed as follows:

I. PURPOSE

The purpose of this Agreement is to set forth the mutual obligations and rights of the CITY and the DISTRICT for the accomplishment of the Utility Adjustments, also known

as DISTRICT Project Nos. W1604 and S1604 and described in Exhibit "A" which is attached hereto and incorporated herein by this reference.

II. DURATION

This Agreement shall become effective immediately upon the signing by all parties and recording with the Snohomish County Auditor and shall remain in effect until the Utility Adjustments have been accepted by the DISTRICT and the DISTRICT has paid the CITY in full; provided, that the respective indemnification obligations of the CITY and the DISTRICT in Section VI shall survive the expiration or termination of this Agreement. The parties anticipate that the PROJECT will be completed by July 2016.

III. CITY RESPONSIBILITIES

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 CITY's Design Contract include the Utility Adjustments 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 Adjustments on a weekly or other agreed upon interval. Inspection of construction activities shall not constitute a guarantee or warranty of the adequacy of performance.

IV. DISTRICT RESPONSIBILITIES

A. The DISTRICT shall be solely responsible for all costs associated with the Utility Adjustments, and reimburse the CITY in accordance with the terms of Section V below.

B. The DISTRICT shall make all reasonable efforts to cooperate with the CITY's Contractor in facilitating the Utility Adjustments and make necessary personnel available so as to not delay the Contractor's construction schedule.

C. The DISTRICT shall, within ten (10) calendar days after notification of completion of the Utility Adjustments, issue notification of any deficiencies or issue written

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 Adjustments shall be considered complete and accepted by the DISTRICT.

D. 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.

E. 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.

V. PAYMENT

A. The DISTRICT agrees to set aside funds for payment to the CITY for the Utility Adjustments in an amount not less than the estimated cost for the bid items for the Utility Adjustments and for an amount necessary to reimburse the CITY for construction management, inspection and administration services related to the Utility Adjustments. The DISTRICT's estimate of costs is shown in Exhibit "A", which is attached hereto and incorporated herein.

B. 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 Contractor's unit price bid on the Utility Adjustments. 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 all contract items related to the DISTRICT's Utility Adjustments, as shown in the bid proposal of the successful bidder; and
- (ii) The cost of any extra work associated with the Utility Adjustments within the 15% contingency, and any costs for extra work that have been approved in accordance with Section VIII. A.

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. HOLD HARMLESS

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.

VII. 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 in which case the DISTRICT shall only be responsible for costs incurred by the CITY prior to the CITY's notice of termination.

B. The DISTRICT has the right to terminate this Agreement prior to the award of the construction contract, in which case the DISTRICT shall be responsible for all costs incurred by the CITY in executing the necessary contract changes to delete the DISTRICT's portion of the work.

C. After award of the construction contract by the CITY, the DISTRICT may terminate the Agreement only upon 30 days prior, written notice to the CITY. In that event, the DISTRICT shall be responsible for all costs incurred by the CITY and all bona fide costs of the contractor in deleting the DISTRICT's work items from the Project Scope of Work as determined by the DISTRICT.

VIII. EXTRA WORK

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 as follows:

A. 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 "A" as may be adjusted in accordance with the accepted bid price.

B. Any change in the work which would cause the "Total Estimated Utility Work Costs" to exceed the amount shown in Exhibit "A", 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 Adjustments cost.

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.

IX. PROJECT RECORDS

During the progress of the construction and for a period not less than three years from the final payment to the CITY, all records pertaining to the Project and accounting shall be kept available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the Project will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the three-year retention period.

X. DISPUTES

In the event the CITY and DISTRICT disagree over whether the Contractor has fulfilled its obligations under the construction contract, the CITY reserves the right to make the final decision as to the acceptability of the work. If a dispute arises between the DISTRICT and the CITY, the parties agree that they will attempt to resolve the issues through mutual negotiation. In the event that the parties are not able to reach an agreement through such negotiation, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to the institution of any lawsuit arising under this Agreement. The parties agree to share the costs of mediation equally. If the parties are not able to resolve their dispute at mediation, then the parties agree that the dispute shall be resolved through binding arbitration through the auspices of JAMS in Seattle and pursuant to the AAA streamlined rules of arbitration. The arbitrator shall have authority to award costs and attorneys' fees to the substantially prevailing party.

XI. CHANGES AND MODIFICATIONS

Either Party may request changes, amendments, or additions to any portion of this Agreement; however, except as otherwise provided in this Agreement, no such changes, amendments, or additions to any portion of this Agreement shall be valid or binding upon either party unless it is in writing and executed by both parties and recorded with the County Auditor. All amendments shall be attached to and made part of this Agreement.

XII. NOTICES

Unless otherwise directed in writing, notices, reports and payments shall be delivered to each party as follows:

The City of Bothell
Public Works Dept.
Attn: Nduta Mbuthia

18415 - 101st Ave NE
Bothell, WA 98011

Alderwood Water &
Wastewater District
Attn: Chris Schumacher, P.E.

3626 - 156th Street S.W.
Lynnwood, WA 98087-5021

Notices mailed by either party shall be deemed effective on the date mailed. Either party may change its address for receipt of reports, notices, or payments by giving the other written notice of not less than five days prior to the effective date.

XIII. ENTIRE AGREEMENT

These provisions represent the entire and integrated agreement of the parties and may not be modified or amended except as provided herein. Any understanding, whether oral or written which is not incorporated herein is expressly excluded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

THE CITY OF BOTHELL

By: [Signature] 9/30/2016
Bob Jean Date
Interim City Manager

ALDERWOOD WATER &
WASTEWATER DISTRICT

By: [Signature] 7/12/16
Jeff Clarke Date
General Manager

Approved as to form only:

[Signature] 8/29/16
City Attorney Date

EXHIBIT A

ALDERWOOD WATER & WASTEWATER DISTRICT UTILITY CONSTRUCTION ASSOCIATED WITH

Bothell-Everett Highway & 228th Street SE Intersection Safety Improvements Project,
Federal Aid Project HSIP-2570(008)

Utility Adjustments Work Description

Alderwood Water & Wastewater District, in conjunction with City of Bothell's Bothell-Everett Highway & 228th Street SE Intersection Safety Improvements Project, will have the City's Contractor adjust water valve boxes and sewer manholes to grade after pavement work is done. An estimate of the scope of Utility Adjustments work and the costs associated with it is as follows:

DESCRIPTION	PLAN QTY	UNIT	UNIT COST	TOTAL COST
Adjust Structure to Grade (S.P. 7-05.5): 9 water valves and 4 SS manholes	13	EA	\$ 750.00	\$ 9750.00
Unanticipated Roadway Changes (Force Account work, reimbursed)	FA	EST	\$ 3,198.95	\$ 3,198.95
TOTAL IMPROVEMENT COSTS				\$ 12,948.95

Cost Summary

Total Improvement Costs	\$ 12,948.95
Sales Tax on Bid Items (Exempt)	N/A
Contingency (15% of Improvement Costs)	\$ 1,942.34
Subtotal	\$14,891.29
Engineering Design	\$ 0
Construction Management, Contract Administration, Construction Inspection & Overhead (Estimated at 20% of Improvement Costs)	\$ 2,978.26
Total Estimated Utility Work Costs (rounded)	\$17,870