

**ALDERWOOD WATER & WASTEWATER DISTRICT
J2206 PROPERTY MANAGEMENT SERVICES
REQUEST FOR PROPOSALS**

I. INTRODUCTION

A. This Request for Proposals (“RFP”) outlines the information necessary to understand the consultant selection process and the required documentation a Proposer must submit. After reviewing this RFP, any firm that determines it has the necessary expertise and experience and could successfully perform the required services may submit its Submittal, addressing the items set forth herein. A general overview of the selection process is as follows:

1. Proposers shall email or deliver the Submittal to the Alderwood Water & Wastewater District (District) no later than **4:00 p.m. on June 15, 2022**, after which time they will be reviewed and evaluated. Applicants may submit their materials one of two ways, via email (preferred), or by submitting a hard copy to the District (must be received by the deadline).
 - If submitting via email – the Submittal shall be emailed to:
Jen Kennedy, MPA, Management Analyst
JKennedy@awwd.com
 - If submitting a hard copy, the Submittal shall be delivered to:
Alderwood Water & Wastewater District
3626 156th Street SW
Lynnwood, WA 98087-5021
Attn: Jen Kennedy, MPA, Management Analyst
2. The District may, at its option, contact a Proposer and ask clarifying questions concerning the Proposer’s Submittal.
3. At the District’s option, the District may conduct interviews with the Proposers qualifying as finalists. Anticipated date of interviews (if needed) will be conducted June 21-22, 2022.

B. The purpose of this RFP is to obtain a qualified consultant team to provide immediate work under this RFP following execution of the contract, for turnkey property management services for a portfolio of District properties. This portfolio is comprised of both commercial and residential units within four buildings, with a total

of nine occupied spaces. The anticipated timeframe for this service contract is for two years, having an option for extension of up to two additional one-year periods. The scope of services shall include but are not limited to:

1. Lease Management

- a. Execute, administer, and enforce terms of all lease agreements, in compliance with federal, state, and local laws.
- b. Collect rents, fees, and late charges.
- c. Administer, collect, track, and provide accounting of charges from applicable tenants. This may include maintenance, operating costs and other related charges typically categorized as a “Multi-Tenant – Triple Net (NNN)” for commercial tenants.
- d. Represent the District’s interest in all matters involving the tenant under the lease agreement.
- e. Be responsible for creating, updating, and renewing tenant leases.
- f. Potential recruitment of tenants to fill vacancies as directed by the District.
- g. Represent and negotiate for the district in any lease terminations.

2. Property Management

- a. Provide management of District properties and corresponding tenant accounts, including:
 - i. Creation and management of tenant ledgers and tenant statements.
 - ii. Management of all NNN-related expenses for applicable commercial tenants and provide annual reconciliation of NNN charges and tenant accounts.
- b. Serve as the emergency contact for property repairs and tenant-related concerns on a 24-hour a day basis.
- c. Ensure that rental properties are well maintained and provide safe and sanitary conditions for occupants.
- d. Have access to skilled specialists for repair, preventative maintenance, grounds/exterior maintenance work, and after conferring with the District, contracting with said subcontractors to respond to building and property needs.

3. Reporting & Correspondence

- a. Provide to the owner a monthly property report, monthly tenant account summary, and corresponding invoice in a format approved by the owner, detailing the activities completed, costs incurred, and any items that may be pertinent to the owner.
- b. Maintain physical and electronic copies of all correspondences and communications with tenants.
- c. Complete and provide to the owner an annual report and financial statement (due within 30 days of the first of the year) of the status of the landowner portfolio of properties.

II. PROJECT BACKGROUND

- A. Alderwood Water & Wastewater District (District) is a special purpose district, which is responsible for providing water and sanitary sewer service to areas within southwestern Snohomish County. The District has purchased properties for potential of expanding District facilities within our service area. The District is bounded on the north by the City of Everett, on the west by Puget Sound, on the south by the King/Snohomish County line and on the east by an irregular boundary line extending from the Woodinville area to Mill Creek. The District provides water service to the City of Brier and portions of the Cities of Mill Creek, Mukilteo, and Bothell as well as unincorporated areas of Snohomish County. The District provides sewer service to portions of the Cities of Mill Creek, Mukilteo, and Bothell as well as unincorporated areas of Snohomish County.

III. PROCUREMENT PROCESS

A. General Information

1. Terms and Conditions:

- a. The procurement of these consultant services will be in accordance with applicable District, federal, state, and local laws, regulations, and procedures. The District reserves the right to reject any and all Submittals received. The District also reserves the right at its sole discretion to waive minor administrative irregularities contained in any submittal.

- b. The District reserves the right to request clarification of information submitted, and to request additional information from any party submitting proposals.
 - c. In accordance with the provisions of the RFP, the District will evaluate the Submittals. The final selection, if any, will be that consultant team which, in the opinion of the District, best meets the requirements set forth in the RFP and is determined to be the most highly qualified for the services requested.
 - d. The consultant will be required to assume responsibility for all services offered in the proposal, whether or not work will be directly performed by the consultant. Further, the consultant will be the sole point of contact for the District with regard to contractual matters, including payment of any and all charges resulting from the contract.
2. **Costs borne by Proposers:** All costs incurred in the preparation of a Submittal and participation in this RFP and negotiation process shall be borne by the proposing firms.
 3. **Public Disclosure:** Once in the District's possession, Submittals shall become property of the District and considered public documents under applicable Washington State laws. All documentation that is provided to the District may be subject to disclosure in accordance with Washington State public disclosure laws.

B. Protests

1. **Time to File a Protest:**
 - a. Any prospective Proposer may file a protest challenging the requirements identified in the RFP provided such protest is received no later than ten (10) calendar days prior to the date established for responding to this solicitation.
 - b. A financially interested proposer may file a protest based on evaluation of Submittals provided such protest is received no later than five (5) calendar days after the protesting party knows or should have known of the facts and circumstances upon which the protest is based.
 - c. In no event shall a protest be considered if all Submittals are rejected or, after execution of this contract.

2. **Form of Protest:** A protest shall be in writing and addressed to: Alderwood Water & Wastewater District, 3626 156th Street SW, Lynnwood, WA, 98087, Attention: Kathy Watne, Administrative Manager for Maintenance and Operations. The protest shall include the following:
 - a. The name, address and telephone number of the party protesting or their representative;
 - b. The RFP number and contract title under which the protest is submitted;
 - c. A detailed description of the specific grounds for protest and any supporting documentation;
 - d. The specific ruling or relief requested.
3. **Determination of Protest:** Upon receipt of a timely written protest, the Administrative Manager for Maintenance and Operations shall investigate the protest and shall, prior to execution of the contract respond in writing to the protest. The Administrative Manager for Maintenance and Operations decision shall be considered the final action by the District.
4. **Compliance with Protest Process:** Failure to comply with these protest procedures will render a protest untimely and inadequate and may result in rejection thereof by the District.
5. **Exhaustion of Administrative Remedies:** As a mandatory condition precedent to initiating a lawsuit against the District, a prospective Proposer or a Proposer shall comply with the Protest Procedures defined herein.
6. **Venue:** By responding to this RFP and for the convenience of the parties, the prospective Proposer or a Proposer acknowledges and agrees that a lawsuit or action related to or arising out of this procurement shall be brought in the Superior Court of Snohomish County, Washington.

C. Schedule

1. **Anticipated Schedule:** The selection process is anticipated to proceed as outlined below and is subject to change:

<u>Date</u>	<u>Selection Process</u>
May 26, 2022	Public Announcement of the RFP
June 2, 2022	Public Announcement of the RFP
June 15, 2022	Submittals Due (4:00 p.m.)
June 21-22, 2022	Tentative Interview Dates

Selection of finalists and AWWD Board approval of selected consultant to follow at a later date.

2. **Notification:** The District will notify firms of any changes to the RFP by addenda.
3. **Addenda:** In the event it becomes necessary to revise any part of the RFP, addenda will be posted to the District's website at: <http://www.awwd.com>. It is the responsibility of the firm to verify whether any addenda have been posted.

D. Negotiations

1. At the completion of the selection process, the selected Proposer will enter into contract negotiations with the District. Negotiation of a contract will be in conformance with applicable federal, state, and local laws, regulations, and procedures. The negotiated cost and pricing data, once agreed to by the District and the Consultant, shall form the basis for a billing/payment provision.
2. At the beginning of negotiations, the selected Proposer and District shall meet to establish a Negotiation Schedule. Negotiations shall begin with the Scope of Services (SOS) identified in the Qualifications Statement and the Work Plan Level of Effort (LOE) submitted by the selected Proposer.
3. If the District and selected Proposer cannot come to terms on LOE and SOS after three (3) revisions to the SOS and LOE, the District may discontinue negotiations and go to the next highest rank Proposer. Failure to reach agreement after three (3) revisions demonstrates an inability to reach agreement within a reasonable timeframe.

IV. INSURANCE REQUIREMENTS

- A. By the date of execution of a Contract, the Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property, including products-completed operations which may arise from, or in connection with, the performance of work hereunder by the Consultant, its agents, representative, employees, and/or sub-consultants. The Consultant or sub-consultant shall pay the cost of such insurance. The Consultant may furnish separate certificates of insurance and policy endorsements from each sub-consultant as evidence of compliance with the insurance requirements of this Contract. Consultant shall carry and provide proof of coverage and limits upon request by the District for the following insurance:

- i. Automobile Liability Insurance. Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- ii. Commercial General Liability. Limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability.
- iii. Professional Liability. Limits no less than \$1,000,000.00 per occurrence and aggregate.
- iv. Before commencing work and services, Consultant shall provide to the District a Certificate of Insurance evidencing the required insurance. All certificates of insurance shall be current for the duration of the contract and shall include on each page the Project/Contract Name and Number.
- v. The District shall be named as an additional insured on the Commercial General Liability Insurance Policy with regard to work and services performed by or on behalf of Consultant, and a copy of the endorsement naming the District as an additional insured be attached to the Certificate of Insurance. All certificates of insurance shall include on each page the Project/Contract Name and Number.
- vi. The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the District; and (3) shall state that the District will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.
- vii. Any payment of deductible or self-insured retention shall be the sole responsibility of Consultant and shall not limit or apply to the Consultant's liability to the District.

V. EVALUATION AND SELECTION CRITERIA

A. All Submittals will be evaluated by a Consultant Selection Panel ("Panel"), which will be responsible for ranking of the Submittals. The criteria outlined below will be used in evaluating the Submittals and determining the most qualified Proposer(s). A total of **100 points** (excluding a potential interview) has been assigned to the Evaluation Criteria. The maximum points possible will follow each criterion listed. The points indicate relative weight or importance given to each criterion. Evaluators will use the points to score each Submittal. Each evaluator will put the scores in rank order, with the highest scored Proposer 1st, the second-highest scored Proposer 2nd, etc. This ranking will then be totaled. From this ranking the District will either short list Proposers for interviews, or (if there are no interviews) recommend the most qualified Proposer to the Board of Commissioners for approval to begin negotiations.

B. Criteria:

1. Experience & Knowledge (Property & Lease Management) – 40 points
2. Work Plan (Tenant Accounts and Property Bookkeeping) – 30 points
3. Facilities Maintenance & Tenant Engagement – 15 Points
4. Services/Duties Understanding – 10 points
5. References – 5 points

VI. DOCUMENTATION

- A. The prime Proposer shall submit **one (1) copy** of the Submittal.
- B. Submittals shall be 20 – 8.5x11 pages or less, excluding organizational chart, resumes, and cover letter.
- C. The Submittal shall consist of the following parts:
1. **Letter of Interest:** The Letter of Interest shall contain the following information:
 - RFP Title;
 - Proposer's name, mailing address, telephone, fax number, contact person, and contact person's email; and
 - Complete list of any proposed sub-consultants.
 - Proposed methodology for billing/charges for services performed as a property manager.

- Provide three (3) references who may speak to the Proposer’s experience with property/lease management, tenant relations, property maintenance, and tenant ledgers and related accounting systems.
2. **Qualifications Statement:** The submittal shall include:
- General statement of the project understanding of the scope of services outlined in Section I.B. (1-3);
 - An organization chart for the project team that will be committed to the project including any proposed sub-consultants;
 - The project team’s experience in key areas of the required services, including:
 - A summary of all relevant property management experience performed, especially any experience involving a public agency (if applicable);
 - An overview of the tenant accounting/ledger system their organization uses to track and manage tenant accounts, including:
 - Process for receiving rents;
 - Tracking tenant communications; and
 - Paying invoices.
 - An approach to communicating with the District, and the tenants;
 - Relevant experience of the proposed key individuals that will be working with the District:
 - Any additional information the Proposer feels should be considered as part of the RFP review process.

The submittal shall be presented in a clear, comprehensive, and concise manner and shall be submitted in a complete package by the prime Proposer.

Attachment 1 – Sample Agreement

AGREEMENT FOR PROPERTY MANAGEMENT SERVICES FOR J2206 ALDERWOOD WATER & WASTEWATER DISTRICT

THIS AGREEMENT, made and entered into by and between Alderwood Water & Wastewater District, Snohomish County, Washington, hereinafter referred to as "District", and **@@consultant name**, with a principal place of business **@@address** ("Property Manager"), collectively referred to as "Parties", shall be effective upon the authorized signatures of both Parties to this Agreement ("Effective Date").

SECTION 1: BACKGROUND

- 1.1 The District desires to retain a Property Manager to perform certain professional services, including turn-key, full-service property management services of designated District owned properties ("Project"). The District solicited for professional services as required by RCW 39.80.
- 1.2 The Property Manager represents it has availability and offers to provide qualified personnel, equipment, and facilities necessary to accomplish such services required for the Project within the required time.
- 1.3 The Parties enter into this Agreement. The term Agreement and Contract shall be used interchangeably and refer to this Agreement.

SECTION 2: PERIOD OF PERFORMANCE

- 2.1 All required work and services specified in the terms and conditions of this Agreement shall be completed on the **@@ Day of Month, Year**, unless extended or terminated earlier by the District pursuant to the terms and conditions of this Agreement.
- 2.2 Time is a material consideration in the performance by the Property Manager under this Agreement. The Property Manager shall complete its services within any established milestones and task completion dates, and the Period of Performance, set forth in the Scope of Services. The completion dates for tasks may be modified by a written directive; however, the Period of Performance for the Agreement may only be modified through an amendment. No completion dates shall be extended because of any unwarranted delays attributable to the Property Manager. Completion dates may be extended in the event of a delay caused by the District which results in a delay in the performance of an affected task, or because of unavoidable delay caused by any governmental action or other conditions beyond the control of the Property Manager, which could not be reasonably anticipated and which results in a delay in the performance of an affected task.
- 2.3 Time Extensions. The Total Price, Period of Performance and task budgets shall not be increased because of any unwarranted delays or costs attributable to the Property Manager. In the event of a delay not attributable to the Property Manager which (1) delay could not be reasonably anticipated and (2) results in an increase in costs to perform the work, the District may, through the execution of an amendment, increase the Total Price, Period of Performance and/or tasks budget.

SECTION 3: ADMINISTRATION AND SUPERVISION

3.1 **DISTRICT.** An employee of the District, hereinafter called the "Project Manager," who shall be designated in writing by the District, shall perform day-to-day management of this project. Unless otherwise indicated in writing by the General Manager or its designee, the Project Manager will issue notices to proceed, approve all requests for payment, authorize termination or modification of tasks, and approve in writing changes to the task budgets outlined in the Cost Summary, Exhibit B attached hereto and incorporated by reference. The Project Manager will also be responsible for determining when the Property Manager has satisfactorily performed all work and for ensuring that the Property Manager complies with all provisions of this Agreement.

3.2 **PROPERTY MANAGER.** The Property Manager represents that it has, or will obtain, all personnel necessary to perform the services required under this Agreement and that such personnel shall be qualified, experienced, and licensed as may be necessary or required by laws and regulations to perform such services. All services required under this Agreement shall be performed by the Property Manager, its employees, or by designated subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel whose selection has been authorized by the District; provided, that the District's authorization shall not relieve the Property Manager from any duties or obligations under this Agreement or at law to perform in a satisfactory and competent manner. All contractual duties, requirements and obligations that the Property Manager owes to the District shall also be owed to the District by the Property Manager's subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel retained to perform the work pursuant to this Agreement. The term "Property Manager" shall refer to **@@ consultant name** and all of its designated subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel.

- A. **Substitution of Personnel.** The Property Manager recognizes and agrees that if a change is made substituting or changing assigned key personnel, the Property Manager shall be responsible for any and all costs associated with "Transfer of Knowledge and Information". The Transfer of Knowledge and Information shall be defined to include the labor hours spent reviewing project documentation, participating in meetings with Project personnel, and participating in site visits to familiarize oneself with the Project and project location(s). The District shall not pay for any time spent for the "Transfer of Knowledge and Information".
1. The Property Manager shall provide sufficient advance notice of any intention to remove or reassign key personnel. The Property Manager shall not remove or reassign the key personnel assigned to this Project without written consent from the District. Exhibit E, Key Personnel, is a listing of key individuals for this work. Notice for the substitution of individuals and positions identified as Key Personnel shall include the following:
 - a. An explanation of the reason for the reassignment or removal;
 - b. The name of the person proposed to replace the individual; and
 - c. Identification of the experience and qualifications of the individual proposed.
 2. For individuals who are not identified as "Key Personnel" in Exhibit E, the Property Manager shall provide documentation supporting the billing rate for the substituted personnel prior to submitting an invoice and the billing rate shall not exceed 110 percent of the originally assigned personnel's billing rate.
 3. **District Request Removal Personnel.** The Property Manager shall remove from the Project any personnel if, after the matter has been thoroughly considered by the District and the Property Manager, the District considers

such removal necessary and in the best interests of the Project and so advises the Property Manager in writing.

SECTION 4: SCOPE OF SERVICES

- 4.1 The District hereby retains the Property Manager upon the terms and conditions contained herein to perform certain work and services on the Project. The work and services for the Project to be performed by the Property Manager are set forth in Exhibit A, Scope of Services, attached hereto, and incorporated herein by this reference.
- 4.2 The District shall make available to the Property Manager, without cost, tenant lease agreements, tenant ledger statements, maintenance and performance records, and other relevant data, and property descriptions of all District facilities related to the Project, which are readily available, and on file at the District. Property Manager shall be entitled to rely upon such information consistent with the applicable standard of care. These documents are available solely as additional Information to the Property Manager and do not relieve the Property Manager of its duties and obligations under this Agreement nor constitute any representation or warranty by the District as to conditions or other matters related to the Project.
- 4.3 It shall be the responsibility of the Property Manager to gather and become familiar with all property and tenant information including existing improvements.

SECTION 5: CHANGES IN SCOPE OF SERVICES

- 5.1 Any direction from the District to perform work that results in an increase or decrease in scope, changes to the Total Price or Period of Performance, or changes impacting the Scope and Budget for the project shall be made only by an amendment prior to the work being performed. A member of the Board of Commissioners for the District is the only authorized District representative who may sign amendments.
- 5.2 In the event the Property Manager identifies something that may impact the scope of services, and/or cost, Property Manager shall inform the Project Manager within five (5) business days of the event and possible impacts to scope, and cost. If appropriate, the parties shall execute an amendment.
- 5.3 The District may, at any time, by written amendment direct the Property Manager to make additions within the general scope of the services or work to be performed under this Agreement, delete portions of the Project, or revise portions of the work. Any changes within the general scope of services, which result in an increase or decrease in time of performance or cost, shall only be made by amendment.

SECTION 6: RESPONSIBILITY OF THE PROPERTY MANAGER

- 6.1 Standard of Care
 - A. The Property Manager shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all services performed pursuant to this Agreement. The Property Manager shall perform its work to conform to generally accepted professional standards applicable to the types of services and work provided hereunder. The Property Manager shall be responsible for the professional standards, performance and actions of all persons and firms performing work pursuant to this Agreement. The Property Manager shall, without additional compensation, correct or revise any errors, omissions or specific breaches of a contractual obligation in such services.

- B. The District's approval of services rendered hereunder shall not in any way relieve the Property Manager of responsibility for the technical adequacy or accuracy thereof. Neither the District's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- C. Consistent with generally accepted professional standards, the Property Manager shall promptly bring to the District's attention any concerns that the Property Manager has regarding the design, operations, conditions, of service requests or any finding, conclusions, or final decisions made by the District. The Property Manager shall, at the District's request, provide the District with a written evaluation of its concerns, along with proposed solutions to any identified problems.

6.2 Maintenance of Contract Documentation

- A. Upon written request by the Project Manager, the Property Manager shall provide the District with access to all documents and correspondence related to the Contract, District properties, and related services provided thereunder, including e-mail communications, memoranda, and all other written materials prepared or used in performance of work and services on this Project.
- B. The Property Manager is cautioned that information and documentation submitted to the District may become a public record in accordance with the Revised Code of Washington and may not be exempt from disclosure under the Washington State Public Disclosure Act.
- C. The Property Manager acknowledges that unauthorized disclosure of information or documentation concerning this Project may cause substantial economic loss or harm to the District. Except as otherwise required by Court Order or subpoena, the Property Manager shall not without prior written authorization by the Project Manager allow the release, dissemination, distribution, sharing, or otherwise publication or disclosure of information or documentation obtained, discovered, shared or produced pursuant to this Agreement.

SECTION 7: COMMENCEMENT

- 7.1 Notice to Proceed. After execution of this Agreement by the District and the Property Manager, the District will issue a written notice to proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified work products and shall set forth the date of commencement of the work, a description of the work to be performed, and the budgets for such tasks. Upon receipt of a notice to proceed, the Property Manager shall promptly commence work.

SECTION 8: DELIVERABLES AND MONTHLY REPORTS

- 8.1 The Property Manager shall provide deliverables during the duration of the contract as outlined in Exhibit A – Scope of Services.
- 8.2 Monthly Reports. Unless otherwise stated in the Scope of Services, monthly reports shall be provided no later than the 10th day of each calendar month during the duration of the contract, the Property Manager shall submit to the Project Manager, a monthly report, in a format approved by the Project Manager, sufficient to show any work completed on-site at one of the District's properties, the status of District properties (including updated photos of the property each month), tenant payments, and related District concerns. At a minimum the monthly report shall identify status of all payments from current tenants (rent and NNN), any communications of note with tenants, any

maintenance work completed (planned or unplanned) and corresponding costs, budget status, amendments, all issues that may result in completion of any task beyond the anticipated schedule or contract budget, and all issues that may result in an increase in the contracted amount.

SECTION 9: COMPENSATION

- 9.1 Subject to the provisions set forth in this Agreement, the District will pay the Property Manager for authorized and satisfactorily completed work and services rendered under this Agreement. No more than monthly progress payments shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals, but in no case shall the total progress payment exceed the Total Price as defined herein, without the prior written authorization of the District through a contract amendment. The amount to be paid to the Property Manager shall be computed as hereinafter set forth; provided, that such payment shall not exceed a maximum amount of **@@Not to Exceed Amount ("Total Price")**. In the event the Property Manager incurs costs in excess of the Total Price, the Property Manager shall pay such excess from its own funds and the District shall not be required to pay any part of such excess and the Property Manager shall have no claim against the District on account thereof.
- 9.2 Compensation for work and services shall be based on standard billing rates and reimbursed direct expenses but not to exceed the Total Price. Costs to be paid are identified in the Cost Summary, which is attached hereto as Exhibit B and incorporated herein by this reference, and comprise the following:
- A. **Labor Costs.** Labor Costs shall be billed based on approved Billing Rates identified in the Costs Summary (Exhibit B) for such individual.
1. The parties agree to the Billing Rates as set forth in Exhibit B, which rates shall be used during the entire term of this Agreement, including all amendments; provided however, Billing Rates may be subject to reasonable adjustments but only in accordance with paragraph 8.4 below.
- B. **Other Direct Costs.** Other Direct Costs ("ODC") are those costs which can be specifically identified with the Contract objectives, are required for performance of the Contract, are approved in advance in writing by the Project Manager, are inclusive of subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel costs, and are actually incurred. Allowable ODC's are as included in Exhibit D to this Contract. Markup on ODC's shall be billed at percentages included in Exhibit D.
- 9.3 **Unallowable Costs.** The District shall not pay for any costs or direct charges associated with or relating to the following activities:
- A. Any resubmission, changes to or adjustments in the invoices, and fixing improper invoices and the preparation and submission of monthly invoices if this cost is not included In the Property Manager's overhead.
- B. Preparation of, discussion and/or negotiation of a request for adjustments in any Billing Rate, Overhead Rate and/or Labor Escalation percentage; and
- C. Changing or reassigning personnel, including but not limited to preparing requests concerning Transfer of Knowledge for Key Personnel.
- D. Preparation of any documentation related to, discussion of, or negotiation of equitable adjustment, disputes, claims or Section 15, Disputes and Remedies.
- E. Meals, except when in Travel Status.
- 9.4 Limitations on Changes to Billing Rates.

- A. Any changes to Billing Rates shall have no impact on the Total Price.
- B. Overhead Rates.
 - 1. The Overhead Rates are identified in the Cost Summary, Exhibit B. The Overhead Rates shall not be subject to modification.

C. Billing Rates

- 1. Should the Property Manager seek an adjustment in Billing Rate(s), Property Manager must notify the District in writing of its request to modify the existing Billing Rate. Property Manager shall submit only one request per year that must include all individual rate increase requests. This request shall include the amount of the increase in the rate for each rate increase. Annual Billable Rate(s) increases for cost-of-living adjustments per Exhibit B are authorized to occur January 1st of each new year, provided that no change in the Total Price occurs.

9.5 Invoice Process. The Property Manager shall submit to the Project Manager an invoice for payment for Project work completed to the end of the previous month. Such invoices shall be for work performed subsequent to that work covered by all previously submitted invoices and shall be computed pursuant to the rates and limitations set forth hereinabove.

- A. Invoices shall detail the work by task, hours and employee name for which payment is being requested; include copies of all invoices from subconsultants, vendors, maintenance and repair personnel for which payment is being requested; and shall itemize, and include copies of, receipts and invoices for the Other Direct Costs.
- B. In the event of a disputed invoice, the District shall pay the undisputed amounts and withhold from payment the disputed portion of the invoice.

9.6 Prompt Payment of subconsultants, vendors, and maintenance and repair personnel. Within ten (10) business days of receipt of a progress payment from the District that includes dollars for work performed by subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel, Property Manager shall pay such subconsultants, vendors, and maintenance and repair personnel out of such amounts as are paid by the District, for all work satisfactorily completed by same.

9.7 Final Payment. Final payment of any balance earned by and payment to the Property Manager for Project work will be made within thirty (30) calendar days after all of the following:

- A. Satisfactory completion of all work required by this Agreement;
- B. Receipt by the District of the reports, account statements, tenant ledgers, notes, and all other documents and/or deliverables which are required to be prepared and submitted by the Property Manager under this Agreement;
- C. Receipt by the District of a fully executed final statement of amounts Invoiced by and paid to each subconsultants, vendors, and maintenance and repair personnel under this Agreement; and,
- D. Execution and delivery by the Property Manager of a release of all claims against the District arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Property Manager from the operation of the release in stated amounts to be set forth therein.

9.8 No payment, whether monthly or final, to the Property Manager for any Project work shall constitute a waiver or release by the District of any claims, right or remedy it may

have against the Property Manager under this Agreement or by law; nor shall such payment constitute a waiver, remission or discharge by the District of any failure or fault of the Property Manager to satisfactorily perform the Project work as required under this Agreement.

SECTION 10: TERMINATION OF AGREEMENT

10.1 Termination for Default

- A. The District may terminate this Agreement, in whole or in part, in writing if the Property Manager substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the District. District's written notification shall state that Property Manager is in material breach of the contract and provide a minimum of fifteen (15) calendar days to cure the breach.
- B. If the District terminates all or part of this Contract for default, the District shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the Property Manager using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed services or other work and (b) any payment due to the Property Manager at the time of termination may be adjusted to the extent of any additional costs the District incurs because of the Property Manager's default. In such event, the District shall consider the actual costs incurred by the Property Manager in performing the Project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the District at the date of termination, the cost to the District of completing the work itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the District of the Project work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the District from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- C. Upon receipt of a termination notice the Property Manager shall at no additional cost to the District:
 1. Promptly discontinue all services affected (unless the notice directs otherwise);
 2. Terminate all subcontracts to the extent they relate to the work terminated; and
 3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, Official Project Documentation and other Project documentation, such other information and materials as the Property Manager or subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has paid the Property Manager for such items.

10.2 Termination for Convenience.

- A. The District may terminate this Agreement, in whole or in part, for the convenience of the District by providing the Property Manager with thirty (30) days' written notice. The District shall terminate by delivery to the Property Manager a Notice of Termination specifying the extent of the termination and the effective date.
- B. If the District terminates this Contract for convenience, the District shall pay the Property Manager only for the following items:

1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Contract and Exhibit B for services satisfactorily performed to the date of termination;
 2. Actual and reasonable Other Direct Costs incurred before the termination;
and
 3. Actual and reasonable termination settlement costs the Property Manager reasonably incurs relating to commitments which had become firm before the termination unless the District determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel and actual reasonable accounting and clerical costs related to preparing Termination Settlement Proposal.
- C. Upon receipt of a termination notice the Property Manager shall at no additional cost to the District:
1. Promptly discontinue all services affected (unless the notice directs otherwise);
 2. Terminate all subcontracts to the extent they relate to the work terminated;
 3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the District all data, drawings, specifications, calculations, reports, estimates, summaries, Official Project Documentation, other Project documentation, and such other information and materials as the Property Manager may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for the Project where the District has reimbursed the Property Manager for such costs;
 4. Take any action necessary, or that the District may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Property Manager and in which the District has or may acquire an interest.

SECTION 11: OWNERSHIP AND USE OF DOCUMENTS

- 11.1 Except for those standard details and design elements that pre-exist the services provided under this Agreement, reports, studies, drawings, specifications, calculations or other information developed under the terms of this Agreement shall become the property of the District after full payment to Property Manager for their preparation. Any modification or alteration, or reuse of drawings/plans, specifications and/or calculations for another project, without written verification or adaptation by Property Manager will be at the District's sole risk and without liability or legal exposure to Property Manager. District shall defend, indemnify, and hold Property Manager harmless from all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting, therefore. The District further acknowledges that it may receive certain materials from Property Manager by way of electronic file and agrees that should it modify such materials in connection with their subsequent use, that Property Manager shall bear no responsibility for the contents thereof.

SECTION 12: THIRD-PARTY CLAIMS AND DISPUTES

- 12.1 At the District's request, Property Manager will assist the District in review and evaluation claims and disputes, preparing information for the District's legal counsel, providing services as witness in litigation or arbitration to which the District is a party and providing other services in connection with actual or potential claims or disputes arising

out of the work, regardless of whether or not Property Manager is named in such legal action. The parties shall cooperate to agree on the compensation for such services. If Property Manager is determined to be responsible for the claim, dispute or litigation due to its negligence or breach of the contract herein, it shall reimburse the District the amounts paid under this section to the extent caused by such negligence or breach.

SECTION 13: AUDIT AND ACCESS TO RECORDS

- 13.1 The Property Manager, including its subconsultants, vendors, and maintenance and repair personnel, shall maintain books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied. The District, or any of its duly authorized representatives, shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit and copying for a period of six years after completion of the Project. The District shall also have access to such books, overhead data, records and documents during the performance of Project work if deemed necessary by the District to verify work performed and Invoices, to assist in negotiations for amendments to the Agreement or modifications to tasks, and to resolve claims and disputes.
- 13.2 Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

SECTION 14: LEGAL RELATIONS

- 14.1 The Property Manager, consistent with the applicable standard of care, shall comply, and shall ensure its subconsultants, vendors, and maintenance and repair personnel comply, with all the terms of this Agreement and the District resolutions, and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.
- 14.2 In performing work and services hereunder, the Property Manager and its subconsultants, vendors, and maintenance and repair personnel, employees, agents and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of the District in any manner whatsoever. The Property Manager shall not hold itself out as, nor claim to be, an officer or employee of the District by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the District. The Property Manager shall be solely responsible for any claims/costs and/or losses arising from the Property Manager's failure to pay wages, compensation, benefits or taxes and/or pay for services, supplies and/or materials provided by Property Manager employees, agents and representatives, including subconsultants, vendors, suppliers, and tenant improvement contractors and maintenance and repair personnel, and will protect, defend, indemnify and hold the District harmless there from.
- 14.3 To the maximum extent permitted by law, the Property Manager agrees to indemnify and save harmless the District, its officers, agents and employees, from and against any and all third party: suits, claims, actions, losses, costs, reasonable attorney fees and expenses, penalties, judgments, settlements and damages of whatsoever kind or nature arising out of, in connection with, or related to errors or omissions in the performance of contractual obligations, and/or the negligent performance of work or services provided by or on behalf of the Property Manager, but only to the extent caused by Property Manager. The Property Manager's Indemnity obligation includes an obligation to (a) satisfy any judgment or other final decision of a court or other tribunal; (b) pay any reasonable settlement negotiated by the District with respect to claims that

are within the scope of the indemnity obligation; and (c) pay all claims against the District by an employee or former employee of the Property Manager or its subconsultants, vendors, and maintenance and repair personnel , and for this purpose, by mutual negotiation, the Property Manager expressly waives, as respects the District only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim. The Property Manager further agrees to defend all claims against the District and its officers, agents, and employees which, if proven, could result in liability of the District, its officers, agents, or employees for loss or damage caused by any such errors, omissions, or negligent work or services performed by the Property Manager. The Property Manager's obligation to defend shall include timely payment of all reasonable attorney fees, costs and expenses incurred in the defense of such claims. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney fees and expenses shall be allowed to the prevailing party.

- 14.4 The District's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
- 14.5 The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Agreement.

SECTION 15: INSURANCE

- 15.1 Insurance. By the date of execution of this Contract, the Consultant shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property, including products-completed operations which may arise from, or in connection with, the performance of work hereunder by the Consultant, its agents, representative, employees, and/or sub-consultants. The Consultant or sub-consultant shall pay the cost of such insurance. The Consultant may furnish separate certificates of insurance and policy endorsements from each sub-consultant as evidence of compliance with the insurance requirements of this Contract. Consultant shall carry and provide proof of coverage and limits upon request by the District for the following insurance:
 - 15.2 Automobile Liability Insurance. Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
 - 15.3 Commercial General Liability. Limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability.
 - 15.4 Professional Liability. Limits no less than \$1,000,000.00 per occurrence and aggregate.
 - 15.5 Before commencing work and services, Consultant shall provide to the District a Certificate of Insurance evidencing the required insurance. All certificates of insurance shall be current for the duration of the contract and shall include on each page the Project/Contract Name and Number.
 - 15.6 The District shall be named as an additional insured on the Commercial General Liability Insurance Policy with regard to work and services performed by or on behalf of Consultant, and a copy of the endorsement naming the District as an additional insured be attached to the Certificate of Insurance. All certificates of insurance shall include on each page the Project/Contract Name and Number.

- 15.7 The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the District; and (3) shall state that the District will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.
- 15.8 Any payment of deductible or self-insured retention shall be the sole responsibility of Consultant and shall not limit or apply to the Consultant's liability to the District.

SECTION 16: DISPUTES AND REMEDIES

- 16.1 Choice of Law. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the Effective Date.
- 16.2 General Manager Review. All claims, counterclaims, disputes and other matters in question between the District and the Property Manager arising out of or relating to this Agreement or the breach of it shall be referred to the General Manager or a designee for determination, together with all facts, data, contentions and so forth which relate thereto. The General Manager shall make a determination within thirty (30) calendar days of such referral.
- 16.3 Alternate Dispute Resolution. Should the claim, counterclaims, or disputes not be resolved, prior to initiating litigation and subsequent to the General Manager's decision, the parties shall attempt to resolve the matter through some mutually agreeable form of Alternate Dispute Resolution (ADR).
- 16.4 Exhaustion of Administrative Remedies. Referral to and determination by, the General Manager or a designee and ADR shall be a condition precedent to the commencement of a civil action to adjudicate such dispute.
- 16.5 Jurisdiction & Venue. Subject to these provisions herein, the Superior Court of Snohomish County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement and the laws of the state of Washington shall apply.

SECTION 17: NOTICE

- 17.1 Any notice required to be given under the terms of this Agreement shall be in writing and directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party. Facsimile notice shall be considered effective with proof of confirmation that the addressee has received the facsimile. Such proof would be a confirmation sheet evidencing such receipt at the fax number listed below.

@@ consultant name
@@ name
@@ Street Address
Street@@ City, State, Zip

Alderwood Water & Wastewater
Attn: Jen Kennedy
3626 156th St SW
Lynnwood, WA
98087-5021
Phone No.: 206-485-1450

SECTION 18: ENTIRETY, AMENDMENT AND EXECUTION OF AGREEMENT

- 18.1 This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties relating to the subject matter hereof and constitutes the entire agreement between the Parties.
- 18.2 The Contract documents included in the Agreement are identified below. Any inconsistency or conflict between the Contract documents shall be resolved by giving

precedence in the following descending order of importance:

- A. This Agreement for Project Management Services
- B. Exhibit A, Scope of Services;
- C. Exhibit B, Cost Summary
- D. Exhibit C, Insurance;
- E. Exhibit D, Allowable Other Direct Costs (ODC's);
- F. Exhibit E, Key Personnel List;
- G. And any modifications made by amendment (as needed).

18.3 This Agreement shall be executed in two (2) counterpart copies, any of which shall be considered for all purposes as the original.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year written below.

Alderwood Water & Wastewater District

@@consultant

By: _____

Dick McKinley

Title: General Manager

Dated: _____

By: _____

@@consultant name

Title: **@@ consultant title**

Dated: _____

