

3626 - 156th Street SW • Lynnwood, WA 98087-5021 • 425-743-4605 • 425-742-4562 Fax • www.awwd.com

MEMORANDUM

DATE: September 6, 2022

TO: The Board of Commissioners
Paul D. McIntyre, President
Jack O. Broyles, Jr., Vice President
Donna J. Cross, Secretary
Larry D. Jones, Commissioner
Dean R. Lotz, Commissioner

General Manager
Dick McKinley

FROM: Paul Richart, Capital Program Manager
Dan Scheil, Engineer

SUBJECT: W2205 WSDOT I-405 & SR 527 Improvements Project
Utility Agreement
Vendor: WSDOT

Requested Action

Execute the Utility Agreement with WSDOT for Project W2205 WSDOT I-405 & SR 527 Improvements Project.

Location

This project is located at 22400 17th Ave SE near the intersection of I-405 & SR 527.

Background

The District provides water and sewer service to the Canyon Park Park-N-Ride. WSDOT has a project planned at I-405, "Brickyard to SR 527 Improvements Project" to make necessary site improvements to the Canyon Park-N-Ride and 220th St SE and 17th Ave SE. The site improvements include a new fire hydrant required by the City of Bothell, and adjustments to existing manholes and gate valves.

Discussion

The Board was briefed on this item at the August 22nd Work Session.

This is intended to be a Design-Build project by WSDOT. WSDOT has requested a Utility Agreement with the District in lieu of a Developer Extension Agreement (DEA). When WSDOT chooses a Contractor to complete the water main and fire hydrant installation at the Park-N-Ride, obtaining a DEA with the District will be part of the contract requirements the Contractor must address to complete this project.

District Staff and legal counsel have worked with WSDOT to complete the Utility Agreement.

WSDOT estimates this work will begin in June 2023.

Budget

WSDOT is responsible for all anticipated costs for this project. However, the approved CIP budget includes funds necessary to support District expenses that may result from this project. Those expenses are included in the CIP Water-Franchise category.

Utility Agreement			Utility Name & Address Alderwood Water & Wastewater District 3626 156 th Street SW Lynnwood, WA 98087
Design-Build Utility Extension and Relocation Work by WSDOT — WSDOT Cost			
Agreement Number UTB 1511	Region NWR	Control Section 314800	Project Title/Location I-405, Brickyard to SR 527 Improvement Project
State Route 405	Milepost From: 26.45 To: 26.75		
Estimated Agreement Amount \$0			Hydrant Connection – Canyon Park Park and Ride

This Utility Agreement (Agreement) is entered into between the Washington State Department of Transportation (WSDOT) and the Alderwood Water & Wastewater District (AWWD); hereinafter referred to individually as the “Party” and collectively as the “Parties.”

Recitals

1. WSDOT is planning the construction or improvement of the State Route as shown above for the identified WSDOT Design-Build Project (Project), and in connection therewith, it is necessary to remove and/or relocate and/or construct certain AWWD facilities (Work).
2. WSDOT is responsible for the cost of the Work affecting the AWWD’s facilities that are located pursuant to a documented ownership of and/or interest in real property, such as and easement, fee title, or court finding of prescriptive right, which is impacted by the WSDOT Project.
3. AWWD is responsible for (1) the cost of the work for AWWD facilities located without a documented ownership of and/or interest in real property such as being located pursuant to a WSDOT franchise, a permit, or undocumented permission and (2) all betterments.
4. The Work shall be defined as all design, right of way acquisition, permitting, materials, equipment, labor, contract administration and any other efforts required to perform the relocation, construction, and/or removal of the AWWD’s facilities.
5. It is deemed to be in the best public interest for WSDOT to include the Work in the Project.

Now, Therefore, pursuant to RCW 47.01.210 and chapter 47.44 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, as well as the attached Exhibit A – Scope of Work; Exhibit B – Conceptual Plans; Exhibit C – Easement; and Exhibit D – Developer Extension Agreement which by this reference are incorporated and made a part hereof;

It Is Mutually Agreed As Follows:

1. Plans, Specifications, and Bids

- 1.1 Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects* shall determine and establish the definitions and applicable standards and payments for

this Agreement. By this reference, this document is adopted and made a part of this Agreement as if fully contained herein.

- 1.2 **Betterment:** A betterment is any improvement to AWWD's facilities not required by code, regulation, standard industry practice, or any other applicable regulation. If any of the Work or other work associated with the Project constitutes a betterment as defined in the Program Guide: *Utility Relocation and Accommodation on Federal Aid Highway Projects*, the AWWD is solely responsible for the costs of such improvement.
- 1.3 WSDOT, acting on behalf of AWWD, agrees to perform the AWWD facilities Work in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (M41-10) as amended and in accordance with the AWWD Utility Standards for water, sewer and surface water documented in the Project Request for Proposal (RFP). The AWWD agrees that it is solely responsible for ensuring that the Utility Codes and Standards provided, at the RFP advertisement date are the applicable standards, codes, regulations, or any other requirements the AWWD is obligating the Project to meet, unless otherwise noted and mutually agreed to by the Parties in writing.
- 1.4 AWWD will review and approve the Work according to the Standards in Section 1.3 above, and these shall be the applicable standards for WSDOT to advertise in the RFP for bids. WSDOT will be AWWD's representative during the RFP Ad and award period. When requested by WSDOT, AWWD shall timely assist WSDOT in answering bid questions and resolving any design issues that may arise that are associated with the Work. All responses to comments and requests for clarification that arise during the RFP Ad and award period shall be managed solely by WSDOT. If AWWD supplies Work plans and special provisions, AWWD agrees to provide WSDOT with any addenda required for the Work during the Ad period, to the Parties' mutual satisfaction.
- 1.5 The Project will be completed using the design-build method of project delivery. As specified in the Project RFP, the final plans and specifications for the Work will be prepared by WSDOT's Design-Build Contractor (DB Contractor) in accordance with the current WSDOT Standard Specifications for Road, Bridge, and Municipal Construction (M41-10), as amended; adopted design standards, unless otherwise noted; and, Exhibit A – Scope of Work; Exhibit B – Conceptual Plans; in accordance with the AWWD Utility Standards for water, sewer and surface water documented in the Project RFP; and any other plans and specifications included in the Project RFP for the Work. WSDOT will direct the DB Contractor to complete the design Work in accordance with such plans and specifications and Section 1.6 herein.
 - 1.5.1 WSDOT's DB Contractor will apply for and acquire the AWWD Developer Extension Agreement for the Work, in the form attached hereto as Exhibit D and incorporated herein in full by this reference. AWWD will work with WSDOT's DB Contractor to complete Exhibit D, such that there is no delay to the Project. If there are any fees associated Exhibit D for the Work, WSDOT's DB Contractor will be responsible to pay AWWD for the fees according to Exhibit D. If this Agreement and Exhibit D conflict, this Agreement shall govern.
- 1.6 AWWD agrees to meet with the WSDOT's DB Contractor as necessary to complete the design of the Work. AWWD shall inform WSDOT of all such meetings and WSDOT shall have the opportunity to attend said meetings at WSDOT's discretion. WSDOT shall

require the DB Contractor to provide AWWD with the final proposed plans and specifications for the Work. Thereafter, AWWD agrees to review said plans and specifications, and agrees to provide written notification to WSDOT and the DB Contractor within ten (10) calendar days after receipt whether AWWD has further comments on said plans and specifications. AWWD shall have final approval authority over any plans and specifications for the Work and agrees to work in good faith with the DB Contractor to resolve all issues.

- 1.7 Any change to the Project that may affect the AWWD's facilities must be approved by AWWD in writing.

2. CONSTRUCTION, INSPECTION, AND ACCEPTANCE

- 2.1 WSDOT agrees to administer the Work on behalf of the AWWD.
- 2.2 AWWD agrees to allow WSDOT or its DB Contractor to disconnect and/or reconnect its facilities as required by WSDOT when such disconnection or reconnection is required. WSDOT agrees to provide reasonable written notice to AWWD when such disconnection or reconnection is required. The Parties agree to define disconnect and/or reconnection requirements, including notification and response. WSDOT agrees, as part of the Work, to remove, disconnect and/or abandon facilities as agreed to by the Parties. AWWD facilities not removed pursuant to this Agreement shall remain the ownership, operation, and maintenance responsibility of AWWD.
- 2.3 Salvage: All materials removed by WSDOT or its DB Contractor shall be reclaimed or disposed of by WSDOT and shall become the property of WSDOT. If the AWWD desires to retain such materials and WSDOT agrees, the value of salvaged materials will be paid to WSDOT in an amount not less than that required by the *Program Guide: Utility Relocation and Accommodation on Federal Aid Highway Projects*.
- 2.4 AWWD may furnish an inspector for the Work. WSDOT agrees to notify AWWD within fourteen (14) calendar days in advance of the Work to be performed. AWWD's inspector shall not directly contact WSDOT's DB Contractor. All contact between AWWD's inspector and WSDOT's DB Contractor shall be through WSDOT's Project Engineer. WSDOT's Project Engineer may require the removal and/or replacement of AWWD's inspector if the inspector interferes with WSDOT's Project, WSDOT's DB Contractor, and/or the Work.
 - 2.4.1 While on WSDOT premises or WSDOT Project site, AWWD, its agents, employees, consultants, contractors or subcontractors shall comply with WSDOT or WSDOT's DB Contractor safety protocols and security policies and regulations, including requirements for the prevention of transmission of communicable diseases (such as COVID-19).
- 2.5 WSDOT shall promptly notify AWWD in writing when the Work is completed.
- 2.6 AWWD shall, within thirty (30) calendar days of being notified that the Work is completed: (a) deliver a letter of acceptance to WSDOT which shall include a release and waiver of all future claims or demands of any nature resulting from the performance of the Work and WSDOT's administration thereof, or (b) deliver to WSDOT written reasons why the Work does not comply with the previously approved RFP Plans and Special Provisions. Upon completion of the Work, WSDOT shall ensure that all

warranties for the Work are provided by WSDOT's DB Contractor.

- 2.7 If AWWD does not respond within thirty (30) calendar days as provided in section 2.6, the Work and WSDOT's administration thereof will be deemed accepted by AWWD, and WSDOT shall be released from all future claims and demands.
- 2.8 Upon completion and acceptance of the Work pursuant to Sections 2.6 or 2.7, AWWD agrees that it shall be solely responsible for all future ownership, operation, and maintenance costs of its facilities, without WSDOT liability or expense.
- 2.9 WSDOT will prepare the final construction documentation in general conformance with WSDOT's Construction Manual. WSDOT will maintain one set of plans as the official "as-built" set, then make notations in red of all plan revisions typically recorded per standard WSDOT practice, as directed by WSDOT's Construction Manual. Once AWWD has accepted the Work per Section 2.6 or 2.7, WSDOT shall provide one reproducible set of contract as-builts to AWWD within sixty (60) days of WSDOT Project completion date.

3. PAYMENT

- 3.1 AWWD agrees that it shall be responsible for the actual direct and related indirect costs, including overhead costs, associated with work for (1) betterments and/or (2) work where AWWD does not have a documented ownership of and/or interest in real property, such as an easement, fee title, or a court finding of prescriptive right for its facilities.
- 3.2 WSDOT agrees that it shall be responsible for the actual direct and related indirect costs, including overhead costs, for (1) Work affecting AWWD's facilities located pursuant to a documented ownership of and/or interest in real property (i.e. easement) which is impacted by the WSDOT Project, as described in this Agreement, and (2) new facilities requested by WSDOT. AWWD's costs shall be reimbursed through AWWD permitting process for the Work by WSDOT's DB Contractor.
- 3.3 The Parties acknowledge and agree that WSDOT does not have the legal authority to advance State funds for AWWD's cost portion of the Work under this Agreement. Should AWWD fail to make payment according to the terms of this Agreement, WSDOT shall have the right to terminate this Agreement, charging AWWD for all associated costs of termination, including non-cancellable items, as well as associated Project delay and contractor claims.
- 3.4 Pursuant to Section 4, if additional work or a change in Work described to in this Agreement is required, WSDOT agrees to pay all change order Work costs for which WSDOT is responsible and AWWD agrees to pay all costs associated with Work delays and/or subsequent contractor claims associated with AWWD's failure to timely respond as required.

4. CHANGE IN WORK OR COST INCREASE

- 4.1 If WSDOT determines additional Work or a change in the Work is required, prior written approval must be secured from AWWD; however, where the change is required to mitigate a Project emergency or safety threat to the traveling public, WSDOT will direct the change without the AWWD's prior approval. WSDOT will notify AWWD of such change as soon as possible thereafter. AWWD agrees to respond to all WSDOT change

order requests in writing and within five (5) working days.

- 4.2 AWWD may request elective change additions to the Work through WSDOT in writing. WSDOT will implement the requested changes as elective changes, provided that a change does not negatively impact WSDOT's transportation system and complies with the Standard Specifications, Project permits, State and/or federal law, applicable rules and/or regulations, and/or WSDOT design policies, and does not unreasonably delay critically scheduled Project contract activities.
- 4.3 All elective changes to the Work shall be approved in writing by AWWD before WSDOT directs the DB Contractor to implement the changes, even if an executed change order is not required by the Project contract. AWWD agrees to pay for the increases in cost, if any, for such elective changes in accordance with Section 3.4.
- 4.4 WSDOT will make available to AWWD all change order documentation related to the Work.

5. UTILITY EASEMENT

- 5.1 Upon completion of the Work covered under this Agreement related to new AWWD facilities requested by WSDOT, WSDOT agrees to grant for the benefit of AWWD, an easement or easements, in the form attached hereto as Exhibit C and incorporated herein in full by this reference.

6. RIGHT OF ENTRY AND RIGHT OF WAY ACCESS

- 6.1 AWWD hereby grants to WSDOT a right of entry and applicable permissions onto all lands in which it has an interest in construction of the Work as defined in Exhibits A and B. Upon completion and acceptance of the Work, the right of entry shall terminate as otherwise provided in Section 5.
- 6.2 AWWD agrees WSDOT or its DB Contractor shall be allowed rights of entry and applicable permissions upon all privately owned lands upon which AWWD has an easement, documented property interest, or permit that are necessary to perform the Work. AWWD also agrees to work with WSDOT or its DB Contractor to obtain all rights of entry and applicable permissions for WSDOT to perform the Work on such lands, which may include reasonable use restriction on those lands. Upon completion of the Work on such lands, the rights of entry and applicable permissions shall terminate, except as otherwise provided in Section 5.

7. GENERAL PROVISIONS

7.1 Indemnification:

- 7.1.1 Each Party to this Agreement will protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115,

the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.

- 7.1.2 The Parties agree that their obligations under this section extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of their officers, officials, employees or agents. For this purpose only, the Parties, by mutual negotiation, hereby waive, with respect to each other only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.
 - 7.1.3 WSDOT and AWWD will protect, defend, indemnify, and save harmless Sound Transit, its officers, officials, employees, and agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and property), arising out of, or in any way resulting from, each Party's negligent acts or omissions with respect to the provisions of this Agreement. Neither WSDOT or AWWD will be required to indemnify, defend, or save harmless Sound Transit if the claim, suit, or action for injuries, death, or damages (both to persons and property) is caused by the sole negligence of Sound Transit. Where such claims, suits, or actions result from the concurrent negligence of WSDOT or AWWD, their agents, officials or employees, and/or involve those actions covered by RCW 4.24.115, the indemnity provisions provided herein will be valid and enforceable only to the extent of the negligence of the indemnifying Party, its agents, officials or employees.
 - 7.1.4 This indemnification and waiver will survive the termination of this Agreement.
- 7.2 Disputes: If a dispute occurs between AWWD and WSDOT at any time during the performance of the Work, the Parties agree to negotiate at the management level to resolve any issues. Should such negotiations fail to produce a satisfactory resolution, the Parties may agree to enter into arbitration and/or mediation before proceeding to any other legal remedy. Each Party shall be responsible for its own fees and costs. The Parties agree to equally share the cost of a mediator.
- 7.3 Venue: In the event that either Party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the Parties hereto agree that any such action or proceedings shall be brought in the superior court situated in Thurston County, Washington. Further, the Parties agree that each shall be responsible for its own attorney's fees and costs.
- 7.4 Termination:
- 7.4.1 Unless otherwise provided herein, AWWD may terminate this Agreement upon thirty (30) calendar days written notice to WSDOT. If this Agreement is terminated by the AWWD prior to the fulfillment of the terms stated herein, AWWD shall reimburse WSDOT for all actual direct and related indirect expenses and costs, including mobilization, construction engineering, contract administration and overhead costs, incurred up to the date of termination associated with the AWWD Work, as well as the cost of non-cancelable obligations, including any redesign, reengineering or re-estimating, if necessary, to delete the Work, and DB Contractor claims, if any, payment in accordance with Section 3. Further, AWWD acknowledges and agrees that should it terminate this Agreement, such termination shall not relieve AWWD from its responsibility to design, remove, relocate, and/or construct its facilities so as not to delay or conflict with WSDOT's

Project. WSDOT agrees to provide to AWWD all Work-related documents upon final payment by AWWD.

- 7.4.2 Unless otherwise provided herein, WSDOT may terminate this Agreement upon thirty (30) calendar days written notice to AWWD. Should WSDOT terminate this Agreement, AWWD shall reimburse WSDOT for all actual direct and related indirect expenses and costs for which AWWD is responsible, including mobilization, construction engineering, contract administration and overhead cost, incurred by WSDOT up to the date of termination associated the Work. AWWD acknowledges and agrees that should WSDOT terminate this Agreement, such termination shall not relieve the Parties from their responsibilities to design, remove, relocate, and/or construct AWWD facilities so as not to delay or conflict with WSDOT's Project. If WSDOT terminates this Agreement pursuant to it or the public's best interest, it shall restore AWWD's facilities that are located pursuant to a documented ownership of and/or interest in real property, such as an easement, fee title, or court finding of prescriptive right, which is impacted by WSDOT, to the same or like condition than it was in prior to the commencement of any construction. WSDOT agrees to provide to AWWD all Work-related documents upon final payment by AWWD.
- 7.5 Amendments: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 7.6 Independent Contractor: Both Parties shall be deemed independent contractors for all purposes, and the employees of each Party and any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be the employees of the other Party.
- 7.7 Audit and Records: During the progress of the Work and for a period of not less than six (6) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Work and shall make them available during normal business hours and as often as necessary, for inspection and audit by the other Party, State of Washington, and/or Federal Government and copies of all records, accounts, documents or other data pertaining to the Work will be furnished upon request. The requesting Party shall pay the cost of copies produced. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until any litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the six-year retention period.
- 7.8 Working Days: Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year last written below.

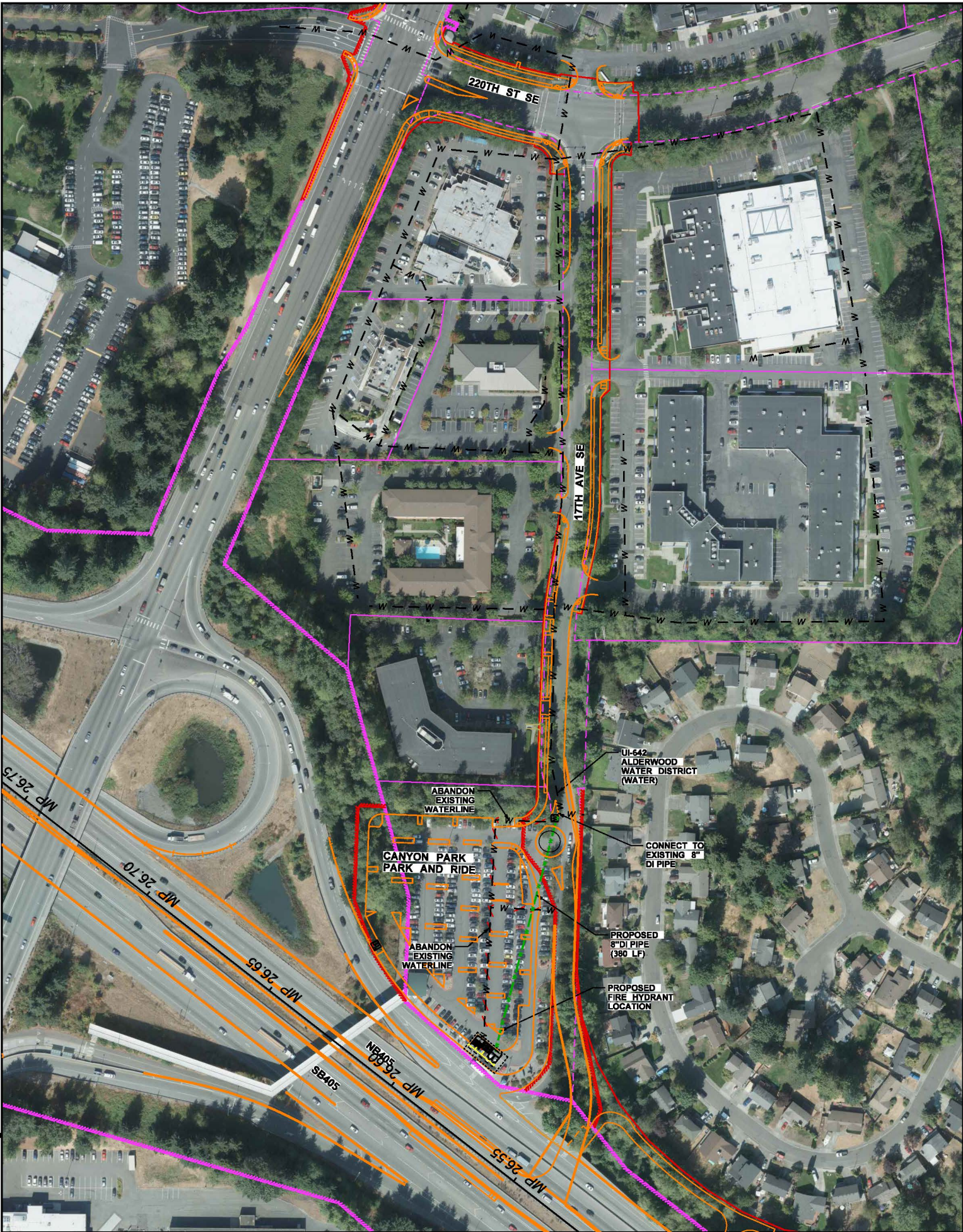
AWWD	Washington State Department of Transportation
By:	By:
Printed:	Printed: Lisa Hodgson
Title:	Title: I-405/SR 167 Program Administrator
Date:	Date:
Approved as to Form AWWD	Approved as to Form Washington State Department of Transportation
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

EXHIBIT A

SCOPE OF WORK

Scope of work between WSDOT and AWWD as part of the I-405, Brickyard to SR 527 Improvement Project are as follows:

- Coordination with WSDOT and their design team on the design of new hydrant and waterline extension.
- Work includes two water services.
- Utility adjustments identified by the DB Contractor on 17th Ave SE and 220th ST SE.
- Plan review and comments.
- Review and comments on Utility Agreement, and preparation of supporting documentation as required.
- Review material submittals.
- Assist WSDOT with construction coordination in-relation to the new hydrant and waterline extension.
- Construction inspection of the hydrant connections.
- Project coordination during construction, including general correspondence and coordination between AWWD and WSDOT.
- Attend construction meetings as requested by WSDOT.
- Review of as-built drawings provided by WSDOT or its DB Contractor.
- WSDOT through its DB Contractor and AWWD shall work together on AWWD's Developer Extension Agreement form (Exhibit D) and process as necessary for the work.
- Other services as needed or requested during the course of the Project.
- Upon final completion of the Work and acceptance by the Parties, WSDOT shall grant an easement for the new hydrant connection and waterline extension. AWWD will own and maintain these facilities upon completion.



**EXHIBIT C
EASEMENT FORM**

AFTER RECORDING RETURN TO:

ATTN: REAL ESTATE SERVICES
DEPARTMENT OF TRANSPORTATION
P.O. BOX 47338
OLYMPIA, WA 98504-7338

Document Title: Easement
Reference Number of Related Document:
Grantor(s): State of Washington
Grantee(s):
Legal Description:
Additional Legal Description is on Page of document
Assessor's Tax Parcel Number:

E A S E M E N T
(Non-Exclusive)

SR,

The STATE OF WASHINGTON acting by and through its DEPARTMENT OF TRANSPORTATION, Grantor, for and in consideration of AND NO/100 DOLLARS (\$.00), hereby grants and conveys unto , Grantee(s), a non-exclusive easement for over, under, across, and upon the following described real property situated in County, State of Washington:

Insert Legal description

[OPTIONAL] EXCEPT, Grantor reserves to itself and its successors and/or assigns, all easement rights of access, light, view, and/or air in the non-exclusive easement herein conveyed to

the extent that the easement abuts the state highway right of way; therefore, the Grantee(s) herein, including heirs, successors, or assigns, shall have no right of ingress and egress to, from, or between SR and the lands herein described, nor shall the Grantee(s) herein, its heirs, successors, or assigns, be entitled to compensation for any loss of access, light, view, and/or air occasioned by the location, construction, reconstruction, maintenance, or operation of said highway.

The specific details concerning all of which may be found on sheet of that certain plan entitled SR , now of record and on file in the Office of the Secretary of Transportation at Olympia, Washington, bearing date of approval , revised .

Subject to all existing encumbrances, including easements, restrictions and reservations, if any.

[OPTIONAL] Grantee(s), its heirs, successors, or assigns, agrees to and shall maintain the property in good, sanitary, and safe repair. Grantee(s), its heirs, successors, or assigns, agrees to and shall (1) repair damages to the road approach and/or driveway caused by or arising out of its use thereof, and (2) maintain the road approach and/or driveway outside of the shoulder line of the highway.

[OPTIONAL] EXCEPT, Grantor specifically reserves the right to use the road approach and/or driveway for any purpose reasonably not inconsistent with Grantee(s)' use of the approach and/or driveway for ingress and egress, insofar as the road approach and/or driveway is located on the land of the Grantor. Grantee(s), its heirs, successors, or assigns, hereby agrees not to interfere with Grantor's use of its land as provided herein.

[OPTIONAL] Should this non-exclusive easement cease to be used for the above described purposes this non-exclusive easement shall automatically terminate and all rights shall revert to Grantor. Upon such termination, Grantee(s), its heirs, successors, or assigns, agrees to execute a Release of Easement releasing all rights granted herein immediately upon Grantor's written notice.

The Grantee(s) herein, on behalf of itself and its heirs, successors, or assigns, as part consideration paid herein, waives and/or releases Grantor from any past, present, or future claims for damages directly or indirectly caused by highway drainage or runoff, and further Grantee(s), its

heirs, successors, or assigns, shall have no right of compensation for damages to the property herein conveyed caused directly or indirectly by highway drainage or runoff.

The Grantee(s), its heirs, successors, or assigns, will shall protect, save, and hold harmless the Grantor, its agents, and employees, from all claims, actions, costs, damages (both to persons and/or property), or expenses of any nature whatsoever by reason of the acts or omissions of the Grantee(s), its agents, contractors, licensees, invitees, employees, or any person whomsoever arising out of or in connection with any acts or activities related to this deed. The Grantee(s), its successors, or assigns, further agrees to defend the Grantor, its agents, or employees in any litigation, including payment of any judgments, costs or attorney's fees, for any claims or action commenced arising out of or in connection with acts or activities related to this deed. This obligation shall not include such claims, costs, damages (both to persons and/or property), or expenses which may be caused by the sole negligence of the Grantor, or its agents, and/or employees; provided that, if the claims or damages are caused by or result from the concurrent negligence of (a) the Grantor, its agents, or employees and (b) the Grantee(s), its agents, contractors, licensees, invitees, employees, and/or any other person, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Grantee(s) or Grantee's(s') agents, contractors, licensees, invitees, employees, and/or any other person.

The Grantee(s), on behalf of themselves and its heirs, successors, or assigns, as part consideration herein, do hereby agree to comply with all civil rights and anti-discrimination requirements of chapter 49.60 RCW as to the lands herein conveyed.

The lands herein described are not required exclusively for state highway purposes and are conveyed pursuant to the provisions of RCW 47.12. .

Dated at Olympia, Washington, this _____ day of _____, 20____.

Notary Public in and for the State of Washington,
residing at _____
My Appointment Expires _____

Application No: _____

Date Submitted: _____

EXHIBIT D

DEVELOPER EXTENSION APPLICATION

SUBMITTAL LIST

Project Name: _____

NOTE: *An application intake meeting is required with the District for each project, and all items on submittal list below should be prepared in advance.*

Some items may be waived by the District if appropriate for the project.

1. Non refundable application fee, see AWWD Code Chapter 9.05.
2. Verification of property ownership (e.g. County tax records, current title report, deed, etc).
3. Filled in and completed application form signed by the Property Owner(s) and Developer(s). If needed, provide verification that the person(s) signing application can legally do so.
4. Project narrative and vicinity map, including zoning, land use and type of building construction (i.e. new detached SFR, attached townhouses, apartments, commercial, TI, etc).
5. Preliminary Engineering Plans drawn with an appropriate scale, including, but not limited to the following items. Plans should be submitted to the District electronically in pdf format. See also the District's online *DE Plan Preparation Requirements*.
 - a. Proposed water and sewer plans that are a separate set from the land use agency, civil or architectural plans. Utility mains must be shown in the same plan and profile views. If more than one sheet, do not show plan over profile.
 - b. Development site plan with number of units / lots / buildings, tracts, buffers, etc.
 - c. Existing features, including water and sewer services, topography, buildings & structures, roads & paved areas, utilities, vegetation and critical environmental areas.
 - d. Roadway and grading plans with a minimum 5-foot contour interval.
 - e. Storm drainage plan and profile sheets, including any Low Impact Development (LID) features (e.g. infiltration, rain gardens, pervious pavement, etc).
6. If available at time of application, Fire Marshal comments for required fire flow, hydrant locations, and type of fire protection system (i.e. sprinklers).

NOTE: One fire flow modeling analysis and result is included with the DE application review and fee. A separate fire flow application and fee will be required for any early review or any additional modeling work necessary due to project revisions by the Developer.

7. For all Commercial and Multi-family projects, a completed Water and Sewer Use Survey.
8. Any applicable permits and determinations from other agencies relative to water and sewer services (i.e. critical area restrictions, building setback requirements, etc).

Alderwood Water & Wastewater District

**APPLICATION FOR
 DEVELOPER EXTENSION AGREEMENT**

APPLICATION FOR (CHECK ALL THAT APPLY)

Included in DE	DE Component
<input type="checkbox"/>	New water main extension, including hydrant assemblies over 20'
<input type="checkbox"/>	New or upgraded water services over 2"
<input type="checkbox"/>	Relocation of existing water main
<input type="checkbox"/>	New sewer main extension
<input type="checkbox"/>	Connection to King County sewer trunk line
<input type="checkbox"/>	Relocation of existing sewer main
<input type="checkbox"/>	Type 1 or 2 sewer lift station
<input type="checkbox"/>	Work within WSDOT Right-of-Way (ROW)
<input type="checkbox"/>	Significant ROW impacts or restoration
<input type="checkbox"/>	Other:

- The undersigned party applies to the Board of Commissioners of the Alderwood Water & Wastewater District, "District" for a preliminary project review of terms and conditions that the District shall establish for a connection to the District's water and/or sewer system.
- Submission of this application begins administration of the District's Developer Extension process. However, the application is not a Developer Extension Agreement or a promise to enter into a Developer Extension Agreement. The application enables the District to identify terms and conditions for connection to the District's system. If this application is accepted, the District may enter into a Developer Extension Agreement incorporating all such terms and conditions.
- A submitted application is valid for one year from the date of the resulting Developer Extension condition letter. After the application expires, a new application, project information items and fee must be submitted unless otherwise approved by the District.
- The District will consider participating in a water or sewer facility extension such as oversizing of a main, offsite improvements not required for the development project, or other conditions that the District considers in excess of that normally required. District staff will help in determining if District participation is applicable.

A. PROJECT INFORMATION (CHECK ALL THAT APPLY)

Included in DE	Type of Development
<input type="checkbox"/>	Detached Single Family
<input type="checkbox"/>	Duplex
<input type="checkbox"/>	Townhomes
<input type="checkbox"/>	Multi-Family (apartments)
<input type="checkbox"/>	Commercial
<input type="checkbox"/>	Offsite utility work
<input type="checkbox"/>	Other:

Included in DE	Type of Recording Document
<input type="checkbox"/>	Plat or Short Plat
<input type="checkbox"/>	Site Plan Approval
<input type="checkbox"/>	Unit Lot Subdivision
<input type="checkbox"/>	Condominium Map
<input type="checkbox"/>	Binding Site Plan
<input type="checkbox"/>	None
<input type="checkbox"/>	Other:

Name of Project: _____

Address of Project: _____

Number of Lots / Units: _____

Commercial Use / Activity: _____

(e.g. office, warehouse, manufacturing, medical / dental, food service, retail, school, religious, etc.)

Will this project require any offsite easements? Yes No Unknown

Will units / buildings have fire sprinklers? Yes No Unknown

Required fire flow demand (gpm) _____ (1,750 used if blank or unknown)

B. PROPERTY OWNER(S) INFORMATION

Property Owner: _____
 (Print full name)

Signature: _____ Date

Address: _____

Phone No.: _____

E-mail: _____

(ATTACH SHEETS FOR ADDITIONAL PROPERTY OWNERS IF NECESSARY)

C. DEVELOPER INFORMATION

Developer Information: _____
(Print full name)

Signature: _____
Date

Contact Person: _____

Address: _____

Phone No.: _____

E-mail: _____

Should AWWD correspondence go to the Developer or Agent? Developer Agent Both

D. AGENT INFORMATION

Agent Company Name: _____
(If applicable) (Print full name)

Contact Person: _____

Address: _____

Phone No: _____

E-mail: _____



Developer Extension Agreement

Developer Extension Agreement

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ALDERWOOD WATER & WASTEWATER DISTRICT DEVELOPER EXTENSION AGREEMENT

Developer Extension No. _____

Application No. _____

The Alderwood Water & Wastewater District ("District") and _____ ("Developer") enter into this Developer Extension Agreement for the purpose of constructing an Extension to the District's infrastructure system. The term "Extension" shall apply herein whether Developer is extending the District water system or the District sewer system or both systems. If this Agreement is accepted, the undersigned, in consideration of the mutual promises and covenants herein contained, agrees to the terms and conditions of this Developer Extension Agreement as follows:

1. NATURE AND LOCATION OF EXTENSION AND TYPE OF DEVELOPMENT

- a. Benefited Property. The proposed system Extension shall be installed at the Developer's sole cost for the use and benefit of the property legally described as:

Snohomish County Tax Parcel No. _____ (See attached Exhibit C for full legal description if needed)

- b. Type of Development. (i.e., single family, multi-family, commercial, etc.).

2. WARRANTY OF AUTHORITY

The Developer and any additional owners as listed in the Developer Extension application, see attached Exhibit A, warrant they are the owners and/or Developers of the property described in this Agreement, and agree to be bound by its terms. The Developer shall provide a current title report or other approved proof of ownership to the District establishing that the parties executing this Agreement are the owners of all the real property described herein.

3. DESCRIPTION OF EXTENSION

Water. The proposed Extension will consist of approximately _____ linear feet of water pipe and appurtenances, and shall be designed and installed in accordance with this Agreement, the Developer Extension condition letter attached as Exhibit B, and the District approved Standards and Specifications. The proposed water system extension shall be installed in streets and other approved rights-of-way and/or easements and shall be for the use and benefit of the property herein described.

- b. Sewer. The proposed Extension will consist of approximately _____ linear feet of sewer pipe and appurtenances, and shall be designed and installed in accordance with this Agreement, the Developer Extension condition letter attached as Exhibit B, and the District approved Standards and Specifications. The proposed sewer system extension shall be installed in streets and other approved rights-of-way and/or easements and shall be for the use and benefit of the property herein described.

- c. Sewer Lift Station. If the proposed extension requires the construction of a sanitary sewer lift station and appurtenances, then such extension shall be designed and installed in accordance with a separate Sewer Lift Station Agreement as well as the District's approved Standards and Specifications.

4. FEES AND EXPENSES TO BE PAID BY THE DEVELOPER

Development fees shall be paid in accordance with District Code Section 9.05. Development fees are not limited to the Table of Standard Fees and Charges in Section 9.05.090(1), but also include any consultant fees incurred by the District for work related directly to Developer's Extension per Code Section 9.05.090(2). Alternatively, Developer may also be responsible for hiring and paying a consultant directly for plan review and other development services, with such consultant selected from a District list of approved consultants.

A non-refundable application fee shall be paid when a Developer Extension application is submitted to the District for preliminary review.

When the Developer Extension Agreement is fully executed and construction plans are submitted for review, a plan review deposit fee shall be paid for the District's estimated expenses. Construction inspection deposit fees and a cash performance guarantee shall be paid to the District prior to scheduling a pre-construction meeting.

Should actual expenses exceed the deposit, the difference shall be paid by Developer to the District prior to final acceptance of the project. If the District determines, after the project is completed and accepted, that expenses were less than the deposit, then the balance of the fee shall be refunded to Developer.

The estimate of plan review and construction inspection expenses does not include allowance for any unusual costs incurred by the District such as property surveys, outside consultant review, changes in design, excessive construction inspections, project coordination, errors or omissions by the Developer, its contractor or agents, unusual negotiations, legal expenses or any other project related costs. Additional review or inspections costs due to design modifications or changes in the original project design or layout shall be considered unusual costs.

The District will bill the Developer for any unusual costs listed above which shall be paid by the Developer prior to final acceptance of the project. The District may discontinue review or inspection work on the Developer Extension project until payment is received for any unusual costs incurred.

5. REIMBURSEMENT FEES

Developer knows and understands connection of Developer's extension to District water and sewer systems may be subject to payment for reimbursement of fair pro rata share of costs of construction of system area facilities constructed by others that benefit Developer's project. Pursuant to RCW 57.22 and District Code, such reimbursement payments will be determined by the District Board of Commissioners. Such reimbursement fees are due to the District at the time of water meter permit payment. On receipt of said payments, the District will make payments to others who have constructed said system area facilities.

6. PREPARATION OF DESIGN PLANS BY DEVELOPER'S ENGINEER

Design engineering shall be performed by the Developer's Engineer. The Developer's Engineer shall be experienced in the design of water and/or sewer infrastructure, and lift stations as appropriate. The Developer shall notify the District in writing if the person or firm proposed to design the project changes after the Developer submits this Agreement to the District.

Before commencing preparation of the project design plans, the District, the Developer and the Developer's Engineer may hold a pre-design meeting. The Developer will request the meeting with the

District and arrange the attendance of concerned parties. At the pre-design meeting, the District will review project submittal requirements, specific design considerations, District standards, plan preparation requirements and other relevant items.

Preliminary engineering plans shall be submitted with the Developer Extension application for a conceptual project review by the District. Review comments, project conditions and the Developer Extension Agreement will be generated by the District and returned to the Developer.

After the Developer Extension Agreement is fully executed, the Developer's Engineer shall submit construction plans to the District for review. All design plans shall meet the requirements as listed in the adopted District Standards. Failure of the District to discover errors, omissions or discrepancies in the design plans shall not relieve the Developer of this responsibility.

The District will review the design plans and comment thereon. The District reserves the right to determine if storm water detention or infiltration facilities, other utility lines, or jurisdictional requirements such as frontage improvements will conflict when placed near or above the District's facilities. The Developer's Engineer shall incorporate the District's comments into the project design and provide the District with a revised plan set for verification.

The District's approval of the project plans for the Developer Extensions shall be noted on an original plans set. Approval shall be by signature of the Engineering Director or Designee in an approved signature block. Original approved plans shall become the property of the District.

The District reserves the right to require changes in the plans during the course of work to conform to the District's Standards.

7. JURISDICTIONAL PERMITTING

The Developer is responsible to obtain all required outside jurisdiction permits and approvals unless otherwise noted below. This includes all local agencies and utility districts that have an existing Interlocal and/or Franchise Agreement with the District, and all City Right-of-Way and Utility permits. A copy of these permits shall be provided by the Developer prior to scheduling a pre-construction meeting

Should changes to the Developer Extension plans be required to obtain permits, approvals, and certifications, the Developer's Engineer shall make all required changes and provide copies of the changed documents to the District. The Developer shall be responsible for providing all required agency certifications, acceptance and/or approvals at the completion of the project.

If the proposed development work occurs within the Right-of-Way of unincorporated Snohomish County or the Washington State Department of Transportation (WSDOT), a Utility permit is required from the County or WSDOT for the Developer Extension. The District shall apply for the required Utility permit and provide a copy to the Developer upon approval. The permit must be obtained prior to scheduling a pre-construction meeting unless otherwise approved by the District.

If additional or extraordinary bonding is required by Snohomish County or WSDOT for the proposed work, the Developer is responsible to furnish the required security in a form acceptable to the District.

8. EASEMENTS

All easements shall be obtained by the Developer and submitted on District standard forms without cost to the District. All easements shall be reviewed and approved by the District prior to obtaining signatures and approvals. The Developer shall provide the District with supporting data to verify the location of all easements. All easements shall be a minimum of fifteen feet in width, unless otherwise approved by the District. An exhibit map shall be included with the easement of the written easement description. Developer shall upon request provide the District satisfactory title insurance insuring without exception the District's interest in all easements conveyed to the District. Developer shall pay all recording fees associated with the easements.

The District shall apply for and secure easements required from property owned by the P.U.D. No. 1 of Snohomish County.

Executed and recorded copies of off-site easements shall be delivered to the District prior to final approval of the construction plans. Other easements shall be recorded and delivered to the District prior to final acceptance of the Extension.

Permanent easements shall be conveyed to the District free of any permanent structures or other structures which interfere with District maintenance and repair responsibilities. Developer agrees not to construct or install such structures on the easement after District has accepted the Extension.

9. CONTRACTOR QUALIFICATIONS

a. **District Held Permits, Contractor Qualifications, & Developer Responsibility**

When the District is required by an agency (e.g., WSDOT or Snohomish County) to be the permit holder for a Developer's work in the right of way, the Developer's contractor must meet minimum qualifications. The approval or rejection of the contractor's qualifications does not limit the developer's responsibility outlined in this agreement.

The Developer shall provide the qualifications for the Contractor's company and onsite foreman's demonstrating the Contractor's successful completion of work similar in scope and complexity. A waiver may be granted, see "Waiver" this section.

b. **Similar in Scope and Complexity Characteristics**

For purposes of this section, the elements of "Similar in Scope and Complexity" is a project having the following elements:

- Traffic control, scheduling, planning, operations, water and/or sewer utility construction, and road way restoration.
- Successful record of performing work with the resources and an experienced work force.
- Ability to meet all permit requirements, easement requirements, and government agencies requirements and regulations.

This record may be satisfied by providing examples of five (5) projects of the same depth/size which were completed within last five (5) years by the contractor that will be performing that portion of the work under the District's right of way permit.

c. **References**

The District reserves the right to contact references and investigate past performance and qualifications of the Contractor, as well as to contact references for projects not identified by the Contractor.

References may be asked to rate the performance of and describe their experience with the Contractor and their team members. Information may be solicited and evaluated on the same criteria outlined above, as well as other information deemed pertinent by the District.

Unsatisfactory reference(s) may be justification to determine a Contractor is not responsible to work in the right of way under the District held permit.

d. **Waiver**

If the District has direct experience with the Contractor or their lead team members, and they have successfully performed work similar in scope and complexity under a right of way permit in the last 2 years, the references and background project references may be waived.

10. INSURANCE

a. The Developer shall purchase and maintain at all times, including the warranty period, an insurance policy from an insurance company which has an A.M. Best rating of "A VII" or better commercial general liability and automobile liability insurance against liability to the Developer, the District, the Developer's engineer and the District employees for negligent injury to person or property resulting from performance, supervision, or inspection of the Work. The District shall be named as an additional insured under such policy by an endorsement to the policy generated by the insurer and provided to the District. Proof of the existence of such insurance shall be provided to the District in a form acceptable to the District and shall include the project name and number. Developer is also responsible for ensuring any contractor primarily responsible for the extension work ("Contractor") satisfies the insurance requirements set forth in Section 10.j., below. The Developer shall not begin work under this Agreement or under any special condition until all required insurance has been obtained and until such insurance has been reviewed and accepted by the District.

b. The minimum coverage limits shall be as follows unless approved in writing by AWWD:

General Aggregate	\$2,000,000
Products - Comp/OPS Aggregate	\$2,000,000
Personal Injury	\$2,000,000
Each Occurrence	\$2,000,000
Automobile Liability	\$1,000,000

Note:

- All current policies shall be provided before work can occur.
- The General Aggregate requirement may be fulfilled with an umbrella policy with equivalent limits.
- Ongoing operations coverage must be equivalent to ISO form 20 10 07 04 and products and completed operations coverage must be similar to ISO form CG 2037 07 04.

c. Policies shall be kept in force until the project is accepted by the District and warranty period has been completed. Developer will provide evidence of insurance and an endorsement adding the District as an additional insured for each additional policy year until the District's final acceptance. The District shall be given at least 30 days written notice of cancellation, non-renewal, material reduction or modification of coverage.

d. The coverage provided by the insurance policies is to be primary to any insurance maintained by the District, except with respect to losses attributable to the sole negligence of the District. Any District insurance that might cover any claim or loss in connection with the extension work shall be in excess of insurance maintained by Developer or Developer's Contractor and shall not contribute with the District's insurance.

e. The insurance policy shall protect each insured in the same manner as though a separate policy had been issued to each. The inclusion of more than one insured shall not affect the rights of any insured with respect to any claim, suit or judgment made or brought by or for any other insured or by or for any employee of any other insured.

f. The general aggregate provisions of the insurance policy shall be amended to show that the general aggregate limit of the policies apply separately to this project.

g. The insurance policy shall not contain a deductible or self-insured retention in excess of \$10,000 unless approved by the District.

h. Providing coverage in the stated amounts shall not be construed to relieve the Developer from liability in excess of such limits.

i. In the event the owner of right way, including but not limited to Snohomish County or WSDOT, requires to be added as an additional insured then it is the Developer's responsibility for complying with any such additional insured requirements.

j. All of the insurance requirements in this Section 10 shall also apply to the Developer's Contractor. The Developer shall require such Contractor to comply with all of the insurance requirements in this Section 10, and the District shall be named as an additional insured under such contractor's policy by an endorsement to the policy generated by the insurer and provided to the District. Proof of the existence of such insurance shall be provided to the District in a form acceptable to the District and shall include the project name and number. Developer or its Contractor will provide evidence of insurance and an endorsement adding the District as an additional insured for each additional policy year and for such until the expiration of the warranty period. Such Contractor shall not begin work under this Agreement or under any special condition until all required insurance has been obtained and until such insurance has been reviewed and accepted by the District.

11. INDEMNITY

The Developer shall indemnify, defend and hold the District and all of its representatives harmless from and against all losses and claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against the District by reason of the act or omission of the Developer, its agents or employees, in the performance of the Work, and for any cost or expense incurred by the District in connection therewith, including overhead expense, legal expense, reasonable attorney's fees and costs attributable thereto; and if suit in respect to the foregoing is filed, then Developer shall appear and defend the same at its own cost and expense, and, if judgment is rendered or settlement made requiring payment of damages by the District, then the Developer shall pay the same.

Developer shall indemnify, defend and hold the District harmless from any liability or expense, including reasonable attorney's fees incurred by the District by reason of Developer (or Developer's employees or subcontractors) breach of franchise, permit, or right-of way approval granted by the state, city, or public or private utility to the District for the purpose of enabling Developer to undertake construction within any Right-of-Way. In the event a District franchise permit has expired, the conditions of the expired permit of the local or state codes, whichever is more stringent shall apply.

Developer further agrees that if any agency complains to the District that the Developer is violating such franchise or permits in any respect, or if the Developer damages any District's facilities, then the District shall give the Developer reasonable notice to comply with such franchise or permit or to make repairs or restoration. If the District deems it necessary to make any repairs or restoration (emergency or otherwise) then the Developer shall reimburse the District for the cost thereof.

In any claim against the District, its agents or employees by any employees of the Developer, or any contractor or subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Developer, or any subcontractor under Workmen's Compensation Acts, Disability Benefit Acts, or other employee benefit acts. This waiver has been mutually negotiated by the parties.

12. WARRANTIES OF DEVELOPER - WATER AND SEWER

Prior to final acceptance, the Bill of Sale shall be provided by the Developer and transfers ownership of the Extension from the Developer to the District. The Bill of Sale form will be provided by the District and shall contain the following warranties with the District as beneficiary:

- a. That the Developer owns the Extension free and clear of all encumbrances and Developer has full authority to transfer title thereto to the District and will defend the title of the District against the claims of all third parties claiming to own the same or claiming any interest therein or encumbrance thereon; and

- b. That all bills and taxes relating to the construction and installation of the (water or sewer) Extension and appurtenances have been paid in full and there are no lawsuits pending involving this project. If any lawsuit is filed as a result of, or involving, this project and its warranties, then the Developer shall undertake to defend the lawsuit and shall accept responsibility for all costs of litigation, including costs on appeal, and shall hold the District harmless on any judgment rendered against the District.
- c. That Developer complied with all laws and ordinances respecting construction of this project, and the Extension is in proper working condition, order and repair, and is adequate and fit for the intended purpose of use as a (water)(sewer) system and as an integral part of the (water supply and distribution)(sewer collection) system of the District, and the Extension has been constructed in accordance with the conditions and standards of the District; and
- d. That for a minimum period of two (2) years after the date of final acceptance of the Extension by the District and when top lift paving is completed, whichever is later, and re-inspection of the project is completed, the Extension and all parts thereof shall remain in proper working condition, order and repair; and Developer shall repair or replace, at its expense, any work or material which, proves defective during the period of the warranty.

In addition, Developer shall obtain and assign to the District warranties and guaranties from its subcontractor or suppliers where such warranties or guaranties are specifically required in this Agreement. When corrections of defects occurring within the warranty period are made, Developer may be required to warranty the corrected work for one (1) year after acceptance of the corrected work by the District at the sole discretion of the District.

13. CORRECTION OF DEFECTS OCCURRING WITHIN WARRANTY PERIOD

When defects in the Extension are discovered within the warranty period, Developer shall start work to remedy any such defects within seven (7) calendar days from the date sent of written notice provided via email (and followed up via mail) by the District and shall complete such work within a reasonable time. In emergencies, where damages may result from delay or where loss of service may result, corrections may be made by the District, and the cost thereof shall be paid by the Developer. If the Developer does not commence or accomplish corrections within the time specified, then the work may be accomplished by the District, and the cost thereof shall be paid by the Developer.

Developer shall reimburse the District for damages or expenses incurred by the District resulting from defects in the Developer's work, including cost of materials and labor, the cost of engineering, and the cost of inspection and supervision by the District.

14. CASH PERFORMANCE GUARANTEE

Prior to beginning construction, the Developer shall furnish to the District a Cash Performance Guarantee in the amount of \$2,500 for water and \$2,500 for sewer for the Developer Extension work. The Guarantee(s) shall be deposited with the District or an assignment of funds in a form prior to release of the approved plans by the District. The Guarantee(s) shall be used as a performance guarantee for proper completion of the Extension and repair of any defective material and workmanship.

The Guarantee(s) shall be held by the District until the warranty inspection is approved. The Developer shall be responsible for any defective material or workmanship, including road settlement or pavement damage. If the Developer terminates the project prior to construction of the Extension, and the District incurs expenses greater than the amount collected from the Developer, then such additional expenses shall be deducted from the Guarantee(s) before being refunded or released to the Developer.

Pursuant to District Code, any developer that is a state agency or unit of local government is exempt from any DEA provision that requires a developer to secure its performance with a surety bond or other financial security device including cash or an assigned account.

15. MAINTENANCE BOND

a. Final acceptance of the Extension by the District shall not relieve the Developer of the obligation to correct defects in labor or materials. Before final acceptance the Developer shall furnish to the District a maintenance bond (bond, assignment of fund or cash) which shall be in force for the warranty period listed in Item 12(d). The bond shall be on the District provided standard form.

b. The value of the construction cost shall be calculated by the District based on as-constructed quantities and standard unit prices for agency construction costs. The maintenance bond shall be in an amount equal to following:

Aggregate Total Construction Cost* of Water and Sewer Installed by Developer Extension Agreement	Required Dollar Value of Maintenance Bond
- 0 -	\$5,000.00
\$ 5,000.01	\$10,000.00
\$10,000.01	\$25,000.00
\$25,000.01	\$100,000.00
greater than	\$100,000.00
	10% of total construction cost

*Total Construction Cost shall include Washington State Sales Tax.

c. A precondition of the District's release of the maintenance bond shall be payment by the Developer of all outstanding expenses incurred by the District.

d. At the end of warranty period listed in Item 12(d) this section, the District will inspect the Extension and release this Bond in writing if the Extension is in satisfactory condition; otherwise the maintenance bond remains in effect until released in writing by the District.

e. **Special Provision Applying to Developers that are a State Agency or Unit of Local Government (“municipality”)**. Pursuant to District Code, a Developer that is a municipality has the option of: (a) furnishing a maintenance bond to the District as set forth in Section 15.a-d, above; or (b) in lieu of providing a maintenance bond to the District, agreeing to promptly correct any defects in labor and/or materials associated with the installation of the new water and/or sewer system for a period of two years after acceptance. The District shall be responsible for re-inspection of the project prior to the two-year date. If no defects are detected in the re-inspection, no further work will be required of the municipality. The District maintains sole discretion in the identification of defects in labor and/or materials during the two-year period.

16. EARLY USE OF THE EXTENSION

A. BEFORE TOP LIFT PAVING (COMPLETION GUARANTEE)

If the Developer completes the Extension and desires service prior to the final paving of streets within the development, then at the District's option and as a condition of service, a cash deposit or an assignment of funds in a form and amount acceptable to the District shall be deposited with the District to cover 125% of the cost of work yet to be completed. After the Developer notifies the District that top lift paving has been completed, the Completion Guarantee will be released after the District's satisfactory inspection.

A. MODEL & EXISTING HOME CONNECTION

If the Developer completes the Extension's water and sewer system installation and desires to connect model homes or an existing home to be served by the new extension, early use of the water and/or sewer system may be granted, at the District's option. The Developer must enter into an early system access agreement and follow the requirements set forth in the applicable water and sewer sections of the District's standards

17. LIENS

Prior to final acceptance of the Extension, the Developer shall deliver to the District a Bill of Sale(s) indicating that there are no liens against the Work. If any lien arises or remains unsatisfied after acceptance of the Work, then the Developer shall reimburse the District for any costs incurred on account thereof, including reasonable attorneys' fees.

18. PHASING AND PERIOD OF ACCEPTANCE

Partial completion or phasing of the development work is not permitted by the District.

Unless otherwise approved by the District, the Developer Extension shall be completed so that it can be accepted in its entirety within two (2) years of the date of this Agreement, otherwise this Agreement and all the Developer's rights herein shall terminate.

If construction has begun within the initial two year timeframe, the terms and conditions of the Developer Extension Agreement may be extended by a period of one (1) year if approved by the District. Additional time extensions may be considered by the District upon request by the Developer.

If the Agreement terminates, the Developer shall submit an application for a new Developer Extension Agreement to the District. Any new Agreement shall be subject to any new or amended Code requirements, policies, or standards and specifications.

19. FINAL ACCEPTANCE - CONDITIONS PRECEDENT

Compliance with all terms and conditions of this Agreement, the approved plans, the District Standards and Specifications, and other District requirements is a condition precedent to the District's obligation to allow connection to the District's system, to accept the bill of sale to the Extension to maintain and operate the Extension and to provide service to the real property described in this Agreement.

The District shall not be obligated to accept title to the Extension or to provide service to the property described in this Agreement if construction by third parties of facilities to be deeded to the District has not been completed and those facilities are necessary to provide service to the property described in this Agreement.

The District shall not be obligated to allow service connections to its system until all fees or connection charges in effect on the date of application for service have been paid.

20. PROCEDURE FOR ACCEPTANCE

Acceptance of title to the Extension shall be by written notification by the District. Prior to acceptance, the bill of sale, the warranties, all necessary easements, and the record documents required by this Agreement shall be delivered to the District.

21. DATE OF FINAL ACCEPTANCE

The date of final acceptance shall be the date of the written notification of acceptance.

22. EFFECT OF ACCEPTANCE

The warranty period commences with the acceptance of the Extension by the District. Acceptance also transfers ownership of the Extension to the District for operation as a public system subject to District rules and regulations, conditions of service, and service charges.

23. RATES AND CHARGES

The property described in this Agreement shall be subject to all rates and charges established by the District in place at the time of final acceptance.

24. SUBCONTRACTING

Developer is fully responsible for the acts and omissions of Contractor, subcontractors and any persons employed, directly or indirectly, by Contractor or subcontractors, as well as the acts and omissions of Developer's employees.

25. NO ASSIGNMENT WITHOUT DISTRICT APPROVAL

This Agreement and Developer's rights and responsibilities may not be assigned without the prior written consent of the District. Any District approved assignment shall be in writing in a form approved by the District and filed with the District by the Developer.

26. LAWS TO BE OBSERVED

The Developer shall comply with all federal, state, and local laws, ordinances and regulations that affect the Work that is the subject of this Agreement. The Developer shall pay all expenses incurred for complying with such laws, ordinances and regulations.

27. DISTRICT PENALTIES AND FINES

The District may impose fines for violating the terms and conditions of the Developer Extension Agreement in accordance with adopted polices and Code. The Developer agrees to comply with all District requirements to ensure compliance with the terms of the Developer Extension Agreement by the Developer's agents. Developer agrees to pay any fines imposed by the District.

28. NO THIRD PERSON SHALL HAVE ANY RIGHTS HEREUNDER

This agreement is made only for the benefit of the District and the Developer. No third person or party shall have any rights hereunder whether by agency or as a third-party beneficiary or otherwise.

29. GOVERNING LAW/FORUM

This agreement shall be construed and enforced in accordance with the law of the State of Washington. Any suit to enforce the provisions of the agreement shall be brought in the Superior Court of Snohomish County, Washington.

30. REMEDIES AVAILABLE TO DISTRICT

If the Developer fails to pay any fees, charges or fines when due as determined by the District, then the charge or fine shall be delinquent and shall accrue interest at lesser of 12% or the highest legal rate per annum until paid as permitted by law. In addition to other remedies, the District may file a lien against the Real Property referenced herein and commence foreclosure proceedings as permitted by law.

31. COSTS OF LITIGATION

If either the District or the Developer commences any legal action relating to the provisions of this agreement, then the prevailing party shall be entitled, to recover all costs of litigation, including out of pocket expenses, expert fees, and reasonable attorneys' fees, including all such costs and fees incurred on appeal.

In any litigation arising out of this Agreement or related to this project to which the District is not a party the Developer shall reimburse the District for all of its costs and expenses, including attorney's or engineer's fees, that are reasonably and necessarily incurred as a result of such litigation.

32. NOTICE

Unless otherwise notified, any notice or other correspondence required by this Agreement shall be in writing to the address identified in the application for Developer's Extension Agreement.

33. GENERAL PROVISIONS, SPECIFICATIONS AND STANDARD DETAILS

Refer to the General Provisions and the District's Specifications and Standards, which are incorporated by reference herein and made a part of this Agreement.

34. REIMBURSEMENT AGREEMENT

Pursuant to RCW 57.22, the District may agree to a Reimbursement Agreement with the Developer for offsite sewer or water improvements. A Developer seeking reimbursement for costs of constructing sewer or water system offsite of the proposed development by adjacent properties directly benefiting from connecting to the new system shall enter into a Reimbursement Agreement with the District.

After final acceptance of the Developer Extension work, the Developer may make a request for such agreement in accordance with the requirements set forth in the District Code Title 4.

Developer agrees that Developer's costs for the sewer/water improvements to be constructed by Developer hereunder have been factored into the feasibility of Developer's Project and that Developer's decision to proceed with Developer's Project is not contingent or in any way dependent on receipt of reimbursement payments or payments from other property owners or developers that may connect to sewer/water facilities constructed by Developer under this agreement. Further, Developer agrees that the District shall not collect payments on behalf of Developer from other property owners or developers that receive no benefit at the time of connection to the District system from water/sewer facilities constructed hereunder. Developer agrees and acknowledges that District reserves the right to direct water/sewer flows and to contract for the construction of other sewer/water facilities, regardless of whether future flows and future facilities constructed under other contracts affect anticipated receipt of latecomer payments hereunder.

35. COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between Developer and District, which may only be changed in writing. For purposes of identification, this Agreement shall be assigned a number by the District, which number shall be endorsed on the first page of the Agreement.

35. INSTRUCTIONS TO EXECUTE THE AGREEMENT

- a. If the Developer is a corporation, this Agreement shall be executed by its duly authorized representative and the Developer hereby warrants same.
- b. If the Developer is a partnership, at least one of the general partners shall sign this Agreement and indicate his/her capacity as such.
- c. If the Developer is a joint venture, this Agreement shall be executed by the authorized representative, pursuant to a power of attorney, who shall sign on behalf of the others.

Signature page follows:

ALDERWOOD WATER AND WASTEWATER DISTRICT:

By: _____ Dated: _____
 Dick McKinley

Its: General Manager

Dated this _____ day of _____, 20____.

DEVELOPER: _____

By: _____ *(Signature)*

_____ *(Print Name)*

Its: _____ *(Title or Position)*

Signature authorization shall be provided for individuals signing for corporations, partnerships, joint ventures, etc.

DEVELOPER – INDIVIDUAL

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

PLACE NOTARY STAMP HERE

Dated _____

Notary Public in and for the State of Washington
residing at _____
My Appointment Expires _____

DEVELOPER – CORPORATE / PARTNERSHIP

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that _____ signed this instrument, on oath stated that _____ was authorized to execute the instrument and acknowledged it as the _____ of _____ to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

PLACE NOTARY STAMP HERE

Dated _____

Notary Public in and for the State of Washington
residing at _____
My Appointment Expires _____