

Adopted: 10/11/17  
Effective: 10/27/17

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 17-068

APPROVAL OF AN INTERLOCAL AGREEMENT BETWEEN SNOHOMISH  
COUNTY AND THE CITY OF LYNNWOOD CONCERNING THE  
CONSTRUCTION OF IMPROVEMENTS TO THE INTERSECTION OF ASH  
WAY AND MAPLE ROAD

WHEREAS, the County and the City currently have an Interlocal Agreement concerning the design of improvements to the intersection of Ash Way and Maple Road (the "Original Agreement"); and

WHEREAS, the County and the City desire to enter into a new Interlocal Agreement for the construction of the improvements; and

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions as if set forth in full herein.

Section 2. The Snohomish County Council approves and authorizes the Snohomish County Executive, or designee, to execute the Interlocal Agreement between Snohomish County and the City of Lynnwood concerning the design of improvements to the intersection of Ash Way and Maple Road, in the form hereto attached as Exhibit A.

PASSED this 11<sup>th</sup> day of October, 2017.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

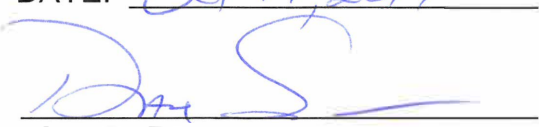
Chairperson

ATTEST:

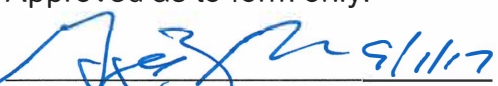
Assistant Clerk of the Council

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- APPROVED
- EMERGENCY
- VETOED

DATE: Oct 17, 2017  
  
County Executive

ATTEST:  
  
Cora E. Palmer

Approved as to form only:  
  
Deputy Prosecuting Attorney

D-22

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**EXHIBIT A**  
to  
**ORDINANCE NO. 17-068**

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE  
CITY OF LYNNWOOD CONCERNING THE CONSTRUCTION OF  
IMPROVEMENTS TO THE INTERSECTION OF ASH WAY AND MAPLE ROAD

*[See Attached]*

1 INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY  
2 OF LYNNWOOD CONCERNING THE CONSTRUCTION OF IMPROVEMENTS TO  
3 THE INTERSECTION OF ASH WAY AND MAPLE ROAD  
4

5 This INTERLOCAL AGREEMENT concerning the construction of improvements  
6 to the intersection of Ash Way and Maple Road (the "Agreement"), is made and entered  
7 into by and between SNOHOMISH COUNTY, a political subdivision of the State of  
8 Washington (the "County"), and the CITY OF LYNNWOOD, a Washington municipal  
9 corporation (the "City"), collectively the "Parties."

10  
11 **RECITALS**  
12

- 13 **A.** The County and the City on March 26, 2016, entered into an Interlocal Agreement  
14 concerning the design of improvements to the intersection of Ash Way and Maple  
15 Road to help prevent the Ash Way/Maple Road intersection and sections of Maple  
16 Road.  
17
- 18 **B.** The County and the City now desire to enter into this Agreement to coordinate and  
19 allocate responsibility for construction of the improvement designs drafted  
20 pursuant to the ILA referenced in the preceding recital (the "Project").  
21
- 22 **C.** For purposes of this Agreement, the portion of the Project located within the City  
23 shall be called the "City's Project Area" and the portion of the Project Area located  
24 within the unincorporated Snohomish County shall be called the "County's Project  
25 Area" as generally show in Exhibit B.  
26
- 27 **D.** For purposes of this Agreement, improvements within the City's Project Area shall  
28 be called "City Work" and improvements within the County's Project Area shall  
29 be called "County Work."  
30
- 31 **E.** For purposes of this Agreement, project management, advertising and bidding of  
32 the construction contract, construction, engineering, inspections performed by, or  
33 for the County, and other activities as required, with respect to City Work shall be  
34 referred to as the "Construction Services".  
35

36 **AGREEMENT**  
37

38 NOW, THEREFORE, in consideration of the mutual promises and covenants  
39 contained herein, it is agreed that the County and City agree as follows:  
40

41 **1. Requirements of Interlocal Cooperation Act**  
42

43 1.1 Purpose of Agreement. This Agreement is authorized by and entered into  
44 pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW. The purpose and intent  
45 of this Agreement is to set forth the mutual obligations, responsibilities, and rights of the  
46 County and the City for performance of the Construction.  
47

1           1.2    No Separate Entity Necessary. The Parties agree that no separate legal or  
2 administrative entities are necessary to carry out this Agreement.

3  
4           1.3    Ownership of Property. Except as expressly provided to the contrary in this  
5 Agreement, any real or personal property used or acquired by either party in connection  
6 with the performance of this Agreement will remain the sole property of such party, and  
7 the other party shall have no interest therein.

8  
9           1.4    Administrators. Each party to this Agreement shall designate an individual  
10 (an “Administrator”), which may be designated by title or position, to oversee and  
11 administer such party’s participation in this Agreement. The Parties’ initial Administrators  
12 shall be the following individuals:  
13

County’s Initial Administrator:

David Lee, PE, Project Mgr.  
Snohomish County DPW  
3000 Rockefeller Avenue M/S 607  
Everett, Washington 98201  
425-388-6694  
david.lee@snoco.org

City’s Initial Administrator:

Brian Delp, Resident Engineer  
City of Lynnwood Public Works  
19100 44<sup>th</sup> Avenue W  
P. O. Box 5008  
Lynnwood, WA, 98046-5008  
425-670-5224  
bdelp@lynnwoodwa.gov

14 Either party may change its Administrator at any time by delivering written notice pursuant  
15 to Section 13 of this Agreement, of such party’s new Administrator to the other party.  
16

17 **2.    Effective Date and Duration**

18  
19           2.1    Effective Date. As provided by RCW 39.34.040, this Agreement shall take  
20 effect when it has: (i) been duly executed by both Parties, and (ii) either filed with the  
21 County Auditor or posted on the County’s Interlocal Agreements website.  
22

23           2.2    Duration. This Agreement shall remain in effect until all obligations of the  
24 Parties are discharged, unless earlier terminated pursuant to the provisions of Section 12  
25 below; PROVIDED, that the Parties’ obligations after December 31<sup>st</sup> of the year in which  
26 this Agreement becomes effective, are contingent upon each Parties’ local legislative  
27 appropriation of necessary funds in accordance with applicable laws.  
28

29 **3.    County Responsibilities**

30  
31           3.1    Project Management. The County shall serve as the project manager for the  
32 purposes of performing the Construction Services.  
33

34           3.2    Grant of Access. The County shall obtain permission and right-of-entry on,  
35 over, under, above and through WSDOT rights-of-way that WSDOT is responsible for  
36 maintaining or from private property owners, when in the reasonable judgment of the

1 County engineer, access is necessary for the County in performing the Construction  
2 Services.

3  
4 3.3 Construction Services. The County shall perform the Construction Services  
5 in a manner consistent with the final bid set of the project plans and specifications approved  
6 by the Parties, and incorporated by this reference (the "Project Plans"). The Construction  
7 Services shall be performed by County staff, consultants, sub-consultants, contractors or  
8 sub-contractors.

9  
10 3.4 Lead Agency. The County shall be the Lead Agency for performance of the  
11 Construction Services.

12  
13 3.5 Evening/Weekend Work. In the event that it is necessary or convenient, in  
14 the reasonable judgment of the County Engineer, to perform Construction Services either  
15 at night or on weekends, the Parties agree they will cooperate to obtain any required  
16 regulatory or administrative approvals.

17  
18 3.6 Preconstruction Meeting & Weekly Meetings. After awarding the contract  
19 for the construction of the Project, the County will arrange a preconstruction meeting and  
20 weekly Project meetings with the contractor who is awarded the contract, (the  
21 "Contractor") and invite the City to attend.

22  
23 3.7 Inspection of Construction Services. The County will provide copies to the  
24 City of all daily Construction Services inspection reports on a weekly or other agreed upon  
25 interval. Inspection of Construction Services by the County shall not constitute a guarantee  
26 or warranty of the adequacy of performance.

27  
28 3.8 Deviation from Project Design. The County shall be responsible for  
29 obtaining City approval for deviations from the Project Plans pursuant to subsections 5.5.1  
30 and 5.5.2.

31  
32 3.9 Independent Contractor. The County shall perform all Construction  
33 Services under this Agreement as an independent contractor and not as an agent, employee,  
34 or servant of the City. The County has the express right to direct and control the County's  
35 activities in providing the agreed Construction Services in accordance with the  
36 specifications set out in this Agreement.

37  
38 3.10 Sub-Contracting. The County, in its sole discretion, may hire one or more  
39 consultants, sub-consultants, contractors or sub-contractors to perform some or all of the  
40 Construction Services.

41  
42 3.11 As-built Plans/Record Drawings. The County shall provide the City a  
43 set of the Project "As-Built Plans/Record Drawings" in paper and PDF form, as provided  
44 by the contractor to the County per the construction contract; provided construction has  
45 been completed under the terms of this Agreement. If the Agreement is terminated prior  
46 to completion, the County shall provide the City a hard copy of the "As-Built Plans/Record  
47 Drawings" of that work completed prior to the termination date.

1           3.12 Notification of Project Completion. The County, in accordance with  
2 Section 13 of this Agreement, shall notify the City when construction has been  
3 substantially completed as defined in the construction contract documents.  
4

5           3.13 Correction of Deficiencies Identified by City. The County shall correct  
6 Construction Services work that the City identifies as not being in conformance with the  
7 Project Plans; provided however, nothing contained herein shall be construed as obligating  
8 the County to correct or otherwise be responsible for any deficiency or defect in the  
9 Construction Services resulting from any error or defect in the Project Plans.  
10

11           3.14 Invoicing. The County shall be responsible for invoicing the City in  
12 accordance with the terms of Section 5.2 of this Agreement for the reimbursement of all  
13 actual costs incurred by the County that are associated with the Construction Services.  
14

15           3.15 Separate Agreements. The County shall be responsible for the  
16 implementation of any separate agreement with the District in connection with this Project.  
17 All work and expenses related to District Work located within the City's Project Area will  
18 be tracked, invoiced and reimbursed by the District through a separate agreement. The  
19 City shall not be responsible for payment of any County costs or expenses incurred in  
20 accomplishing District Work.  
21

22           3.16 Cost to Complete Forecasting. The County shall share all cost to complete  
23 forecasting information with the City on a monthly basis, or other mutually agreeable  
24 interval. The County shall provide Notice, pursuant to Section 13, to the City within five  
25 (5) working days when cost to complete forecasting shows the Project exceeding the Total  
26 Estimated Cost of Construction in Exhibit A.  
27

#### 28 **4. City Responsibilities**

29

30           4.1 Cooperation with the County. The City shall make all reasonable efforts to  
31 cooperate with the County in facilitating construction of the Project and make the City's  
32 Resident Engineer and other necessary personnel available to assist the County on matters  
33 within the City's Project Area so as to prevent delay in the Project construction schedule.  
34 The City shall be responsible for all costs to the County for delays to the Project resulting  
35 from delays that are caused by the City. Notice and request to remedy will be made by the  
36 County to the City in cases where the City is the cause of a delay.  
37

38           4.2 Grant of Access. The City grants to the County, for the purpose of  
39 performing Construction Services pursuant to this Agreement, permission and right-of-  
40 entry on, over, under, above and through those City rights-of-way that are necessary or  
41 convenient, in the reasonable judgment of the County.  
42

43           4.3 Acceptance of Project Construction. The City, within ten (10) working days  
44 after notification by the County of the substantial completion of the Construction Services  
45 shall set up a meeting with the County to jointly review the Construction Services work  
46 and jointly develop a punch list indicating deficiencies in the Construction Services. Once  
47 correction of the punch list items is completed by the County, the County shall provide

1 notice to the City of the punch list's completion. The City, in accordance with Section 13  
2 of this Agreement, shall issue written notification notice to the County of either any failures  
3 to correct previously identified deficiencies or acceptance of the work. If notification has  
4 not been received by the County as of the close of business on the fifteenth (15) working  
5 day following the County's notification to the City that the identified deficiencies have  
6 been corrected, the Construction Services work shall be considered complete and accepted  
7 by the City.

8  
9 4.4 Future improvements, maintenance, repairs, or corrections. The cost of any  
10 future improvements, maintenance, repairs, corrections, or permit obligations to any City  
11 facilities and/or improvements within the City's Project Area covered under the terms of  
12 this Agreement shall be the exclusive responsibility of the City from the date of acceptance  
13 by the City unless covered under the contract performance period.

14  
15 4.5 Permitting and Inspections. The City shall provide to the County any City  
16 required permits for the Construction Services at no cost to the County. Inspections within  
17 the City Project Area will be performed by the County in conjunction with the Construction  
18 Services.

19  
20 4.6 City Accessing the City Project Area or Contact with Contractor. City  
21 personnel accessing the City Project Area for reasons related to the Project, shall first check  
22 in with onsite County personnel. The City shall direct any concerns regarding construction  
23 activities by the contractor to County personnel.

## 24 25 **5 Estimate Cost, Segregation, Invoicing and Payment of Construction Services**

26  
27 5.1 Estimated Cost of Construction Services. The estimated cost of  
28 Construction Services are as described in Exhibit A; provided, the estimated costs shown  
29 in Exhibit A are based on the most current engineers estimate and may be higher or lower  
30 depending upon the successful bidder's construction contract award amount. If the contract  
31 award amount is less, or greater, than that currently shown in Exhibit A, the parties  
32 acknowledge that the costs for Sales Tax (if applicable), Contingency, Construction  
33 Inspection and Contract Administration, and Administrative Fee will also need to decrease  
34 or increase corresponding to their assigned percentages shown in Exhibit A.

35  
36 The Parties agree the estimated cost of Construction Services associated with the  
37 Construction Services shall not exceed the total estimated costs shown on Line F of Exhibit  
38 A without written amendment pursuant to Section 14.2.

39  
40 5.2 Invoicing and Payment. The County shall invoice the City monthly, or  
41 other schedule that is mutually convenient and agreed to by the parties, showing actual  
42 expenditures for Construction Services for City Work during the previous period. Invoices  
43 shall be based on Project construction contract progress payments made to the Contractor  
44 including changes approved under Sub-section 5.5.2 below and all County expenditures  
45 for the provision and support of the Construction Services as described more specifically  
46 in Section 5.3 below. Invoices shall include supporting documentation and detail of  
47 expenses incurred and be sent to the City's Administrator identified in Section 1.4 of this



1 Agreement. Supporting documentation shall include cost segregation for Contractor  
2 payments, County Labor and Equipment (including administrative fee), and any  
3 consultant, subconsultant, contracted or subcontracted work performed in support of  
4 Construction Services.

5  
6 Undisputed invoices shall be paid by the City within thirty (30) days of receipt by the City.  
7 Notice of any potential dispute regarding invoiced expenses shall be made by the City in  
8 writing within the same time period. Payment by the City shall not constitute agreement  
9 as to the appropriateness of any item or acceptance of the work so represented. At the time  
10 of final audit, all required adjustments related to any potential dispute for which notice has  
11 been timely given shall be made and reflected in a final payment.

12  
13 5.3 City Reimbursement of Costs for Construction Services Performed by  
14 County Staff, Consultants, Sub-Consultants, Contractors, or Sub-Contractors.

15  
16 5.3.1 County Staff. The City shall reimburse the County for all actual  
17 costs of the Construction Services provided by County Staff on a time and materials basis,  
18 plus an administrative fee pursuant to Section 5.4 of this Agreement for only those costs  
19 of County staff identified in Section 5.3.1(a) below, and only to the fixed maximum amount  
20 identified in Exhibit A, or as otherwise amended. The County agrees that only those costs  
21 directly attributed to the Construction Services and allowed under accepted accounting  
22 procedures will be charged to the City. By way of example, those costs directly attributed  
23 may include, but are not limited to, the following types of cost components:

- 24 (a) Salaries, wages, benefits of all County employees engaged therein;  
25 (b) Travel expenses, including mileage of County employees;  
26 (c) Materials, when provided by the County;  
27 (d) County-owned machinery and equipment, for which the County equipment  
28 rental rate shall be included in computing the cost of the machinery and  
29 equipment;  
30 (e) Other costs and incidental expenses; including depreciation on County  
31 machinery and equipment;  
32 (f) The full cost to the County of rental machinery and equipment, together  
33 with any operator furnished therewith;  
34 (g) The cost of equipment, supplies, and related expenses when purchased by  
35 the County;  
36 (h) The full or proportionate cost (as is applicable) of permits required from  
37 other agencies, except the City, for work within the City's Project Area.

38  
39 5.3.2 Consultants and Sub-Consultants. In the case where the County  
40 finds it necessary to contract any portion, or portion(s), of the Construction Services to  
41 Consultants and/or Subconsultants in accordance with Section 3.9 of this Agreement, the  
42 City shall reimburse the County for One Hundred Percent (100%) of the contracted work  
43 for Construction Services. The Construction Services provided through contract with  
44 consultants and/or subconsultants, in combination with Construction Services provided by  
45 County Staff per Section 5.3.1, shall also be limited to the fixed maximum amounts shown  
46 in Exhibit A, unless amended per Section 14.2.

1                    5.3.3 Contractors or Sub-Contractors. The City shall reimburse the  
2 County for One Hundred percent (100%) of the final cost of all approved Construction  
3 Services bid items.  
4

5                    5.4 Administrative Fee. For the purpose of fixing the compensation to be paid  
6 by the City to the County for the County performing Construction Services, it is agreed  
7 that there shall be included in each billing an administrative fee to cover administrative  
8 costs. This fee is calculated by taking the total labor cost as identified in Section 5.3.1(a)  
9 above and multiplying it by the County Administrative Rate. This rate is currently set at  
10 twenty percent (20%) and is not included in charges for materials, equipment or payments  
11 to consultants, subconsultants, contractors or subcontractors. This rate may be reasonably  
12 adjusted annually to reflect changes in actual administrative costs without the need for a  
13 formal amendment of this Agreement.  
14

15                    5.5 Extra Work. There may be unforeseen conditions such as construction  
16 disputes and claims, changed conditions, and changes in the construction work, requiring  
17 expedited resolution that may involve the need for decisions by the City. Reimbursement  
18 for increased construction engineering and/or construction contract amounts for  
19 Construction Services shall be limited to costs covered by a modification, change order or  
20 extra work order approved as described below. Reimbursement for this work shall be  
21 included in "Invoicing and Payment" as set forth in Section 5.2 above.  
22

23                    5.5.1 Changes to Contract Plans and Specifications. Should it be  
24 determined that any change from the Project Plans is required, the County shall administer  
25 the necessary Change Orders in accordance with the Change Management Plan identified  
26 in Section 5.5.2 below.  
27

28                    5.5.2 Change Management Plan. For the purposes of managing and  
29 approving changes in work, plans and specifications for Construction Services related to  
30 the City's Project Area and City Work, the following Change Management Plan provisions  
31 shall be followed.  
32

33                    5.5.2.1 Change Control Log. All Extra Work and Changes to  
34 Contract Plans and Specifications shall be tracked using a mutually agreeable form of  
35 Change Control Log. The purpose of this log will be to actively manage changes as they  
36 occur, document the need and or reasons for changes, and monitor the ongoing financial  
37 impacts of the changes to the project budget and contingencies. The Change Control Log  
38 will be transmitted to the City at weekly project meetings, or by other mutually agreeable  
39 means and intervals.  
40

41                    5.5.2.2 Notice and Copy of Change Orders. The County shall  
42 provide notice and electronic copies of all change orders to the City Administrator.  
43

44                    5.5.2.3 Format of Change Orders. Standard County forms, format,  
45 and procedure shall be used to document and process change orders.  
46

1                   5.5.2.4    Approval of Change Orders. Change orders shall be approved  
2 in accordance with the following:

3                   (a)    Change Orders Less Than \$10,000 per incident. The County  
4 will have the administrative authority to approve change orders less than \$10,000 per  
5 incident.

6                   (b)    Change Orders between \$10,000 and \$50,000 per incident.  
7 All change orders between \$10,000 and \$50,000 per incident require prior approval by  
8 email by the City’s Administrator or designee, prior to the County approving the change  
9 order with the Contractor.

10                  (c)    Change Orders greater than \$50,000 per incident. All  
11 change orders greater than \$50,000 per incident require prior approval in writing by the  
12 City’s Public Works Director or designee, prior to the County approving the change order  
13 with the Contractor.

14  
15                  5.6    Contractor Claim. The City and County shall work together to resolve  
16 claims arising from the work performed under this Agreement. The City shall be  
17 responsible for all costs associated with claims for City Work within the City’s Project  
18 Area subject to the Counties duty to indemnify and hold harmless the City under Section 8  
19 of this Agreement.

20  
21                  5.7    Final Invoice. Upon completion of the Project, the County shall submit a  
22 final invoice to the City in accordance with Section 7 of this Agreement.

23  
24    **6.    Bidding and Award of Construction Contract for the Project**

25  
26                  6.1    Bid Schedules. The Project will be bid in a single schedule separated into  
27 five groups as identified in Section 6.2.

28  
29                  6.2    Bid Package. The bid package will contain a provision that in substance  
30 states the following:

31                  Bid items in Group 1 are for work within the County Project Area outside WSDOT  
32 limited access area and will be paid from County funds. Bid items in Group 2 are  
33 for work within the City Project Area and will be paid from City funds. Bid items  
34 in Group 3 are for work within WSDOT limited access area and will be paid from  
35 County funds. Bid Items in Groups 4 and 5 are for work related to District Work  
36 and will be paid from District funds. For bidding purposes, bid items for Groups  
37 1 and 2 will be combined into one proposal, bid items for Group 3 will be one  
38 proposal and bid items for Groups 4 and 5 will be combined into one proposal.  
39 The quantities for each group will be noted on the Summary of Quantities and  
40 separated into their individual groups during bid tabulation.

41  
42                  The low bidder is the bidder with the lowest total bid, which is the sum of all  
43 Groups.”

44  
45                  6.3    Bid Award or Rejection. Upon opening of the bids for construction of the  
46 Project, the Parties will meet and confer. The County shall award to the lowest responsible  
47 and responsive bidder, except as follows:

1           6.3.1    Over Budget. If the Parties determine that the low bid exceeds  
2 available funds for the Project, the County shall reject all bids. The parties, prior to  
3 rebidding, shall discuss the size of available budgets, which shall at least be equal to the  
4 engineer’s estimates.  
5

6           6.3.2    Unbalanced Bid. If either party determines that the low bid appears  
7 unbalanced, then the County may either reject the unbalanced bid or reject all bids.  
8

9           6.3.3    Re-bid. If all bids are rejected under Sub-sections 6.3.1 or 6.3.2  
10 above, then the County shall re-bid the Project, unless both City and County agree that  
11 such a rebid would be futile. If on such rebid all bids are again rejected under Sub-sections  
12 6.3.1 or 6.3.2 above, then either the City or the County may elect, effective on written  
13 notice to the other party delivered prior to any third call for bids, to terminate this  
14 Agreement.  
15

16           6.4    Additional Insured. The construction contract will contain a provision  
17 requiring the City, and the District be added as an additional insured on the contractor’s  
18 required liability insurance policies.  
19

20 **7.    Audit, Final Invoice by County and Review and Acceptance of Construction**  
21 **Services by City**  
22

23           7.1    Audit and Final Billing. Upon completion of the Project, the County shall  
24 conduct an audit in accordance with standards of the Washington State Department of  
25 Transportation. At the time of the audit, all required adjustments shall be made and shall  
26 be reflected in a final invoice to the City. The County shall, upon the completion of the  
27 audit, provide the City with a copy of the audit and a final invoice.  
28

29           7.2    Review and Acceptance. The City shall have thirty (30) days from receipt  
30 of the audit and final invoice to review and notify the County, pursuant to Section 13 of  
31 this Agreement, if it accepts or has comments on the audit and final invoice for the  
32 Construction Services.  
33

34           7.3    Deemed Acceptance. Within thirty (30) days of receipt of the audit and  
35 final billing, the City shall notify the County in writing of any objections to the audit and/or  
36 billing as it relates to Construction Services. If no objections are timely filed, the City shall  
37 make final payment to the County and such final payment shall constitute an acceptance  
38 by the City of the County’s costs and accounting.  
39

40 **8.    Indemnification/Hold Harmless**  
41

42           8.1    Indemnification/Hold Harmless. Each Party shall protect, defend,  
43 indemnify, and hold harmless the Other Party, its officers, officials, employees, and agents,  
44 from any and all claims, demands, suits, penalties, losses, damages, judgments, or costs of  
45 any kind whatsoever (hereinafter “claims”), arising out of or in any way resulting from the  
46 Indemnifying Party’s officers, employees, agents, contractors and/or subcontractors of all  
47 tiers, consultants and/or sub-consultants, acts or omissions, performance or failure to

1 perform this Agreement, to the maximum extent permitted by law or as defined by RCW  
2 4.24.115, now enacted or as hereinafter amended.

3  
4 8.2 Waiver of Immunity Under the Industrial Insurance Act. The  
5 indemnification provisions of Section 8.1 above are specifically intended to constitute a  
6 waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51  
7 RCW, as respects the other party only, and only to the extent necessary to provide the  
8 indemnified party with a full and complete indemnity of claims made by the indemnitor's  
9 employees. The parties acknowledge that these provisions were specifically negotiated and  
10 agreed upon by them.

11  
12 8.3 Survival. The provisions of this Section 8 shall survive the expiration or  
13 earlier termination of this Agreement.

14  
15 **9. Insurance**

16 Each party shall maintain its own insurance and/or self-insurance for its liabilities  
17 from damage to property and /or injuries to persons arising out of its activities associated  
18 with this Agreement as it deems reasonably appropriate and prudent. The maintenance of,  
19 or lack thereof of insurance and/or self-insurance shall not limit the liability of the  
20 indemnifying part to the indemnified party(s). The City and the District shall be named as  
21 an additional insured on all Certificates of Insurance received for this project from  
22 Contractors and/or Consultants.

23  
24 **10. Compliance with Laws**

25 In the performance of its obligations under this Agreement, each party shall comply  
26 with all applicable federal, state, and local laws, rules and regulations.

27  
28 **11. Default, Remedies and Dispute Resolution**

29  
30 11.1 Default. If either Party fails to perform any act or obligation required to  
31 be performed by it hereunder, the other party shall deliver written notice of such failure to  
32 the non-performing party. The non-performing party shall have thirty (30) days after its  
33 receipt of such notice in which to correct its failure to perform the act or obligation at issue,  
34 after which time it shall be in default ("Default") under this Agreement; provided, however,  
35 that if the non-performance is of a type that could not reasonably be cured within said thirty  
36 (30) day period, then the non-performing party shall not be in Default if it commences cure  
37 within said thirty (30) day period and thereafter diligently pursues cure to completion.

38  
39 11.2 Remedies. In the event of a party's Default under this Agreement, then  
40 after giving notice and an opportunity to cure pursuant to Section 11.1 above, the non-  
41 Defaulting party shall have the right to exercise any or all rights and remedies available to  
42 it in law or equity.

43  
44 11.3 Dispute Resolution. Disputes that are not resolved within five (5)  
45 working days by the County and City Administrators shall be processed as follows:  
46

1           11.3.1     The dispute shall be referred by the County and City Administrators  
2 to senior management of each party on the fifth day. Within five (5) working days each  
3 party shall designate one senior manager with authority to resolve the matter in dispute.  
4 Senior managers may jointly retain consulting engineers or other experts or facilitators to  
5 make recommendations to them. However, either party may independently retain  
6 consultants or experts.

7  
8           11.3.2     If the respective senior managers cannot reach agreement within  
9 five (5) working days of receiving a referral, they may initiate either: (i) a five (5) working  
10 day cooling-off period, or (ii) voluntary non-binding mediation by a mutually agreed-upon  
11 mediator. The parties intend that any mediation process or any cooling-off period followed  
12 by further negotiations be completed within thirty (30) working days of senior managers'  
13 receiving the referral.

14  
15           11.3.3     If the parties choose to have the dispute mediated, a mediator shall  
16 be selected within five (5) working days from a pool of mediators who have mediated  
17 disputes involving similar issues in the past and who devote a significant portion of their  
18 practice to handling mediations or arbitrations, with preference for those who would be  
19 available within thirty (30) working days of senior management receiving the referral. If  
20 the parties cannot reach an agreement on the selection of the mediator within five (5)  
21 working days of senior management agreeing to have the dispute mediated, either party  
22 may apply to the Superior Court of Snohomish County to have the mediator appointed by  
23 a judge or commissioner of that court.

24  
25           11.3.4     If the parties are still unable to resolve the dispute, either party may  
26 file a lawsuit in the Superior Court in Snohomish County.

27  
28 **12.    Termination**

29  
30           12.1     Notice of Termination. Either party may terminate this Agreement at any  
31 time, with or without cause, upon providing not less than thirty (30) days' advance written  
32 notice to the other party pursuant to Section 13 of this Agreement. The termination notice  
33 shall specify the date on which the Agreement shall terminate.

34  
35           12.2     Calculation of Costs Due Upon Termination. Upon termination of this  
36 Agreement as provided in this Section 12, the City shall pay the County for all Construction  
37 Services performed up to the date of termination, as well as the costs of all non-cancelable  
38 obligations or penalties incurred by the County as a result of the cancellation of  
39 Construction Services. The County shall invoice the City within sixty (60) days after the  
40 date of termination of all remaining costs including non-cancelable costs. Non-cancelable  
41 obligations shall mean the County's contractual obligations for construction or equipment  
42 associated with the Project or Utility Work that either cannot be canceled or if cancellable,  
43 would require the payment of a penalty such as, but not limited to, the following:

44  
45           12.2.1    The cost to the County of rental machinery and equipment, together  
46 with any operator furnished therewith if applicable;

1           12.2.2 The cost of equipment or supplies that can't be returned, when  
2 purchased by the County;

3  
4           12.2.3 The cost or penalties incurred for the return of equipment or supplies,  
5 when purchased by the County; or

6  
7           12.2.4 Payment to consultants, sub-consultants, contractors or sub-  
8 contractors for work performed on behalf of the County.

9  
10          12.3     Payment After Termination. No payment shall be made by the City for  
11 any expense incurred for Construction Services performed following the effective date of  
12 termination unless the City authorized the expense or Construction Services in writing or  
13 they are determined to be non-cancelable obligations pursuant to Section 12.2 of this  
14 Agreement.

15  
16 **13.     Notices**

17           All notices required to be given by any party to the other party under this Agreement  
18 shall be in writing and shall be delivered either in person, by United States mail, or by  
19 electronic mail (email) to the applicable Administrator or the Administrator's designee.  
20 Notice delivered in person shall be deemed given when accepted by the recipient. Notice  
21 by United States mail shall be deemed given as of the date the same is deposited in the  
22 United States mail, postage prepaid, and addressed to the Administrator, or their designee,  
23 at the addresses set forth in Section 1.4 of this Agreement. Notice delivered by email shall  
24 be deemed given as of the date and time received by the recipient.

25  
26 **14.     Miscellaneous**

27  
28          14.1     Entire Agreement. This Agreement constitutes the entire agreement  
29 between the parties regarding the subject matter contained herein.

30  
31          14.2     Amendment. This Agreement may not be modified or amended in any  
32 manner except by a written document signed by both Parties; PROVIDED, that the County  
33 and City Public Works Directors, or their designee's, are authorized to execute written  
34 amendments to the Agreement or to change the City's estimated cost of construction  
35 services as shown in Exhibit A of this Agreement. The City Public Works Director may  
36 execute written amendments to the Agreement up to the amounts budgeted and authorized  
37 by City Council.

38  
39          14.3     Governing Law and Venue. This Agreement shall be governed by and  
40 enforced in accordance with the laws of the State of Washington. The venue of any action  
41 arising out of this Agreement shall be in the Superior Court of the State of Washington, in  
42 and for Snohomish County.

43  
44          14.4     Interpretation. This Agreement and each of the terms and provisions of it  
45 are deemed to have been explicitly negotiated by the Parties, and the language in all parts  
46 of this Agreement shall, in all cases, be construed according to its fair meaning and not  
47 strictly for or against either of the Parties hereto. The captions and headings in this

1 Agreement are used only for convenience and are not intended to affect the interpretation  
2 of the provisions of this Agreement. This Agreement shall be construed so that wherever  
3 applicable the use of the singular number shall include the plural number, and vice versa,  
4 and the use of any gender shall be applicable to all genders.  
5

6 14.5 Severability. If any provision of this Agreement or the application thereof  
7 to any person or circumstance shall, for any reason and to any extent, be found invalid or  
8 unenforceable, the remainder of this Agreement and the application of that provision to  
9 other persons or circumstances shall not be affected thereby, but shall instead continue in  
10 full force and effect, to the extent permitted by law.  
11

12 14.6 No Waiver. A party's forbearance or delay in exercising any right or  
13 remedy with respect to a Default by the other party under this Agreement shall not  
14 constitute a waiver of the Default at issue. Nor shall a waiver by either party of any  
15 particular Default constitute a waiver of any other Default or any similar future Default.  
16

17 14.7 No Assignment. This Agreement shall not be assigned, either in whole or  
18 in part, by either party without the express written consent of the other party, which may  
19 be granted or withheld in such party's sole discretion. Any attempt to assign this  
20 Agreement in violation of the preceding sentence shall be null and void and shall constitute  
21 a Default under this Agreement.  
22

23 14.8 Warranty of Authority. Each of the signatories hereto warrants and  
24 represents that he or she is competent and authorized to enter into this Agreement on behalf  
25 of the party for whom he or she purports to sign this Agreement.  
26

27 14.9 No Joint Venture. Nothing contained in this Agreement shall be  
28 construed as creating any type or manner of partnership, joint venture or other joint  
29 enterprise between the Parties.  
30

31 14.10 No Third Party Beneficiaries. This Agreement and each and every  
32 provision hereof are for the sole benefit of the City and the County. No other persons or  
33 parties shall be deemed to have any rights in, under or to this Agreement.  
34

35 14.11 Execution in Counterparts. This Agreement may be executed in two or  
36 more counterparts, each of which shall constitute an original and all of which shall  
37 constitute one and the same agreement.  
38

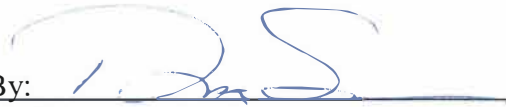
39 14.12 Records. The Parties shall maintain all records pertaining to the  
40 Construction Services for a period not less than six (6) years from the final payment to the  
41 County by the City or the date the Agreement is terminated, whichever is later. The County  
42 shall provide either a paper or electronic PDF copy of any final construction documentation  
43 identified and requested by the City for the City's Project Area. The Parties shall keep all  
44 records available for either public disclosure requests pursuant to RCW 42.56 (aka the  
45 Public Records Act) for inspection or audit by the State or City. Copies of all records,  
46 accounts, documents or other data pertaining to the Project shall be furnished upon request.  
47 If any litigation, claim, or audit is commenced, the records and accounts along with




1 supporting documentation shall be retained by the Parties until all litigation, claim or audit  
2 finding has been resolved even though such litigation, claim, or audit may continue past  
3 the six-year retention period.

4  
5 14.13 Limitations on Authority. The parties understand that this Agreement  
6 does not impose on them in any obligation to exercise the authority or perform the functions  
7 of the other; and that neither party is relieved by this Agreement of any obligation or  
8 responsibility impressed upon it by law, except to the extent that actual and timely  
9 performance thereof is accomplished by the performance by both parties under this  
10 Agreement.


11  
12 IN WITNESS WHEREOF, the parties have executed this Agreement as of the last  
13 date written below.


14  
15 “County”  
16 **SNOHOMISH COUNTY:**  
17  
18  
19 By:   
20 Dave Somers  
21 Snohomish County Executive

“City”  
**CITY OF LYNNWOOD:**  
By:   
Nicola Smith  
Mayor

22  
23  
24 Date: 10/17/17

Date: 10/2/2017

25  
26  
27  
28 Approved as to Form:  
29  
30  
31   
32 Deputy Prosecuting Attorney

Approved as to Form:  
33  
34  
35   
36 City Attorney  
37 Rosemary Larson

38  
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**EXHIBIT A**

**DESCRIPTION AND ESTIMATED COST OF CONSTRUCTION SERVICES\***

Line #	Description of Bid Item	Qty	Unit	Unit Cost	Total Cost
1	Mobilization	0.5	LS	\$586,000	\$293,000.00
2	CLEARING AND GRUBBING	0.2	ACRE	\$25,000	\$5,000.00
3	REMOVING DRAINAGE STRUCTURE	2	EACH	\$500	\$1,000.00
4	REMOVAL OF STRUCTURE AND OBSTRUCTION	1	L.S.	\$5,000	\$5,000.00
5	SAWCUTTING EXISTING PAVEMENT	250	L.F.	3	\$750.00
6	REMOVING ASPHALT CONC. PAVEMENT	250	S.Y.	\$20	\$5,000.00
7	REMOVING EXISTING DRAINAGE PIPE	240	L.F.	\$20	\$4,800.00
8	ROADWAY EXCAVATION INCL. HAUL	1,410	C.Y.	\$25	\$35,250.00
9	GRAVEL BORROW INCL. HAUL	2,070	TON	\$20	\$41,400.00
10	STREAMBED GRAVEL	165	TON	\$100	\$16,500.00
11	CHANNEL EXCAVATION INCL. HAUL	120	C.Y.	\$20	\$2,400.00
12	COMBINATION INLET	3	EACH	\$1,525	\$4,575.00
13	CL. II REINF. CONC. CULV. PIPE 12 IN. DIAM.	120	L.F.	\$100	\$12,000.00
14	CORRUGATED POLYETHYLENE STORM SEWER PIPE 8 IN. DIAM.	60	L.F.	\$45	\$2,700.00
15	ADJUST MANHOLE	3	EACH	\$600	\$1,800.00
16	SCHEDULE A STORM SEWER PIPE 24IN. DIAM.	50	L.F.	\$150	\$7,500.00
17	SCHEDULE A STORM SEWER PIPE 30IN. DIAM.	10	L.F.	\$150	\$1,500.00
18	RESETTING EXISTING HYDRANTS	1	EACH	\$2,500	\$2,500.00
19	STRUCTURE EXCAVATION CLASS A INCL. HAUL	330	C.Y.	\$25	\$8,250.00
20	SHORING OR EXTRA EXCAVATION CL. A	1	L.S.	\$14,900	\$14,900.00
21	GRAVEL BACKFILL FOR WALL	147	C.Y.	\$60	8,820.00
22	ST. REINF. BAR FOR CONC. SLAB AND WALL	222003	LB.	\$1	\$288,603.90
23	CONC. CLASS 4000 FOR SLAB AND WALL	1263	C.Y.	\$350	\$442,050.00
24	PILE TOP PLATE	419	EACH	\$80	\$33,520.00
25	GALVANIZED 8 IN. DIAM. PIN PILE	16760	L.F.	\$52	\$871,520.00
26	GALVANIZED 8 IN. DIAM. PIN PILE - LOW OVERHANG	0	L.F.	\$82	\$

27	PIN PILE LOAD TEST	4	EACH	\$6,000	\$24,000.00
28	CRUSHED SURFACING BASE COURSE	321 0	TON	\$30	\$96,300.00
29	CRUSHED SURFACING TOP COURSE	980	TON	\$35	\$34,300.00
30	CRUSHED SURFACING BASE COURSE - BURIED SLAB	584	TON	\$30	\$17,520.00
31	HMA CL. 1/2 IN. PG 64-22	143 0	TON	\$110	\$157,300.00
32	ASPHALT COST PRICE ADJUSTMENT	0.5	CALC	\$9,340	\$4,670.00
33	HMA FOR APPROACH CL 1/2 IN. PG 64-22	40	TON	\$150	\$6,000.00
34	ESC LEAD	98	DAY	\$75	\$7,350.00
35	CHECK DAM	160	L.F.	\$25	\$4,000.00
36	INLET PROTECTION	4	EACH	\$100	\$400.00
37	EROSION/WATER POLLUTION CONTROL	0.5	EST.	\$238,000	\$119,000.00
38	SEEDING, FERTILIZING, AND MULCHING	0.2	ACRE	\$7,000	\$1,400.00
39	TOPSOIL TYPE A		C.Y.	\$	\$
40	STREET CLEANING	146	HR	\$120	\$17,520.00
41	OUTLET PROTECTION	5	EACH	\$750	\$3,750.00
42	HIGH VISIBILITY FENCE	160	L.F.	\$4	\$640.00
43	HIGH VISIBILITY SILT FENCE	107 0	L.F.	\$4	\$4,280.00
44	BIODEGRADABLE EROSION CONTROL BLANKET	250	S.Y.	\$2	\$500.00
45	DEWATERING	0.5	L.S.	\$150,000	\$75,000.00
46	DEWATERING TREATMENT AND DISCHARGE	100 000	GAL	\$1	\$50,000.00
47	CEMENT CONC. TRAFFIC CURB AND GUTTER	510	L.F.	\$35	\$17,850.00
48	CEMENT CONC. TRAFFIC CURB	60	L.F.	\$50	\$3,000.00
49	CEMENT CONC. PEDESTRIAN CURG	40	L.F.	\$35	\$1,400.00
50	EXTRUDED CURB	20	L.F.	\$100	\$2,000.00
51	BEAM GUARDRAIL TYPE 10	0	L.F.	\$35	\$
52	BEAM GUARDRAIL TRANSITION SECTION TYPE 21	0	EACH	\$3,500	\$
53	BEAM GUARDRAIL ANCHOR TYPE 10	0	EACH	\$1,000	\$
54	REMOVING AND RESETTING BEAM GUARDRAIL	0	L.F.	\$50	\$
55	PAINT LINE	960	L.F.	\$1	\$960.00
56	PLASTIC WIDE LANE LINE	850	L.F.	\$5	\$4,250.00
57	PLASTIC TRAFFIC ARROW	7	EACH	\$200	\$1,400.00

58	PRECAST DUAL FACED SLOPED MOUNTABLE CURB	0	L.F.		\$
59	PLASTIC STOP LINE	40	L.F.	\$15	\$600.00
60	PLASTIC BICYCLE LANE SYMBOL	3	EACH	\$150	\$450.00
61	PLASTIC TRAFFIC LETTER	8	EACH	\$75	\$600.00
62	RAISED PAVEMENT MARKER TYPE 1	3	HUND	\$200	\$600.00
63	RAISED PAVEMENT MARKER TYPE 2	1	HUND	\$500	\$500.00
64	PERMANENT SIGNING	1	L.S.	\$6,475	\$6,475.00
65	PROJECT TEMPORARY TRAFFIC CONTROL	0.5	L.S.	\$240,400	\$120,200.00
66	TRAFFIC CONTROL SUPERVISOR	0.5	L.S.	\$93,600	\$46,800.00
67	WSDOT SINGLE SLOPE TRAFFIC BARRIER	270	L.F.	\$120	\$32,400.00
68	ADJUST MANHOLE	0	EACH	\$	\$
69	RESETTING EXISTING HYDRANT	0	EACH	\$	\$
70	ADJUST VALVE BOX	4	EACH	\$500	\$2,000.00
71	TYPE B PROGRESS SCHEDULE	1	L.S.	\$5,000	\$5,000.00
72	STRUCTURE SURVEYING	0.5	L.S.	\$	\$80,000.00
73	ROADWAY SURVEYING	0.5	L.S.		\$23,500.00
74	CEMENT CONC. SIDEWALK	150	S.Y.	\$60	\$9,000.00
75	CEMENT CONC. CURB RAMP TYPE PARALLEL A	2	EACH	\$ 2,000	\$4,000.00
76	CHAIN LINK FENCE TYPE 3	0	L.F.	\$20	\$
77	CHAIN LINK FENCE TYPE 4	0	L.F.	\$15	\$
78	ROADSIDE CLEANUP	1	EST	\$25,000	\$25,000.00
79	SPCC PLAN	1	L.S.	\$750	\$750.00
80	CEMENT CONC. DROP CURB DRIVEWAY APPROACH TYPE 3	90	S.Y.	\$80	\$7,200.00
81	RECORD DRAWINGS	1	L.S.	\$2,500	\$2,500.00
82	PEDESTRIAN TRAFFIC CONTROL	1	L.S.	\$3,188	\$3,188.00
83	PRECAST DUAL FACED SLOPED MOUNTABLE CURB	120	L.F.	\$20	\$2,400.00
84	ROADWAY PULVERIZATION AND GRADING	320 0	S.Y.	\$4	\$12,800.00
85	POTHOLING	10	EACH	\$700	\$7,000.00
86	REMOVING AND RESETTING EXISTING PERMANENT BARRIER	0	L.F.	\$150	\$
87	ADDITIONAL EXCAVATION FOR DRAINAGE STRUCTURE	0.5	EST	\$10,000	\$5,000.00
88	FISH EXCLUSION	1	EST	\$11,500	\$11,500.00
89	FORCE ACCOUNT	1	EST	\$12,500	\$12,500.00
90	PEDESTRIAN HANDRAIL	144	L.F.	\$90	\$12,960.00
91	CONC. MODULAR RETAINING WALL TYPE A	240	S.F.	\$40	\$9,600.00

92	FIELD OFFICE BUILDING	1	L.S.	\$12,500	\$12,500.00
93	CONC. MONUMENT CASE AND COVER	0	EACH	\$1,500	\$
A	Subtotal of Bid Items				\$3,222,151.90
B	Contingency (15% of Line A Amount)				\$483,322.79
C	Subtotal of Bid Items and Contingency				\$3,705,474.69
D	Const. Insp. & Contract Administration (15% of Line C Amount)				\$555,821.20
E	Administrative Overhead (20% of Line D Amount)				\$111,164.244
F	Total Estimated Cost Of Construction Services				\$4,372,460.13

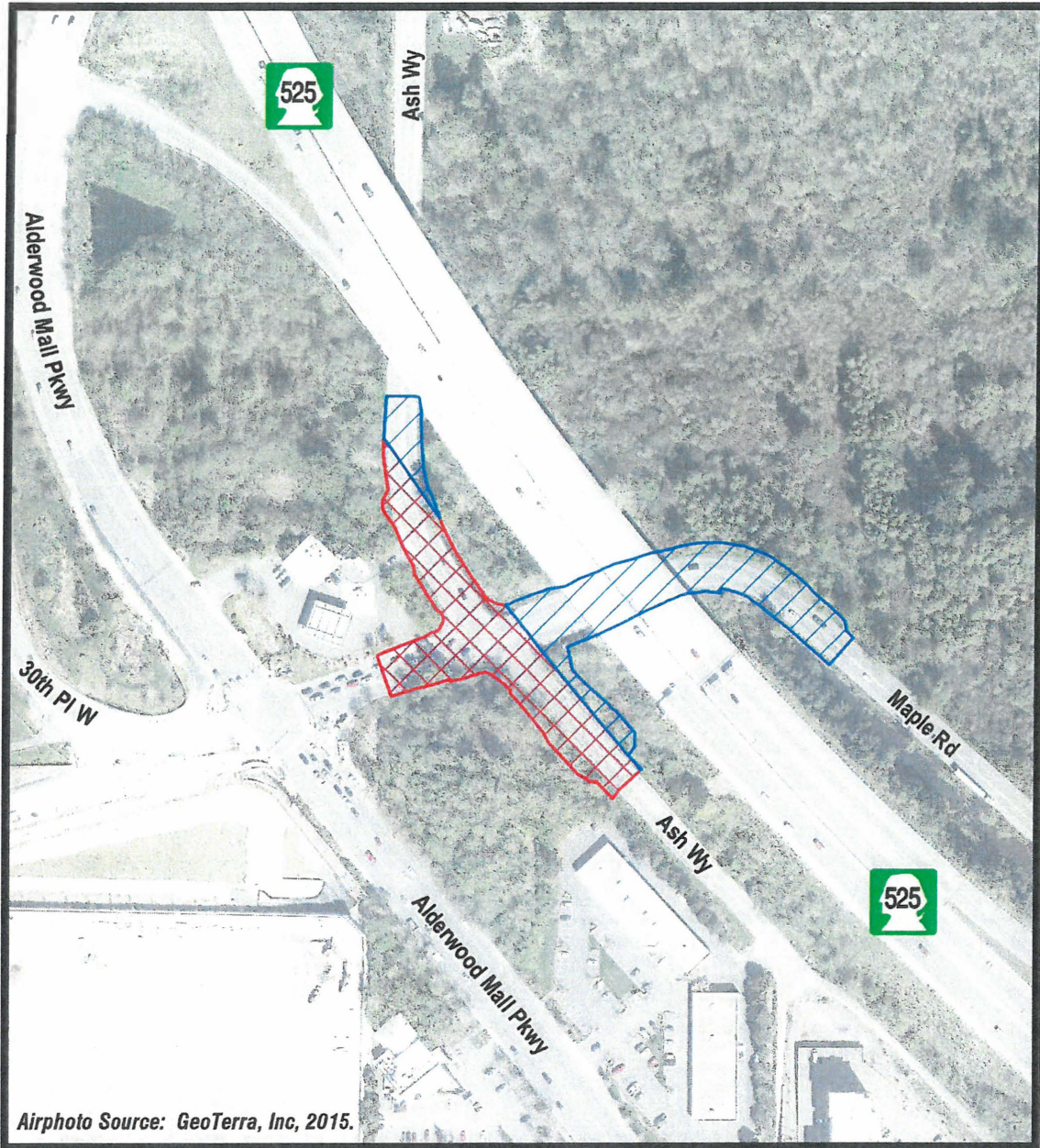
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\* Note: This estimate will be adjusted to conform to the successful bidder's proposal upon award and all County expenditures invoiced to the City shall be actual costs.

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

### EXHIBIT B

## AERIAL PHOTO DEPICTING CITY AND COUNTY PROJECT AREAS



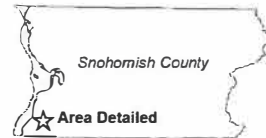
Airphoto Source: GeoTerra, Inc, 2015.

#### Key to Features:

	Snohomish County Portion	
	City of Lynnwood Portion	

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