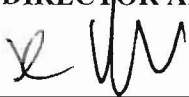


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: 5/28/2013

AGENDA ITEM: Interlocal Agreement with Snohomish County: Utility Relocate for 67 th Ave Site Distance Project	
PREPARED BY: Paul Federspiel, Project Engineer	DIRECTOR APPROVAL: 
DEPARTMENT: Engineering	
ATTACHMENTS: Interlocal Agreement	
BUDGET CODE: 40220594.563000	AMOUNT: \$50,000

SUMMARY:

Snohomish County is currently undertaking a roadway sight distance improvement project. The project is on 67th Avenue and starts at the north side of 132nd Street and terminates at Hilltop Road. The proposed lowering of the roadway surface will leave a portion of a City water main with insufficient cover. Therefore, that portion of the water main will need to be lowered approximately 2 feet in elevation.

Relocating the water main in advance of the County's project will be far more difficult than performing the work during the County's project. The City has requested that the County include the lowering of the water main in their scope of work to be performed by the County's contractor.

The project will begin in the fall of this year.

RECOMMENDED ACTION:

Staff recommends that Council authorize the Mayor to sign the Interlocal Agreement with Snohomish County in an amount of \$45, 173.75 with a management reserve of \$4,826.25 for a total \$50,000.

**INTERLOCAL AGREEMENT
BETWEEN SNOHOMISH COUNTY AND THE CITY OF MARYSVILLE
FOR UTILITY RELOCATION AND CONSTRUCTION ASSOCIATED WITH THE
67TH AVENUE NE/132ND STREET NE SIGHT DISTANCE IMPROVEMENT PROJECT**

THIS AGREEMENT, made and entered into by and between the CITY OF MARYSVILLE, hereinafter referred to as the "CITY," and SNOHOMISH COUNTY, hereinafter referred to as the "COUNTY," both of which are located in and existing under the laws of the State of Washington.

WHEREAS, the COUNTY has determined that construction of improvements on 67th Avenue NE between 132nd Street NE and Hilltop Road, also known as County Road Project RC1654 and hereinafter referred to as the "PROJECT," is necessary in order to improve sight distance and provide an acceptable level of road safety; and

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

WHEREAS, the CITY desires to relocate some of its water system facilities located within the right-of-way limits of the PROJECT; and

WHEREAS, the COUNTY is the lead agency for the design and construction of the PROJECT; and

WHEREAS, it is deemed to be in the best interest of the public and the CITY to incorporate the CITY's water facilities work, hereinafter called the "UTILITY WORK", as requested by the CITY, into the COUNTY's construction plans and contract for the PROJECT; and

WHEREAS, the parties are authorized to enter into an interlocal agreement pursuant to chapter 39.34 RCW in order to jointly accomplish the PROJECT;

NOW THEREFORE, it is mutually agreed as follows:

I. PURPOSE

The purpose of this Agreement is to set forth the mutual obligations, responsibilities and rights of the COUNTY and the CITY for the accomplishment of the UTILITY WORK described in Exhibit B, which is attached hereto and incorporated herein by this reference. No separate legal entity is created by this Agreement.

II. DURATION

This Agreement shall become effective immediately upon execution by all parties and posting of the Agreement on the COUNTY's website pursuant to RCW 39.34.040. The Agreement shall remain in effect until the UTILITY WORK has been accepted by the CITY and the CITY has paid the COUNTY in full, unless terminated sooner, as provided herein. The parties anticipate the PROJECT to be completed by December 31, 2014.

III. COUNTY RESPONSIBILITIES

A. The COUNTY shall act as the lead agency for the PROJECT and shall accomplish the UTILITY WORK described in Exhibits B and C on behalf of the CITY in conjunction with the PROJECT. The COUNTY shall be responsible for compliance with the Local Agency Guidelines published by the Washington State Department of Transportation, during the design and construction phases of the PROJECT. The COUNTY's Project Manager shall act as the administrator of this cooperative undertaking.

B. The COUNTY shall (i) include plans and specifications for the UTILITY WORK in the PROJECT's plans and specifications, PROVIDED that inclusion does not result in any delay in the scheduled advertising date for the PROJECT contract; (ii) print and distribute the Contract Specifications and Plans; (iii) administer the advertisement for construction; (iv) award and administer the contract, including accounting, payment of the contractor selected by the COUNTY (the "Contractor"), and keeping the PROJECT records. After awarding the contract, the COUNTY will arrange a preconstruction conference with the Contractor(s) and invite the CITY to attend and participate.

C. The COUNTY reserves the right to review and reject the CITY's plans and specifications for the UTILITY WORK not in compliance with COUNTY standards or not in conformance with the COUNTY's plans and specifications for the PROJECT. Ultimate responsibility for accuracy and completeness of the CITY's plans for the UTILITY WORK, however, rests with the CITY.

D. The COUNTY, acting for and on behalf of the CITY, shall provide construction engineering and inspection of the UTILITY WORK for the CITY based upon the plans and specifications approved and provided by the CITY. The COUNTY will provide copies to the CITY of all daily inspection reports for work involving the CITY's facilities on a weekly or other agreed upon interval. Inspection of construction activities by the COUNTY shall not constitute a guarantee or warranty of the adequacy of performance. The COUNTY shall be responsible for obtaining CITY approval for all deviations from PROJECT design documentation approvals affecting the CITY's UTILITY WORK, including but not limited to deviations from the approved plans, and all other approved design documentation.

E. The COUNTY shall bill the CITY for costs related to the UTILITY WORK in accordance with the payment provisions of Section V of this Agreement.

F. The COUNTY shall provide to the CITY a hard copy of the "as-built" plans/mark-up sheets showing the completed UTILITY WORK, PROVIDED that construction of said UTILITY WORK has been completed under the terms of this Agreement. If the Agreement is terminated prior to completion of the UTILITY WORK, the COUNTY shall provide the CITY a

hard copy of the "as-built" plan sheets of the completed work. The COUNTY will retain and file the original polypropylene plan sheets and all other PROJECT records.

G. Any obligations of the COUNTY beyond the current fiscal year are subject to local legislative appropriation of funds for the specific purpose of funding this PROJECT in accordance with the COUNTY Charter and applicable law.

IV. CITY RESPONSIBILITIES

A. The CITY shall be solely responsible for all costs associated with preliminary engineering, construction, inspection, and contract administration related to the UTILITY WORK, and shall reimburse the COUNTY for such costs in accordance with the terms of Section V of this Agreement.

B. The CITY shall submit to the COUNTY engineering plans and specifications for the UTILITY WORK based upon the 2012 English edition of the Standard Specifications for Road, Bridge, and Municipal Construction of the Washington State Department of Transportation (WSDOT), as modified by the COUNTY for COUNTY projects.

C. The CITY shall comply with the terms of the franchise agreement between the CITY and the COUNTY, including but not limited to, COUNTY design standards and specifications, and Chapter 136-40 WAC, Standards of Good Practice Accommodation of Utilities on County Road Right of Way.

D. The CITY shall make all reasonable efforts to cooperate with the COUNTY's Contractor in facilitating the UTILITY WORK described in Exhibit B, and make necessary personnel available so as to not delay the Contractor's construction schedule. The CITY shall be responsible for any costs to the COUNTY in the event of delay arising from the UTILITY WORK caused by the CITY.

E. The CITY shall, within fourteen (14) calendar days after notification of completion of the UTILITY WORK, issue written notification to the COUNTY of any deficiencies or of acceptance of the work. The COUNTY's Contractor shall correct any deficiencies. If, after the fourteen (14) day period, notification has not been received by the COUNTY, the UTILITY WORK shall be considered complete and accepted by the CITY.

F. The CITY may, if it desires, furnish an inspector for the UTILITY WORK. Any costs for such inspection will be borne solely by the CITY. All contact between said inspector and the COUNTY's Contractor shall be through the COUNTY's on-site representative who shall be identified at the preconstruction conference.

G. The CITY shall maintain the facilities constructed as the UTILITY WORK under this Agreement from the date of acceptance of the UTILITY WORK by the CITY. In accordance with this Agreement and the terms of the CITY's franchise, the cost of any future improvements and/or maintenance, repairs, or corrections to any utility facilities covered under the terms of this Agreement shall be the exclusive responsibility of the CITY unless covered under the contract performance period.

V. PAYMENT

A. The CITY agrees to reimburse the COUNTY for all costs associated with the UTILITY WORK as described in Section V.C. below. The CITY's estimate of costs is shown in Exhibit C, Preliminary Cost Estimate, which is attached hereto and incorporated herein by this reference.

B. The COUNTY shall provide the CITY monthly with properly executed invoices showing actual expenditures during the previous month on the UTILITY WORK. Invoices shall be based on the Contractor's payments, equipment, materials and labor expended on the UTILITY WORK, plus COUNTY expenditures in support of the UTILITY WORK as described in Section V.C. below. Invoices shall be paid by the CITY within thirty (30) days of receipt by the CITY without offset or deduction for any reason. Notice of any potential dispute regarding such payment request shall be made in writing within the same time period. Payment by the CITY shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. At the time of final audit, all required adjustments related to any potential dispute for which notice has been timely given shall be made and reflected in a final payment.

C. The CITY shall pay the COUNTY for the following costs:

- (1) One hundred percent (100%) of the final cost of all contract items related to the UTILITY WORK, as shown in the bid proposal of the successful bidder; and
- (2) Actual costs of COUNTY expenditures for engineering (labor and equipment), contract administration and construction inspection for the UTILITY WORK, as described in Exhibit C, plus 15% (on labor expenses only) for administrative overhead; and
- (3) The cost of any extra work associated with the UTILITY WORK within the amount of the "Contingency" as shown in Exhibit C, and any costs for extra work that have been approved in accordance with Section VIII.

E. Upon completion of the PROJECT, the COUNTY shall conduct a final audit of the PROJECT in accordance with standards of the Washington State Department of Transportation. At the time of the final audit, all adjustments required shall be made and shall be reflected in a final billing to the CITY. Within thirty (30) days of receipt of the audit and final billing, the CITY shall notify the COUNTY in writing of any objections to the audit and/or billing. If no objections are timely filed, the CITY shall make final payment to the COUNTY and such final payment shall constitute an acceptance by the CITY of the COUNTY's costs and accounting.

VI. HOLD HARMLESS AND INDEMNIFICATION

A. The CITY shall hold harmless, indemnify and defend the COUNTY, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever,

including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the CITY's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of the CITY's participation in this PROJECT; PROVIDED, HOWEVER, that the CITY's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CITY's obligations hereunder shall apply only to the percentage of fault attributable to the CITY, its officers, officials, employees or agents; PROVIDED FURTHER, by mutual negotiation, the CITY expressly waives, as respects the COUNTY only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

B. The COUNTY shall hold harmless, indemnify and defend the CITY, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the COUNTY's negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of the COUNTY's participation in this PROJECT; PROVIDED HOWEVER, that the COUNTY's obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the CITY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the COUNTY's obligations hereunder shall apply only to the percentage of fault attributable to the COUNTY, its officers, elected and appointed officials, employees or agents; PROVIDED FURTHER, by mutual negotiation, the COUNTY expressly waives, as respects the CITY only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

C. The parties hereby agree that, except as expressly set forth in this Agreement, the performance of services pursuant to this Agreement shall not constitute an assumption by the COUNTY of any CITY obligations or responsibilities.

VII. TERMINATION

A. The COUNTY has the right to terminate this Agreement by providing written notice to the CITY if the COUNTY determines not to undertake the PROJECT or to discontinue the PROJECT, in which case the CITY shall only be responsible for costs incurred by the COUNTY for the UTILITY WORK prior to the COUNTY's notice of termination.

B. The CITY has the right to terminate this Agreement by providing written notice to the COUNTY prior to the award of the construction contract, in which case the CITY shall be responsible for all costs incurred by the COUNTY in executing the necessary contract changes to delete the UTILITY WORK from the PROJECT.

C. After award of the construction contract by the COUNTY, the CITY may terminate this Agreement only upon thirty (30) days' prior written notice to the COUNTY. In that event, the

CITY shall be responsible for all costs incurred by the COUNTY and all bona fide costs claimed by the Contractor in performing the UTILITY WORK up to and including the date of termination and in deleting the UTILITY WORK from the PROJECT.

VIII. EXTRA WORK

A. There may be unforeseen conditions requiring immediate resolution during the construction phase of the PROJECT such as construction disputes and claims, changed conditions and changes in the construction work. Reimbursement for increased construction engineering and/or construction contract amounts for the UTILITY WORK shall be limited to costs covered by a modification, change order or extra work order approved as described below.

B. Should it be determined that any change from the contract plans and specifications for the UTILITY WORK is required, the COUNTY, through the Director of Engineering Services, shall have authority to make such changes up to the amount of the "Contingency" shown in Exhibit C.

C. Any change in the UTILITY WORK, that would result in an increased cost to the CITY in excess of \$10,000 per incident, or that would result in a total of cumulative incidents that is greater than the "Contingency" amount in Exhibit C, will require a binding Letter of Agreement, signed by both the COUNTY Public Works Director or his/her designee and the CITY Public Works Director or his/her designee, describing the changed scope of work and the estimated change in the UTILITY WORK cost.

D. In the event of a claim by the Contractor, shall be responsible for its proportionate share based on its proportionate responsibility for the claim.

IX. INSURANCE

A. The COUNTY will require the Contractor(s) performing services on the PROJECT to procure and maintain, for the duration of the PROJECT's construction contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work associated with this Agreement. The COUNTY will require the Contractor and each subcontractor to carry insurance that meets the requirements of Section 1-07.18, Public Liability and Property Damage Insurance, of the Standard Specifications for Road, Bridge, and Municipal Construction 2012 of the Washington State Department of Transportation (WSDOT) and COUNTY requirements for liability and property damage insurance. The COUNTY will furnish the CITY with a copy of said COUNTY requirements upon request. Endorsements shall name Snohomish County, the CITY, their officers, elected officials, agents, and employees as an additional insured.

B. The Contractor shall provide or purchase Workers' Compensation Insurance coverage to meet the Washington State Industrial Insurance regulations and cause any subcontractors working on behalf of the Contractor to also carry such insurance prior to performing work on the PROJECT. Neither the CITY nor the COUNTY will be responsible for payment of Workers' Compensation premiums or for any other claim or benefit for the Contractor, its employees, consultants, or subcontractors, which might arise under the Washington State Industrial Insurance laws.

C. The Contractor shall provide the COUNTY with a certificate of insurance outlining the required coverages, limits, and additional insured endorsements, with copies to be provided to the CITY upon request. The COUNTY reserves the right to receive a certified copy of all insurance policies.

X. PROJECT RECORDS

During the progress of the PROJECT and for a period not less than six (6) years from the final payment to the COUNTY, the COUNTY shall keep all records and accounting pertaining to the PROJECT available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the PROJECT shall be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained by the COUNTY until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the six-year retention period.

XI. DISPUTE RESOLUTION

A. In the event the COUNTY and the CITY disagree over whether the Contractor has fulfilled its obligations under the construction contract, the COUNTY reserves the right to make the final decision as to the acceptability of the work. If a dispute arises between the CITY and the COUNTY, the parties agree that they will attempt to resolve the issue through mutual negotiation. In the event that the parties are not able to reach an agreement through such negotiation, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to the institution of any lawsuit arising under this Agreement. Mediation shall be conducted under the then-current Commercial Mediation Rules of the American Arbitration Association or, if such model procedure no longer exists, some other mutually acceptable procedure. The COUNTY and the CITY shall jointly select a neutral third party mediator. The parties agree to share the costs of mediation equally.

B. This Agreement has been made pursuant to, and shall be construed according to, the laws of the State of Washington. In the event that mediation is unsuccessful and either party finds it necessary to institute legal proceedings to enforce any provision of this Agreement, such proceedings may only be brought in the Superior Court of Snohomish County, Washington.

XII. PROPERTY

Any real or personal property acquired or used by either party in connection with this Agreement will be acquired, held, and disposed of by that party in its discretion, and other parties will have no joint or other interest therein. Upon termination of this Agreement, real and personal property acquired through this Agreement shall be retained or disposed of in the manner provided by law.

XIII. CHANGES AND MODIFICATIONS

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

made part of this Agreement and shall be posted on the COUNTY's website pursuant to RCW 39.34.040.

XIV. NOTICES

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

SNOHOMISH COUNTY
Department of Public Works
Attn: Matt Ojala, P.E.
3000 Rockefeller Avenue
Everett, WA 98201

CITY OF MARYSVILLE
Public Works Department
Attn: Paul Federspiel, P.E.
80 Columbia Avenue
Marysville, WA 98270

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

For accounting purposes, the respective Federal Tax Identification Numbers are:

Snohomish County: 91-6001368

City of Marysville: 91-6001459

XV. ENTIRE AGREEMENT

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Agreement and bind their respective entities.

SNOHOMISH COUNTY

CITY OF MARYSVILLE

By: _____
Aaron Reardon Date
County Executive

By: _____
Jon Nehring Date
Mayor

Approved as to form only:

Approved as to form only:

By: _____
Deputy Prosecuting Attorney Date

By: _____
City Attorney Date

Approved as to Insurance
By Risk Management:

By: _____
Risk Manager Date

EXHIBIT A
VICINITY MAP

SEC. 2 & 3, TWP. 30 N, R. 5 E, W.M.

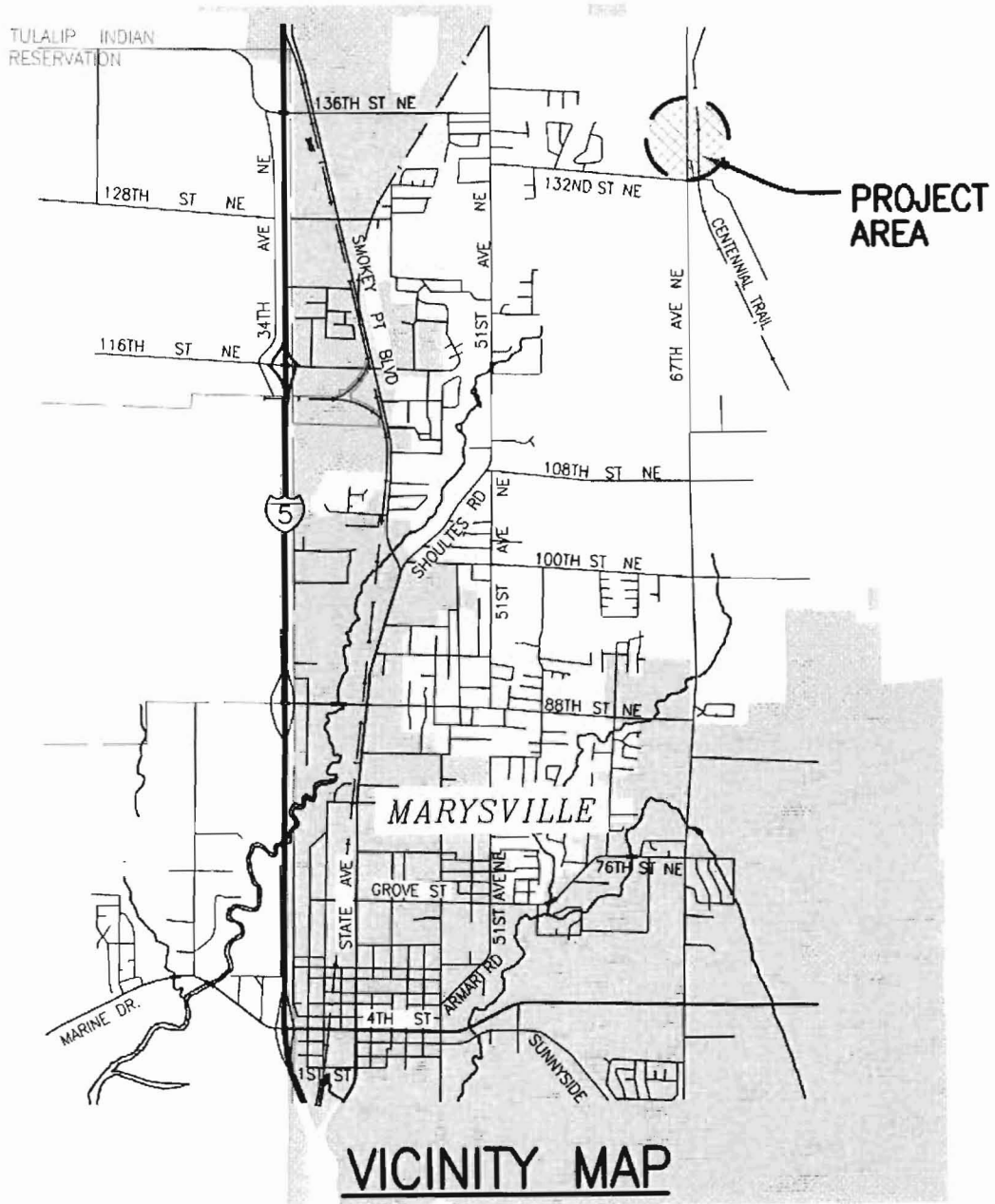


EXHIBIT B

CITY OF MARYSVILLE

UTILITY WORK ASSOCIATED WITH THE 67TH AVENUE NE/132ND STREET NE SIGHT DISTANCE IMPROVEMENT PROJECT

UTILITY WORK DESCRIPTION

The COUNTY's PROJECT provides for the design, right-of-way appraisal and acquisition, construction and inspection of road improvements on 67th Avenue NE between 132nd Street NE and Hilltop Rd.

The UTILITY WORK to be included in the PROJECT, at the request of the CITY, concerns modification of water lines in the PROJECT area, specifically:

- Construction of water system modifications beneath 67th Avenue NE, between 132nd Street NE and Hilltop Road so as to maintain a minimum cover depth not less than 36 inches, and the relocation of an existing hydrant to a location outside of the sight distance triangle for southbound traffic.

The estimated cost of the UTILITY WORK, based on the design, is shown in Exhibit C. The CITY will be responsible for any additional work on its water system, as it deems necessary, to accomplish the UTILITY WORK.

EXHIBIT C

CITY OF MARYSVILLE
UTILITY WORK ASSOCIATED WITH THE
67TH AVENUE NE/132ND STREET NE SIGHT DISTANCE IMPROVEMENT PROJECT

PRELIMINARY COST ESTIMATE

Construction (CN):	
Water System	\$35,500
Subtotal CN	\$35,500
Construction Engineering (15% CN)	\$5,325
Contingency (10% CN)	\$3,550
Administrative Overhead (15% CE)	\$798.75
Total Utility Work Cost	\$45,173.75