

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
CITY OF REDMOND

Sound Transit R200 Stormwater Facilities

AGREEMENT GMB1219

This Agreement is made and entered into between the CITY OF REDMOND, a municipal corporation, hereinafter the “CITY,” and the STATE OF WASHINGTON, DEPARTMENT OF TRANSPORTATION (WSDOT), hereinafter the “STATE”. The CITY and STATE shall hereinafter each be identified as a “Party”, and jointly called the “Parties”.

WHEREAS, SOUND TRANSIT has funded the design and construction of the Downtown Redmond Link Extension Project (“Project”), also known as R200, a 3.4-mile light rail extension from the Redmond Technology Station to downtown Redmond, and

WHEREAS, the Project includes modification to stormwater facilities located within the City and within WSDOT right-of-way, including: Redmond Way Split Ponds, NE 51st Street Conveyance Pipe, NE 76th Street Media Filter Drain, SR520 Treatment Wetland at Redmond Way, and SR520 Detention Pond 6-1B at Redmond Way, collectively “Stormwater Facilities” (Exhibit A) and

WHEREAS, the Project has been approved by the Parties through their permitting processes, and

WHEREAS, the proposed Redmond Way Split Ponds (Exhibit B), which lies within WSDOT limited access, treats and infiltrates runoff from an area that is nearly 70 percent within the City of Redmond right-of-way, and

WHEREAS, the proposed NE 51st Street Conveyance Pipe (Exhibit C), which lies within WSDOT limited access, conveys flows from City of Redmond right-of-way, and

WHEREAS, the existing NE 76th Street Media Filter Drain (Exhibit D), which treats runoff from the City of Redmond Right-of-way will be removed by the project, and

WHEREAS, the State’s SR520 Treatment Wetland (Exhibit E) at Redmond Way primarily treats runoff from the SR520 limited access along with limited City of Redmond right-of-way, and

WHEREAS, the State’s Pond 6-1B (Exhibit E) primarily detains runoff from SR520 limited access, along with limited City of Redmond right-of-way, and

WHEREAS, the maintenance responsibility for the Stormwater Facilities needs to be determined to ensure the facilities function properly, and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to chapter 39.34 RCW,

NOW, THEREFORE, pursuant to RCW 47.52.090, the above recitals that are incorporated herein as if set forth below, and in consideration of the terms, conditions, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED AS FOLLOWS:

1. PURPOSE OF AGREEMENT

1.1 This Agreement clarifies the responsibilities and cost obligations associated with the Stormwater Facilities associated with the Project, including but not limited to maintenance, operation, inspection, modification, replacement, of or to the Facility located within state-owned SR520 limited access right-of-way.

1.2 This Agreement outlines the maintenance responsibilities of the Parties, which are described in the Project's Operations and Maintenance Manuals.

1.3 The location of the Stormwater Facilities shown on Exhibits A-E, attached hereto and by this reference, made a part hereof.

1.4 If any term or provision of this Agreement is determined to be invalid, such invalid term or provision shall not affect or impair the remainder of this Agreement, but such remainder shall remain in full force and effect to the same extent as though the invalid term or provision were not contained in this Agreement.

2. MAINTENANCE RESPONSIBILITIES AND COST OBLIGATIONS

2.1 The Parties shall be responsible for performance and cost of the operation and maintenance, repair, and removal of Stormwater Facilities, with responsibility as noted in Exhibit F as either CITY or STATE responsibility.

2.2 The Parties shall perform or cause to be performed, the inspection, operation and maintenance and repair of the facilities as defined in the Operations and Maintenance Manuals developed for the Project, as may be amended by the responsible party.

3. EMERGENCY MAINTENANCE OR REPAIR

3.1 Should a Party determine that any work that is the responsibility of the other Party presents an immediate danger to the public or to the real property, facility, or operations, the Party will notify the responsible Party in writing with email being acceptable, and request that the responsible party immediately address the emergency maintenance or repair problem.

3.2 In the event that the responsible Party does not or cannot immediately perform the emergency maintenance or repair, the Party providing notice may perform the emergency maintenance or repair at the expense of the responsible Party.

3.3 The responsible Party shall be responsible for the actual direct and related indirect costs of the emergency maintenance or repair work. Reimbursement of the cost of the work shall be made in accordance with invoice and payment procedures set forth below.

4. FAILURE TO PERFORM MAINTENANCE AND EMERGENCY MAINTENANCE

4.1 The STATE reserves the right to perform the Work required of the CITY on those segments of project that lie within STATE owned access to the extent necessary for safe operation and maintenance of the highway, should the CITY fail to perform the Work pursuant to this agreement.

4.2 The CITY reserves the right to perform the Work required of the STATE on those segments of project that lie within City of Redmond owned right-of-way to the extent necessary for safe operation and maintenance of the right-of-way, should the STATE fail to perform the Work pursuant to the agreement.

4.3 If the CITY fails to perform the work required under this agreement, the STATE will notify the CITY in writing with email being acceptable, of the Work that must be completed, and the CITY shall perform the Work within thirty (30) calendar days. If the CITY does not perform the identified Work, the STATE reserves the right to perform the Work in accordance with minimum WSDOT highway standards set forth in this agreement.

4.4 If the STATE fails to perform the work required under this agreement, the CITY will notify the STATE in writing with email being acceptable, of the Work that must be completed, and the STATE shall perform the Work within thirty (30) calendar days. If the STATE does not perform the identified Work, the CITY reserves the right to perform the Work in accordance with minimum City of Redmond standards.

4.5 In the event the STATE is required to perform any of the Work required to be performed by the CITY, the CITY shall reimburse the STATE for its actual direct, and related indirect costs, for all Work performed on behalf of the CITY within thirty (30) days of the date of the invoice from the STATE (the "Due Date"). In the event the CITY fails to make payment by the Due Date, the CITY will pay the STATE interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. Interest shall be calculated from the Due Date to the date of payment.

4.6 In the event the CITY is required to perform any of the Work required to be performed by the STATE, the STATE shall reimburse the CITY for its actual direct, and related indirect costs, for all Work performed on behalf of the STATE within thirty (30) days of the date of the invoice from the CITY (the "Due Date"). In the event the STATE fails to make payment by the Due Date, the STATE will pay the CITY interest on outstanding balances at the rate of twelve percent (12%) per annum, or the highest rate of interest allowable by law, whichever is greater. Interest shall be calculated from the Due Date to the date of payment.

5. TERM: EFFECTIVENESS AND DURATION

5.1 This Agreement is effective upon the Parties acceptance of the Project construction. The terms of this Agreement shall remain in effect until modified (Section 9) or terminated (Section 10).

6. AGREEMENT CONTACT AND MANAGEMENT

6.1 The Parties representatives for this Agreement are shown below. All correspondence

related to this Agreement will be through the designated contacts. All correspondence shall include reference to GMB1219, this Agreement's number.

CITY	STATE
Steven Flude, PE Deputy Director of Public Works PO Box 97010; MS: 2NPW Redmond, WA 98073 Phone: 425.556.2742 email: sflude@redmond.gov	Morgan Balogh, PE Asst. Regional Administrator for Maintenance Operations PO Box 330310 Seattle, WA 98133 Phone: 206.440.4806 email: baloghm@wsdot.wa.gov

6.2 Any Party may, from time to time, by electronic mail notification or other written notification, designate additional and/or different contact person(s) or information to which such notice, request, report, billing or other communication are thereafter to be addressed. The Party in receipt of the change will confirm receipt of the change by electronic mail notification or other written notification, to the initiating Party. Such changes allowed by this Section 6.2 shall not be considered amendments to this Agreement.

7. INDEMNIFICATION, HOLD HARMLESS AND WAIVER

7.1 The CITY shall protect, defend, indemnify, and hold harmless the STATE, 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/or property, including state-owned highway property and facilities), arising out of, or in any way resulting *from* the operation, maintenance, and/or repair of the Stormwater Facilities, pursuant to the provisions of this Agreement. The CITY will not be required to indemnify, defend, or hold harmless the STATE if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the STATE. Where such claims, suits, or actions result from concurrent negligence of both Parties, or involves those actions covered by RCW 4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

7.2 The STATE shall protect, defend, indemnify, and hold harmless the CITY, 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/or property), arising out of, or in any way resulting from, the STATE's performance pursuant to the provisions of this Agreement. The STATE will not be required to indemnify, defend, or hold harmless the CITY if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the CITY or the actions of third parties. Where such claims, suits, or actions result from the concurrent negligence of the Parties, or involves those actions covered by RCW

4.24.115, the indemnity provisions provided herein shall be valid and enforceable only to the extent of each Party's own negligence.

7.3 The CITY agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction, operation, or maintenance work pursuant to this Agreement. For this purpose, the CITY, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Chapter 51.12 RCW.

7.4 The STATE agrees that its obligations under this section extend to any claim, demand and/or cause of action brought by, or on behalf of, any of its employees or agents while performing construction, operation, or maintenance work pursuant to this Agreement. For this purpose, the STATE, by mutual negotiation, hereby waives with respect to the STATE only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provisions of Chapter 51.12 RCW.

7.5 These indemnifications and waiver shall survive the termination of this Agreement.

8. RIGHT OF ENTRY

8.1 The STATE hereby grants to the CITY, its employees, agents and contractors a right of ingress and egress without prior institution of any suit or proceedings of law upon all STATE land which the Stormwater Facilities occupy within SR 520 limited access right-of-way and SR202 right-of-way for the purpose of accomplishing the work described in this Agreement.

8.2 The CITY hereby grants to the STATE a right of entry upon all CITY land which the Stormwater Facilities occupy for the STATE's purpose of accomplishing the work described in this Agreement.

9. MODIFICATIONS

9.1 This instrument contains all the agreements and conditions made between the Parties hereto and may not be modified, amended or supplemented orally or in any manner other than in writing and by signature of both Parties. No failure on the part of either Party to enforce any covenant or provision herein contained, nor any waiver of any right hereunder, unless in writing, shall discharge or invalidate such covenant or provision or affect the right of either Party to enforce the same in the event of any subsequent breach or default.

10. TERMINATION

10.1 Neither the STATE nor the CITY may terminate this Agreement without the written concurrence of the other Party. Upon termination of this Agreement, the Parties agree that RCW 47.24.020 and the City Streets as Part of State Highways guidelines, dated April 30,1997, reached by the Washington State Department of Transportation (WSDOT) and the Association of Washington Cities (CITIES) on the interpretation of selected topics of chapter 47.24 RCW and figures of WAC 486-18-050 for construction, operations and maintenance responsibilities of WSDOT and CITIES for such streets,

shall control for the operation and maintenance of the Stormwater Facilities constructed within state-owned SR520 limited access right-of-way.

11. DISPUTES

11.1 In the event that a dispute arises under this Agreement, it shall be resolved as follows: The Parties shall each appoint a member to a disputes board. These two members shall select a third member not affiliated with the Parties. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. Any attempt at such dispute resolution in compliance with aforesaid process shall be a prerequisite to the filing of any litigation concerning the dispute. The Parties shall each be responsible for their own costs and fees and agree to equally share all costs associated with the third disputes board member.

12. INDEPENDENT CONTRACTOR

12.1 The CITY and the STATE shall each be deemed an independent contractor for all purposes under this Agreement, and the employees of one party or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other party.

13. VENUE

13.1 In the event either Party deems it necessary to institute legal action or proceedings to ensure any right or obligation under this Agreement, the Parties hereto agree that such action or proceedings shall be brought in the superior court situated in Thurston County, Washington. Further, the Parties agree that each will be solely responsible for payment of their own attorney's fees, witness fees, and costs.

14. WORKING DAYS

14.1 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 Party's date signed last below.

CITY OF REDMOND

Authorized by City Council motion on [DATE]

By: _____
Angela Birney, Mayor

Date: _____

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

By: _____
Kimberly Farley, Deputy CEO

Date: _____

By: _____
Morgan Balogh, WSDOT NWR
Maintenance Assistant Regional
Administrator

Date: _____

Approved as to form for City of Redmond:

By: _____
James E. Haney, City Attorney

Date: _____

Approved as to form for Washington State Department of Transportation:

By: _____
Mark F. Schumock, Assistant Attorney General

Date: _____

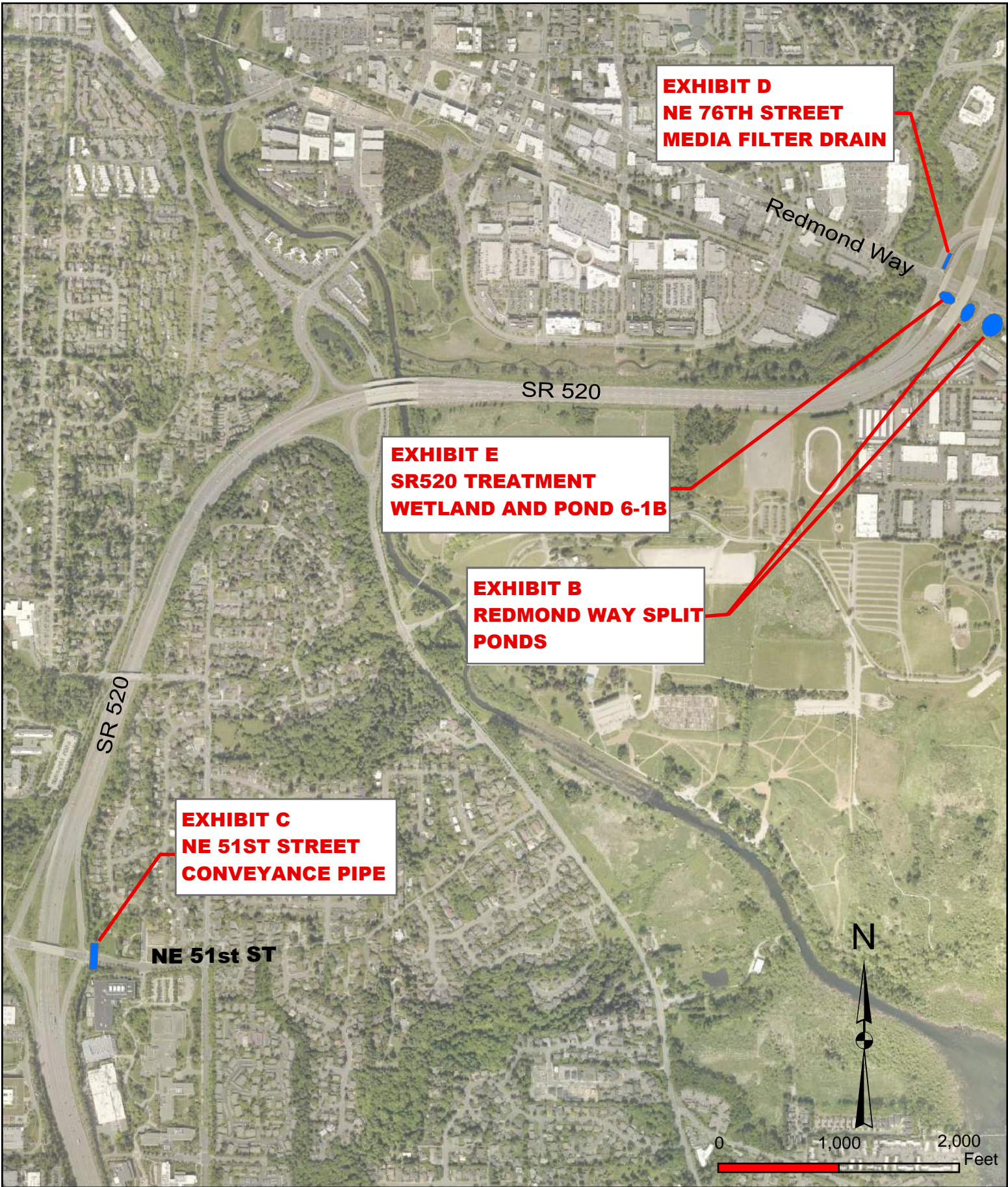


EXHIBIT D
NE 76TH STREET
MEDIA FILTER DRAIN

EXHIBIT E
SR520 TREATMENT
WETLAND AND POND 6-1B

EXHIBIT B
REDMOND WAY SPLIT
PONDS

EXHIBIT C
NE 51ST STREET
CONVEYANCE PIPE

NE 51st ST

SR 520

Redmond Way

SR 520

N

0 1,000 2,000 Feet



City of Redmond, Washington

VICINITY MAP
AGREEMENT
GMB1219
EXHIBIT A
STORMWATER FACILITIES

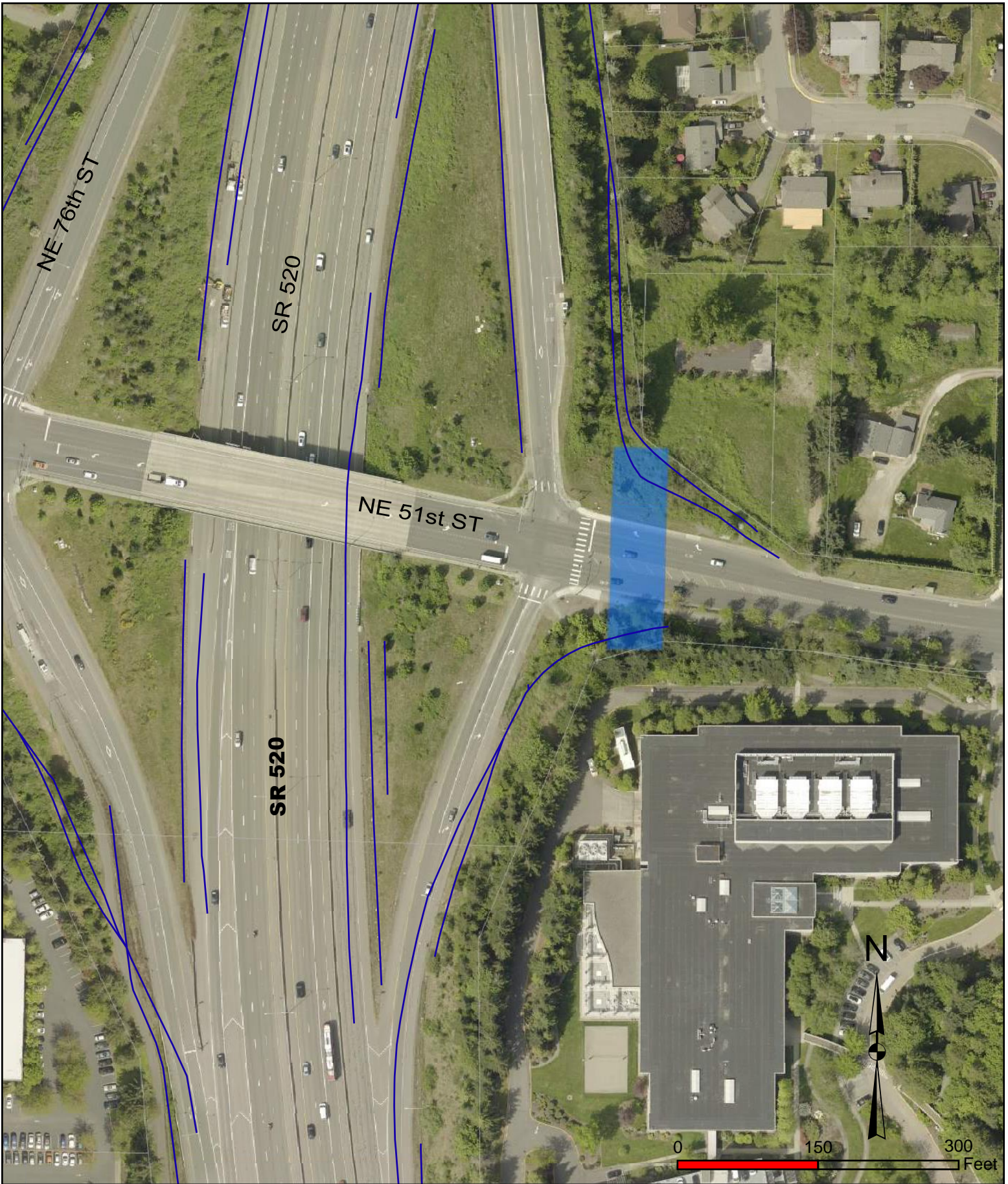


City of Redmond, Washington

**AGREEMENT
GMB1219
EXHIBIT B**

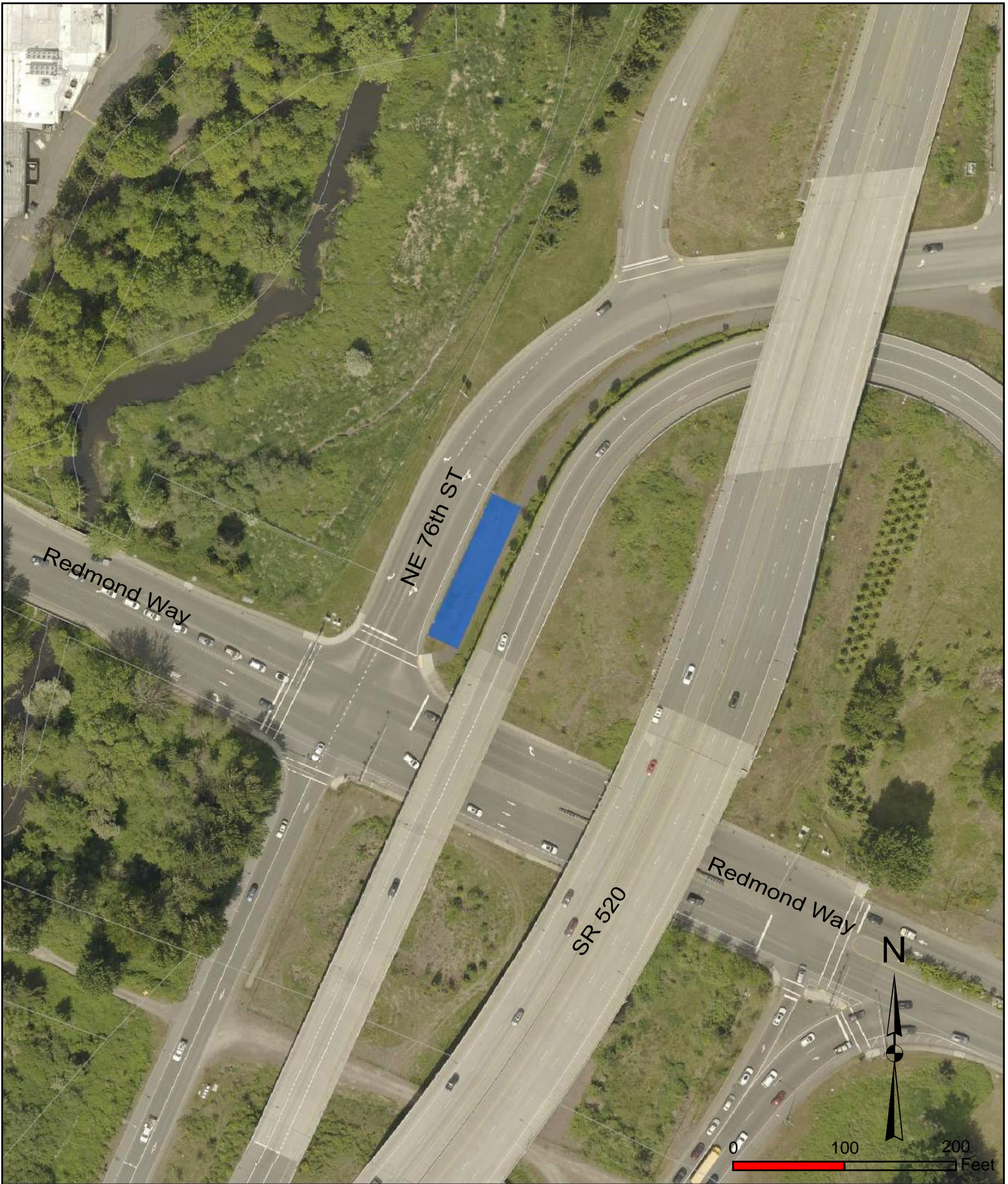
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**REDMOND WAY SPLIT PONDS
INCLUDES INFILTRATION AND WATER QUALITY FACILITY**



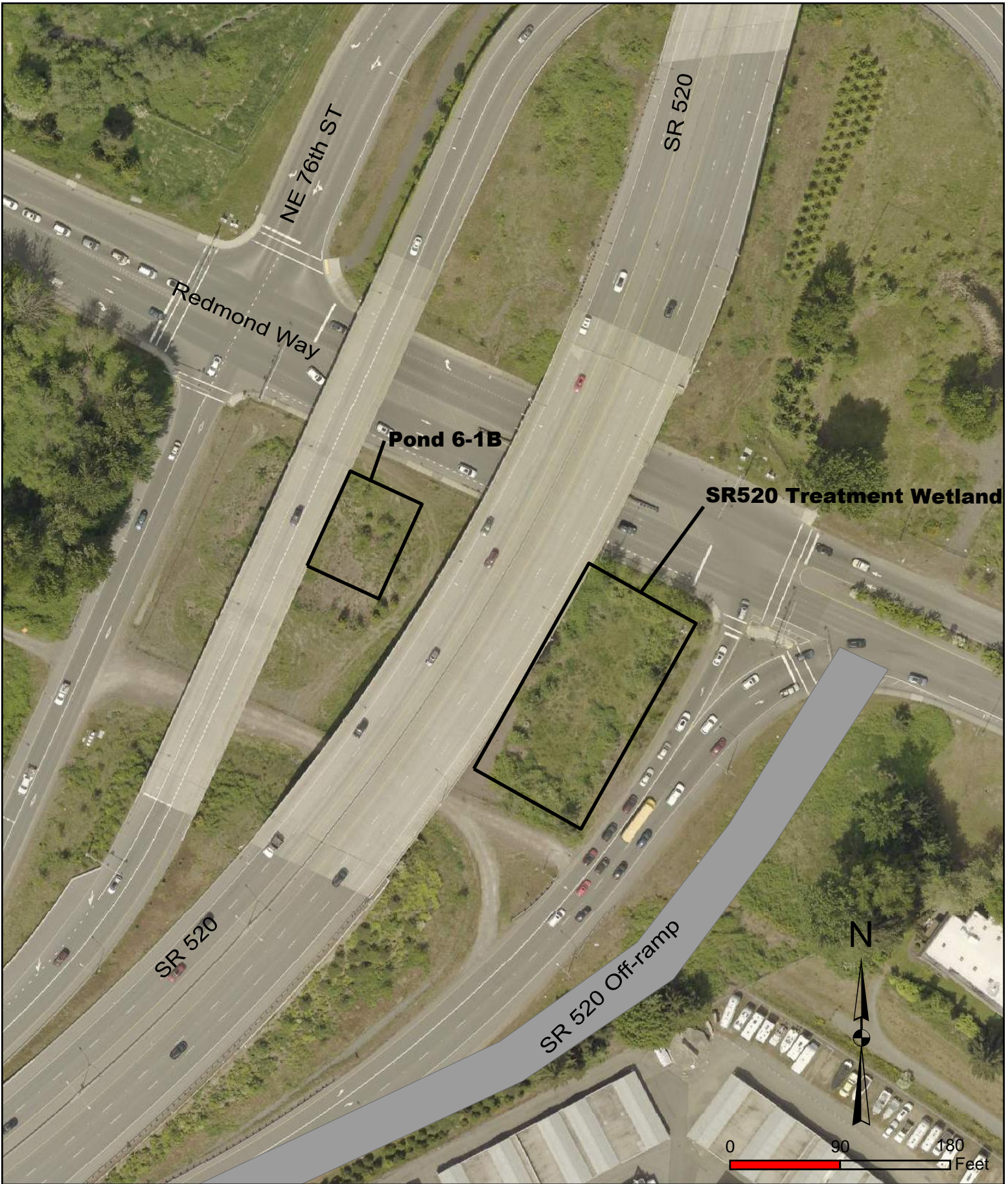
City of Redmond, Washington

**AGREEMENT
GMB1219
EXHIBIT C
NE 51st STREET CONVEYANCE PIPE
INCLUDES PIPE, CATCH BASINS AND OUTFALL PADS**



City of Redmond, Washington

**AGREEMENT
GMB1219
EXHIBIT D
NE 76th STREET MEDIA FILTER DRAIN**



City of Redmond, Washington

**AGREEMENT
GMB1219
EXHIBIT E
SR520 TREATMENT WETLAND
AND POND 6-1B**

Stormwater Facility	Work Performed By	Responsibility of Maintenance Cost
Redmond Way Split Ponds (Includes infiltration pond and water quality facility – Filterra bioretention)	CITY	CITY
NE 51 st Street Conveyance Pipe (Includes pipe, catch basins, and rock outfall pads)	CITY	CITY
SR520 Treatment Wetland	STATE	STATE
SR520 Pond 6-1B	STATE	STATE



City of Redmond, Washington

**AGREEMENT GMB1219
EXHIBIT F
MAINTENANCE RESPONSIBILITIES**