

CITY OF MUKILTEO

JUL 25 2019

FINANCE

**INTERLOCAL AGREEMENT BETWEEN
MUKILTEO WATER & WASTEWATER DISTRICT AND
CITY OF MUKILTEO FOR THE 2019 88th ST PAVEMENT
PRESERVATION PROJECT**

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Mukilteo, a municipal corporation ("City"), and the Mukilteo Water and Wastewater District, a municipal corporation ("District") (individually a "Party" and collectively the "Parties") for the purposes set forth below.

WHEREAS, the City has bid and awarded the 88th St. SW Pavement Preservation Project ("Project") to Lakeside Industries, Inc. ("Contractor"), the lowest responsible bidder; and

WHEREAS, the 88th St. SW Pavement Preservation Project includes removing, repairing, replacing and overlaying the asphalt and associated subgrade on 88th St. SW; and

WHEREAS, as a part of the Project, the District will be required to raise the existing Sanitary Sewer Manholes to final grade ("District Work"); and

WHEREAS, in order to provide for continuity and consistency in the project and other efficiencies, the District desires to have the City's contractor perform the District Work on 88th St. SW identified as "Adjust Manhole to Finished Grade" on the approved project plans; and

WHEREAS, the City is willing to include the District Work as part of the Project's design, plans and specifications which are attached hereto as Exhibit A and incorporated herein by this reference ("Project Plans and Specifications") (the District Work and the City Work collectively referred to herein as the "Project Work"), conditioned on the District reimbursing the City for the cost to install the District Work; and

WHEREAS, the City competitively bid the Project as a public works project and awarded the Project Work to the lowest responsible bidder for the bid amount including tax ("Contractor Cost"); and

WHEREAS, Chapter 39.34 RCW permits governmental entities to enter into interlocal agreements to accomplish mutually beneficial purposes in the public interest, and the Parties desire to enter into this Agreement to cooperate and share in the costs associated with the Project;

NOW, THEREFORE, in consideration of the following terms and conditions, the Parties agree as follows:

Section 1. General. The City, as agent acting for and on behalf of the District, agrees to have the Contractor perform the District Work as part of the Project, in accordance with the Project Plans and Specifications. This Agreement shall be in full force and effect for the duration of the above described Project Work.

Section 2. Construction Plans. The District has approved the Project Plans and Specifications for the portion applicable to the District Work.

Section 3. Bidding and Construction. The City is hereby designated as the District's bidding and construction agent for the Project. As construction agent, the City will perform all engineering, survey and field inspections and shall make all payments to the Contractor. The City will keep the District advised as to the progress of the Project work. The City, as construction agent, shall have final decision-making authority, after consulting with the District, with regards to decisions related to the work of the Contractor.

Section 4. Authority to Construct. Subject to the provisions of Section 3 herein, the District hereby authorizes the City to proceed with construction of the work for the purpose intended by this Agreement, and as further described in Section 8.

Section 5. Inspection by the District. The District shall furnish at its cost an inspector on the Project for the District Work. All contact between the District's inspector and the Contractor shall be through the City's representatives.

Section 6. Acceptance. The City shall conduct a field review of each portion of the District Work with representatives of the District and shall further require all punch list items to be corrected to the satisfaction of the City and the District before final acceptance by the City. The District agrees, upon satisfactory completion of the work as determined by the District, to deliver a Letter of Acceptance of the District Work. The District's acceptance of the District's Work shall not constitute acceptance of any unauthorized or defective work or materials, nor be a waiver of any manufacturer's, supplier's or contractors' warranties. Final acceptance of the Project shall be by the City after inspection by all agencies involved.

Section 7. Payment. The District, in consideration of the faithful performance of the work to be done by the City, agrees to pay and reimburse to the City the total amount for the cost to complete the District Work, which sum shall include all construction costs to complete the District Work plus applicable sales tax plus construction management costs (e.g., project management, construction administration, inspection). The construction cost shall be the unit cost submitted for Adjust Manhole on the awarded bidder's bid tab times the number of Manholes adjusted. Sales tax shall be the prevailing sales tax at the time of payment for the District Work. Construction Management costs shall be 10% of the construction cost for District Work.

Payment shall be made by the District to the City within sixty (60) calendar days of the District's acceptance of the District's Work as referenced in Section 6.

Section 8. Indemnification and Hold Harmless.

A. Each Party agrees to protect, defend, and indemnify the other Party, its officers, officials, employees, and agents from any and all costs, claims, judgments and/or awards of damages arising out of or in any way resulting from the Party's default, failure of performance, or negligent conduct associated with this Agreement, by the Party, its employees, subcontractors or agents. In addition, each Party agrees to protect, defend, and indemnify the other Party, its

officers, officials, employees, and agents from any and all costs and awards of damages due to claims for delay associated with the indemnifying Party's work except to the extent any alleged delay was caused by the other Party's actions or inactions. Each Party agrees that its obligations under this provision extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees or agents. The foregoing indemnity is specifically and expressly intended to constitute a waiver of each Party's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects the other Party only, and only to the extent necessary to provide each Party with a full and complete indemnity of claims made by the other Party's employees. The Parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

B. Claims shall include, but not be limited to, defects or mistakes in plans, specifications and/or drawings, assertions that the use or transfer of any software, book, document, report, film, tape, or sound reproduction of any kind, delivered hereunder, constitutes an infringement of any copyright patent, trademark, trade name, and/or otherwise results in unfair trade practice.

C. In the event either Party incurs any costs, including attorney fees or expert witness fees, to enforce this provision and prevails in such enforcement action, all such costs and fees shall be recoverable from the losing Party.

D. The provisions of this section shall survive the expiration or earlier termination of the Agreement with regard to any event that occurred prior to or on the date of such expiration or earlier termination.

Section 9. Resolution of Disputes and Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Washington. If the Parties are unable to settle any dispute, difference or claim arising from the Parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Snohomish County Superior Court, unless the Parties agree in writing to an alternative dispute resolution process. In any claim or lawsuit for damages arising from the Parties' performance of this Agreement, each Party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law, provided, however, nothing in this paragraph shall be construed to limit the City's or District's right to indemnification under Section 11 of this Agreement.

10. Written Notice. Any notice under this Agreement will be in writing and shall be delivered by mail or hand delivery (copies may be emailed) to the parties as specified below:

Mukilteo Water & Wastewater District
7824 Mukilteo Speedway
Mukilteo, Washington 98275
Attn: Jim Voetberg, General Manager
Email: Jimv@mukilteowwd.org

City of Mukilteo
11930 Cyrus Way
Mukilteo, Washington 98275
Attn: Mayor Jennifer Gregerson
Email: jgregerson@mukilteowa.gov

11. Other Provisions.

A. This Agreement contains the entire agreement of the Parties and supersedes all prior discussions. This Agreement may be amended only in writing, signed by both Parties.

B. Nothing contained herein is intended to, nor shall be construed to create any rights in any third party, or to form the basis for any liability on the part of the Parties, or their officials, officers, employees, agents or representative, to any third party.

C. Waiver of any default or breach of this Agreement shall not be deemed to be a waiver of any other prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such through written agreement of both Parties.

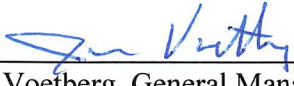
D. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby and shall continue in full force and effect if such remainder would then continue to serve the purposes and objectives of the parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

CITY OF MUKILTEO

MUKILTEO WATER & WASTEWATER
DISTRICT

By: 
Mayor Jennifer Gregerson
Date: 7.16.19

By: 
Jim Voetberg, General Manager
Date: 7/22/19

APPROVED AS TO FORM:

EXHIBIT A
PROJECT PLANS AND SPECIFICATIONS