

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MUKILTEO AND THE ALDERWOOD
WATER & WASTEWATER DISTRICT FOR CONSTRUCTION
ASSOCIATED WITH THE HARBOUR REACH CORRIDOR
IMPROVEMENT PROJECT (City Project No.PW081108)**

THIS AGREEMENT is made and entered into this 7TH day of FEBRUARY, 2018, by and between the ALDERWOOD WATER & WASTEWATER DISTRICT, hereafter called the "DISTRICT", and THE CITY OF MUKILTEO, hereafter called the "CITY," both of which are located in and exist under the laws of the State of Washington.

WHEREAS, the CITY has a capital improvement project, known as the Harbour Reach Corridor Project (the "Project"), as shown in Exhibit "A", which includes construction of a new urban arterial connecting Beverly Park Road to Harbour Pt Blvd SW and will modify the existing Harbour Reach Road to provide an increased level of road safety and traffic circulation; and

WHEREAS, the DISTRICT operates and maintains existing water and sanitary sewer facilities in the public road rights-of-way, including rights-of-way within the Project area; and

WHEREAS, the DISTRICT is required to adjust its facilities at its own expense to accommodate CITY street improvements pursuant to chapter 35.99.060 RCW and further desires to install a new water main within the area of the City's Project (collectively the "Utility Work"); and

WHEREAS, the DISTRICT intends to install a water main to provide for future fire flow needs and redundancy of the public water system. The DISTRICT's scope of work and cost estimate are attached hereto as Exhibits B and C, respectively, for informational purposes, and actual costs will be determined after a public bid process and award of contract, as may be adjusted by change order; and

WHEREAS, the CITY and the DISTRICT can achieve cost savings and other benefits in the public interest by incorporating the DISTRICT's work into the CITY's Project; and

WHEREAS, the CITY is the lead agency for the construction of 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 and rights of the CITY and the DISTRICT for the accomplishment of the Utility Work, described in Exhibit "B" attached hereto and incorporated herein by this reference.

II. DURATION

This Agreement shall become effective immediately upon the signing by all parties and filing with the Snohomish County Auditor or upon listing the ILA on the CITY's or the District's web site per RCW 39.34.040 and shall remain in effect until the Utility Work has been accepted by the DISTRICT and the DISTRICT has paid the CITY in full; provided, that the respective indemnification obligations of the CITY and the DISTRICT in Section VI shall survive the expiration or termination of this Agreement. The parties anticipate that the PROJECT will be substantially completed by **December 2019**.

III. CITY RESPONSIBILITIES

A. The CITY shall act as the lead agency on the Project and will 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 CITY's Project Managers shall act as the administrator of this cooperative undertaking.

B. The CITY shall (i) have the CITY's Design Contract include the Utility Work in the CITY's plans and specifications as a bid alternate; (ii) print and distribute the Contract Specifications and Plans; (iii) administer the advertisement for construction; and (iv) award and administer the contract, including accountings, making payments to the Contractor, and keeping the Project records.

C. The CITY, acting for and on behalf of the DISTRICT, shall provide construction management and inspection for the DISTRICT. The CITY will provide copies of all daily inspection reports for work involving the DISTRICT's Utility Work on a weekly basis. Inspection of construction activities shall not constitute a guarantee or warranty of the adequacy of performance.

IV. DISTRICT RESPONSIBILITIES

A. The DISTRICT shall be solely responsible for all costs associated with the Utility Work, and shall reimburse the CITY in accordance with the terms of Section V below.

B. The DISTRICT shall make all reasonable efforts to cooperate with the CITY's Contractor in facilitating the Utility Work and make necessary personnel available so as to not delay the Contractor's construction schedule.

C. The DISTRICT shall, within ten (10) calendar days after notification of completion of the Utility Work, issue notification of any deficiencies or issue written notification of acceptance. The CITY's Contractor will correct the deficiencies. If, after the ten (10) day period, notification has not been received by the CITY, the Utility Work shall be considered complete and accepted by the DISTRICT.

D. The DISTRICT may, if it desires, furnish an inspector on the Project. Any costs for such inspection will be borne solely by the DISTRICT. All contact between said inspector and the CITY's contractor shall be through the CITY's on-site representative who will be identified by the CITY.

E. The DISTRICT shall own and maintain any utility facilities constructed for the DISTRICT under this Agreement from the date of acceptance of the facilities by the DISTRICT. In accordance with this Agreement and the terms of the DISTRICT'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 DISTRICT unless covered under the contract performance period.

V. PAYMENT

A. The DISTRICT agrees to set aside funds for payment to the CITY for the Utility Work in an amount not less than the estimate of cost for the Utility Work design, cost for the bid items for the Utility Work and for an amount necessary to reimburse the CITY for construction management, inspection and administration services related to the Utility Work. The estimate of costs for the Utility Work is shown in Exhibit "C", attached hereto and incorporated herein.

B. The CITY shall provide the DISTRICT with invoices showing expenditures on the DISTRICT's portion of the Project. Invoices shall be based on Contractor's unit price bid on the Utility Work and shall include the DISTRICT's share of costs for construction management, inspection and administration. Invoices shall be paid by the DISTRICT within thirty (30) days of receipt by the DISTRICT. Payment by the DISTRICT shall not constitute an agreement as to the appropriateness of any item or acceptance of the work so represented.

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

- (i) 100% of the final cost of all contract items related to the DISTRICT's Utility Work, as shown in the bid proposal of the successful bidder; and
- (ii) The cost of any extra work associated with the Utility Work within the 15% contingency, and any costs for extra work that have been approved in accordance with Section VIII. B.

D. Upon completion of the Project, a final audit shall be conducted 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 DISTRICT. Within thirty (30) days of receipt of the audit and final billing, the DISTRICT shall notify the CITY of any objections to the audit and/or billing. If no objections are filed, the DISTRICT shall make final payment to the CITY and such final payment shall constitute an acceptance by the DISTRICT of the CITY's costs and accounting.

VI. HOLD HARMLESS

A. The DISTRICT agrees to defend, hold harmless and indemnify the CITY and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of the DISTRICT's participation in this Project including any act or omissions of the DISTRICT, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the DISTRICT or otherwise. The DISTRICT further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the DISTRICT or the CITY, arising from the DISTRICT's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the CITY and the DISTRICT shall be shared, based upon the percentage of fault attributed to each party as either mutually agreed or determined by the trier of fact.

B. The CITY agrees to defend, hold harmless and indemnify the DISTRICT and its elected and appointed officials, agents and employees from and against any and all claims, costs, demands and obligations of whatsoever nature arising by reason of the CITY's participation in this Project including any act or omissions of the CITY, its employees, agents, contractors or elected or appointed officials, whether attributable to the negligence of the CITY or otherwise. The CITY further agrees to defend at its own expense all suits or actions of whatsoever nature brought against the DISTRICT or the CITY, arising from the CITY's participation in this Project. All claims, demands and obligations resulting from the concurrent negligence of the CITY and the DISTRICT shall be shared, based upon the percentage of fault attributed to each party as either mutually agreed or determined by the trier of fact.

C. The CITY and the DISTRICT hereby specifically and expressly waive any and all immunity under industrial insurance, Title 51 of the Revised Code of Washington, and agree that the foregoing waiver was mutually negotiated by the parties. Further, the indemnification obligations of the parties under this Agreement shall not be limited in any way by insurance or any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts or other employee benefits acts; provided, however, that the parties' waiver of immunity by the provisions of this section extends only to claims against the DISTRICT by the CITY or claims against the CITY by the DISTRICT and does not include, or extend to, any claims by the parties' employees directly against either party or claims by any third-party contractor against either party.

VII. TERMINATION

A. The CITY has the right to terminate this Agreement if the CITY determines not to undertake the Project or to discontinue the Project by providing written notice of termination to the DISTRICT, in which case the DISTRICT shall only be responsible for Utility Work costs incurred by the CITY prior to the effective date of the CITY's notice of termination.

B. The DISTRICT has the right to terminate this Agreement prior to the award of the construction contract by providing written notice of termination to the CITY, in which case the DISTRICT shall be responsible for all costs incurred by the CITY in executing the necessary contract changes to delete the DISTRICT's portion of the work.

C. After award of the construction contract by the CITY, the DISTRICT may terminate the Agreement only upon 30 days prior, written notice to the CITY. In that event, the DISTRICT shall be responsible for all verified and substantiated costs incurred by the CITY in connection with the Utility Work and all bona fide, verified and substantiated costs of the contractor in deleting the DISTRICT's work items from the Project Scope of Work.

VIII. EXTRA WORK

There may be unforeseen conditions requiring immediate resolution during the construction phase of this agreement such as construction disputes and claims, changed conditions and changes in the construction work. Reimbursement for increased construction management and/or construction contract amount shall be limited to costs covered by a modification, change order or extra work order approved as follows:

A. Should it be determined that any change from the contract plans and specifications is required, the CITY, through the City Public Works director or his/her designee, shall have authority to make such changes up to the amount of the "Contingency" shown in Exhibit "C" as may be adjusted in accordance with the accepted bid price.

B. Any change in the work that would cause the "Grand Total" cost to exceed the amount shown in Exhibit "C", will require a Letter of Understanding (LOU), signed by both the CITY'S Public Works Director or his/her designee and the DISTRICT's General Manager or his/her designee, describing changed scope of work and estimated change in the Utility Work cost. The DISTRICT will return a signed copy of the LOU to the CITY within a week via either email or US Mail. Any cost incurred due to the delay of extra fund authorization from the DISTRICT will solely be the DISTRICT's responsibility.

C. Each party, in the event of a claim by the construction contractor, shall be responsible for its share of a claim filed by the contractor arising out of that party's portion of the Scope of Work. Claim expenses shared by the DISTRICT will be considered a change in the work and will follow the procedure set in part VIII.B.

IX. PROJECT RECORDS

During the progress of the construction and for a period not less than three years from the final payment to the CITY, all records pertaining to the Project and accounting shall be kept available for inspection and audit by the State and copies of all records, accounts, documents or other data pertaining to the Project will be furnished upon request. The CITY will be providing copies of all AWWD project related information upon completion of the project. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit may continue past the three-year retention period.

X. DISPUTES

In the event the CITY and DISTRICT disagree over whether the Contractor has fulfilled its obligations under the construction contract, the CITY reserves the right to make the final decision as to the acceptability of the work. If a dispute arises between the DISTRICT and the CITY, the parties agree that they will attempt to resolve the issues 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. The parties agree to share the costs of mediation equally. If the parties are not able to resolve their dispute at mediation, then the parties agree that the dispute shall be resolved through binding arbitration through the auspices of JAMS in Seattle and pursuant to the AAA streamlined rules of arbitration. The arbitrator shall have authority to award costs and attorneys' fees to the substantially prevailing party.

XI. 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 and recorded with the County Auditor. All amendments shall be attached to and made part of this Agreement.

XII. NOTICES

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

City of Mukilteo
Attn: Randall Roberts, P.E.
Capital Projects Engineer
11930 Cyrus Way,
Mukilteo, WA 98275

Alderwood Water & Wastewater District
Attn: Dan Scheil, P.E.
Engineer
3626 - 156th Street S.W.
Lynnwood, WA 98087-5021

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.

XIII. 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.

XIV. MISCELLANEOUS

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

B. No Assignment. This Agreement shall not be assigned, either in whole or in part, by either party without the express written consent of the other party, which may be granted or withheld in such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void.

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

D. No Joint Venture. Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

E. No Separate Entity Necessary. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement.


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

G. No Third Party Beneficiaries. This Agreement and each and every provision hereof is for the sole benefit of the CITY and the DISTRICT. No other persons or parties shall be deemed to have any rights in, under or to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

THE CITY OF MUKILTEO

ALDERWOOD WATER &
WASTEWATER DISTRICT

By:  2-7-18
Jennifer Gregerson Date
Mayor

By:  2/5/2018
Dean R. Lotz Date
Board President

Approved as to form only:

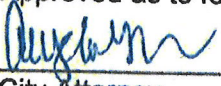
 4/19/18
City Attorney

EXHIBIT "B"

DISTRICT'S SCOPE OF WORK

Alderwood Water & Wastewater District, in conjunction with City of Mukilteo's Project, will have the City's Contractor install an 8-inch water main from Beverly Park Road to South Road, as well as adjust water valve boxes, meter box and sewer manhole lids to grade, and assume the work for other items as identified on the plans.

EXHIBIT "C"

CITY OF MUKILTEO HARBOUR REACH CORRIDOR PROJECT

ESTIMATED COSTS OF UTILITY WORK (AWWD ref# W1703)

An estimate of the scope of Utility Work and the costs associated with it is as follows:

Line #	Description of Bid Item	Approx Qty.	Unit	Unit Cost	Total Costs
1.	Mobilization and Demobilization	1	LS	\$ 5,000.00	\$ 5,000.00
2.	8-Inch Ductile Iron Pipe	1,450	LF	\$ 100.00	\$ 145,000.00
3.	Trench and Excavation Safety Systems	1	LS	\$ 5,000.00	\$ 5,000.00
4.	Connection to Existing Water Main	2	EA	\$ 5,000.00	\$ 10,000.00
5.	Adjust Sewer Manholes	7	EA	\$ 600.00	\$ 4,200.00
6.	Adjust Gate Valves	12	EA	\$ 500.00	\$ 6,000.00
7.	1-inch Combination Air & Vacuum Assy	1	EA	\$ 4,000.00	\$ 4,000.00
8.	2-inch Blow Off Assy	1	EA	\$ 3,500.00	\$ 3,500.00
9.	Fire Hydrant Assembly	1	EA	\$ 5,000.00	\$ 5,000.00
10.	Foundation Gravel	25	TON	\$ 30.00	\$ 750.00
11.	Bank Run Gravel for Trench Backfill	850	CY	\$ 35.00	\$ 29,750.00
12.	Force Account (FA)	1	EST	\$ 25,000.00	\$ 25,000.00
13.	Subtotal of Bid Items				\$ 243,200.00
14.	Sales Tax- Mukilteo (10.3% of Subtotal of Bid Items Amount)				\$ 25,049.60
15.	Subtotal of Bid Items and Sales Tax				\$ 268,249.60
16.	Contingency (15% of Subtotal of Bid Items and Sales Tax Amount, Line 14)				\$ 40,237.44
17.	Subtotal of Bid Items, Sales Tax, and Contingency				\$ 308,487.04
18.	Construction Inspection & Contract Administration (Estimated as 15% of Subtotal of Bid Items, Line 13)				\$ 36,480.00
19.	Administrative Overhead (Estimated as 15% of Construction Inspection & Contract Administration, Line 17)				\$ 46,273.06
20.	Total Estimated Cost Of Utility Work				\$ 391,240.10

* Note: This estimate will be adjusted to conform to the successful bidder's proposal and all City expenditures invoiced to the District will be actual expenditures.

