

**INTERLOCAL AGREEMENT
CITY OF EDMONDS AND CITY OF MUKILTEO
2018 SLURRY SEAL PROJECT**

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into by and between the City of Edmonds, Washington ("Edmonds") and the City of Mukilteo, Washington ("Mukilteo") (collectively, the "Parties") as of the date entered below.

WHEREAS, Chapter 39.34 RCW authorizes two or more political subdivisions or units of local government of the State of Washington to cooperate on a basis of mutual advantage to provide for services and facilities; and

WHEREAS, Mukilteo is currently planning a capital improvement project known as the 2018 Slurry Seal Project (the "Project"); and

WHEREAS, Mukilteo plans to install slurry seal on various streets as part of the Project; and

WHEREAS, Edmonds wishes to incorporate the use of slurry seal into its 2018 pavement preservation program; and

WHEREAS, combining both cities' slurry seal installations into one construction contract can create a mutual cost benefit by taking advantage of economy of scale; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of defining their respective rights, obligations, costs and liabilities regarding this undertaking; and

WHEREAS, the City Council of the City of Edmonds has taken appropriate action to approve Edmonds' entry into this Agreement; and

WHEREAS, the City Council of the City of Mukilteo has taken appropriate action to approve Mukilteo's entry into this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and covenants contained herein, Edmonds and Mukilteo agree as follows:

TERMS

Section 1. Purpose. The purpose of this Agreement is to establish a formal arrangement under which Edmonds will pay Mukilteo to incorporate slurry seal work on various Edmonds streets into the Project and to construct said work in conjunction with Mukilteo's construction of the Project. The terms, conditions and covenants of this Agreement shall accordingly be interpreted to advance this purpose. This Agreement further seeks to allocate and define the Parties' respective rights, obligations, costs and liabilities concerning the establishment, operation and maintenance of this undertaking.

Section 2. Term. This Agreement shall be effective upon filing with the Snohomish County Auditor in accordance with Section 14. Unless terminated in accordance with Section 3, this Agreement shall remain effective until the sooner of the following events: (a) Edmonds' written acceptance of and payment for Mukilteo's slurry seal work provided to Edmonds pursuant to this Agreement, or (b) December 31, 2018, when it shall expire automatically. The Parties may at their option renew this Agreement for a mutually agreed upon term by a writing signed by both Parties.

Section 3. Termination. Either Party may terminate this Agreement with or without cause by providing the other Party with thirty (30) days' written notice of its intent to terminate. Termination or expiration shall not alter Edmonds' payment obligations under Section 6 for services already rendered, as well as for the normal and reasonable costs incurred by the contractor in terminating and closing out Edmonds' portion of the work, and shall not alter the Parties' respective obligations under Section 9 of this Agreement.

Section 4. Obligations of Edmonds. Edmonds agrees to:

- A. Reimburse Mukilteo for all actual costs related to the slurry seal in accordance with the terms of Section 6 of this Agreement.
- B. Reimburse Mukilteo for Edmonds' share of Mukilteo's actual costs for design, construction engineering, inspection and management of the Project work. Edmonds' share of Mukilteo's actual costs shall be prorated based on Edmonds' share of the total construction costs for the work. Edmonds' share of Mukilteo's actual costs for construction engineering and management shall not exceed \$20,000.00 without prior approval by Edmonds, which approval shall not be unreasonably withheld.
- C. Respond promptly to information requests submitted by Mukilteo or its agents regarding the Project work.
- D. Provide written acceptance of the work to Mukilteo upon satisfactory completion of the Project work.

Section 5. Obligations of Mukilteo. Mukilteo agrees to:

- A. Incorporate the streets identified by Edmonds into Project documents.
- B. Submit to Edmonds written invoices for payment in accordance with Section 6. Include copies of invoices or other documentation from consultants and/or contractors clearly indicating Edmonds' portion of the invoices.
- C. Provide Edmonds personnel reasonable access to the Project's construction area for purposes of inspecting and monitoring the progress of the work.
- D. Respond promptly to information requests submitted by Edmonds or its agents regarding the Project work.

Section 6. Payment Schedule. The Parties agree to the following billing and payment schedule:

- A. For design costs, construction contract costs, and for construction engineering and management costs incurred by Mukilteo for Edmonds' work, Mukilteo shall within thirty (30) days submit an invoice to Edmonds for its share of said expenses.
- B. A fifteen percent (15%) administrative overhead charge shall be included to each billing to cover administrative costs incurred by Mukilteo in administering the Project.
- C. Within thirty (30) days of receiving any invoice pursuant to subsection 6.A, Edmonds shall tender payment to Mukilteo in the form of a check, money order or other certified funds for the invoiced amount for work approved by Edmonds, which approval shall not be unreasonably withheld.
- D. In the event that the Parties disagree regarding Edmonds' share of any expense incurred by Mukilteo regarding the Project, the Parties may agree to submit the question for resolution by a mediator or arbitrator acceptable to both Parties.

Section 7. Ownership and Disposition of Property. The Project work done for Edmonds pursuant to this Agreement shall become and remain the exclusive property of Edmonds upon completion. All other work constructed under the Project shall become and remain the exclusive property of Mukilteo upon completion.

Section 8. Administration. No Separate Entity Created. The Assistant City Engineer for Mukilteo shall serve as the administrator of this Agreement. No separate legal entity is formed by this Agreement.

Section 9. Release, Indemnification and Hold Harmless Agreement. Each Party to this Agreement shall be responsible for its own negligent and/or wrongful acts or omissions, and those of its own agents, employees, representatives, contractors or subcontractors, to the fullest extent required by the laws of the State of Washington. Each Party agrees to protect, indemnify and save the other Party harmless from and against any and all such liability for injury or damage to the other Party or the other Party's property, and also from and against all claims, demands and causes of action of every kind and character arising directly or indirectly, or in any way incident to, in connection with, or arising out of work performed under the terms hereof, caused by its own fault or that of its agents, employees, representatives, contractors or subcontractors.

Mukilteo specifically promises to indemnify Edmonds against claims or suits brought under Title 51 RCW by its own employees, contractors or subcontractors, and waives any immunity that Mukilteo may have under that title with respect to, but only to, the limited extent necessary to indemnify Edmonds.

Section 10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington. Any action arising out of this Agreement shall be brought in Snohomish County Superior Court.

Section 11. No Employment Relationship Created. The Parties agree that nothing in this Agreement shall be construed to create an employment relationship between Edmonds and any employee, agent, representative or contractor of Mukilteo, or between Mukilteo and any employee, agent, representative or contractor of Edmonds.

Section 12. No Third Party Rights. This Agreement is intended for the sole and exclusive benefit of the Parties hereto and no third party rights are created by this Agreement.

Section 13. Notices. Notices to Mukilteo shall be sent to the following address:

**City of Mukilteo
Assistant City Engineer
11930 Cyrus Way
Mukilteo, WA 98275**

Notices to Edmonds shall be sent to the following address:

**City of Edmonds
City Engineer
121 Fifth Avenue N
Edmonds, WA 98020**

Section 14. Duty to File Agreement with County Auditor. Mukilteo shall, after this Agreement is executed by both Parties, file this Agreement with the Snohomish County Auditor.

Section 15. Integration. This document constitutes the entire embodiment of the Agreement between the Parties and, unless modified in writing by an amendment to this Interlocal Agreement signed by the Parties hereto, shall be implemented as described above.

Section 16. Non-Waiver. Waiver by any Party of any of the provisions contained within this Agreement, including but not limited to any performance deadline, shall not be construed as a waiver of any other provision.

DATED this 16th day of February, 2018.

CITY OF EDMONDS

By: David O. Earling

DAVID O. EARLING
Mayor

Date

2.16.18

CITY OF MUKILTEO

By: Jennifer Gregerson

JENNIFER GREGERSON
Mayor

Date

3.6.18

ATTEST/AUTHENTICATED:

Scott Passey
Scott Passey, City Clerk

ATTEST/AUTHENTICATED:

Janet Keefe
Janet Keefe, City Clerk

Approved as to form only:

Sharon Cates
City of Edmonds, Office of the City Attorney

Approved as to form only:

[Signature]
City of Mukilteo, Office of the City Attorney