

INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF MUKILTEO FOR SHARED USE PATH IMPROVEMENTS

This INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE CITY OF MUKILTEO FOR SHARED USE PATH IMPROVEMENTS (this "Agreement"), is made and entered into this 8 day of AUGUST, 2022, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and the City of Mukilteo, a Washington municipal corporation (the "City"), collectively the "Parties," pursuant to Chapter 39.34 RCW.

RECITALS

A. The 2015 Comprehensive Parks and Recreation Element, a component of the Snohomish County Growth Management Act Comprehensive Plan, has documented a County-wide need for a wide variety of recreational facilities; and

B. The County Executive and the County Council have determined that it is consistent with the Snohomish County Parks and Recreation Element and is in the public interest of County residents to participate in joint undertakings with local municipalities to increase recreational opportunities and facility capacity; and

C. The County Council approved Amended Ordinance 21-090, adopted November 9, 2021, which adopted the 2022-2027 Capital Improvement Program as part of Snohomish County's Growth Management Act Comprehensive Plan, and which included Amendment 1, which identified specific projects to be funded as City Council Partnership Projects; and

D. Amendment 1 included the City of Mukilteo's Shared Use Path Improvements project which will repair and replace damaged segments to the existing asphalt shared-use path pavement that runs along southbound SR 526/Paine Field Blvd. ("the Project"). Snohomish County has agreed to provide Forty Thousand Dollars (\$40,000) of Real Estate Excise Tax funds (the "Funds") in support of this project; and

E. The City of Mukilteo has provided the following: confirmation from the City indicating ownership interest in the property (Attachment A, incorporated herein by this reference); Proof of Insurance (Attachment B, incorporated herein by this reference); and relevant portions of the City's Capital Facilities Plan ("CFP") identifying the Project (Attachment C, incorporated herein by this reference); and

F. Pursuant to this Agreement and Chapter 39.34 RCW, the County wishes to provide, and the City wishes to accept, the above-described Funds from the County.

AGREEMENT

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

1. Purpose of Agreement.

This Agreement is authorized by and entered into pursuant to Chapter 39.34 RCW. The purpose and intent of this Agreement is to define the responsibilities of the County and the City as they relate to the County's provision of the funds to the City's Project located along SR 526/Paine Field Blvd. between SR 525 and 44th Ave. W/92nd St. SW (the "Property"). Planned enhancements include repairing and replacing damaged segments to the existing asphalt shared-use path pavement.

2. Effective Date and Duration.

This Agreement shall not take effect unless and until it has been duly executed by both Parties and either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect through December 31, 2023, unless earlier terminated pursuant to the provisions of Section 12 below, PROVIDED HOWEVER, that each party's obligations are contingent upon local legislative appropriation of necessary funds for this specific purpose in accordance with applicable law.

3. Administrators.

Each party to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer such party's participation in this Agreement. The Parties' initial Administrators shall be the following individuals:

County's Initial Administrator:

Jeremy Husby, Director
Snohomish County Division of
Parks & Recreation
6705 Puget Park Drive
Snohomish, Washington 98296
(425) 388-6601 phone
Jeremy.Husby@snoco.org

City's Initial Administrator:

Matt Nienhuis, Public Work Director
City of Mukilteo
11930 Cyrus Way
Mukilteo, Washington 98275
425-315-2613
mnienhuis@mukilteowa.gov

Either party may change its Administrator at any time by delivering written notice of such party's new Administrator to the other party.

4. Project Performance.

4.1 Certification of Real Property Interest. The City certifies to the County that the City owns the real property or easements upon which the Project shall be executed, and additional real property or easements are not needed to complete the Project.

4.2 City's Financial Commitment. The City certifies to the County that the City has monies sufficient to match any funding provided by the County to the City under the terms of this Agreement and will have sufficient monies to complete the Project by the Project deadline identified in Section 4.3 below (the "City's Financial Commitment").

4.3 **Project Deadline.** On or before December 31, 2023, the City shall complete the Project. In executing the Project, the City shall obtain and, upon request, provide the County with copies of all permits necessary to complete the Project.

4.4 **Recognition of County as Financial Sponsor.** The City shall recognize the County as a financial sponsor of the Project as follows:

4.4.1 Upon completion of the Project or dedication of the completed Project, whichever comes first, the City shall install at the Project site a plaque in a form approved by the County that indicates that the County is a financial sponsor of or contributor to the Project;

4.4.2 The City shall invite the County to all events promoting the Project and recognize the County at all such events as a financial sponsor of the Project;

4.4.3 The City shall recognize the County as a financial sponsor in all brochures, banners, posters, and other promotional material related to the Project.

4.5 **Project Maintenance.** The City shall be responsible for on-going capital improvements to, and maintenance of, the Project and the Property. The County makes no commitment to support the Project or Property beyond what is provided for in this Agreement and assumes no obligation for future support of the Project or Property except as expressly set forth in this Agreement.

4.6 **Availability to County Residents.** The City shall make the Property available to all County residents on the same terms as to residents of the City.

5. Invoicing and Payment.

5.1 **Invoicing.** Prior to December 31, 2023, the City shall submit to the County an invoice requesting disbursement of the Funds for the Project. The invoice shall provide line item detail for materials, labor and overhead and include any documentation requested by the County, including but not limited to documentation as to what amounts have been spent by the City on the Project.

5.2 **Payment.** Unless the County delivers to the City written notice disputing the amount of a particular line item, within twenty (20) working days of receipt from the City of an invoice properly submitted to the County pursuant to Section 5.1, the County shall remit to the City an amount not to exceed [PROJECT AMOUNT – spelled out (numeric)].

5.3 **No Overpayments.** In the event that the Project is completed for less than the combined total of the Funds and the City's Financial Commitment, the County shall remit to the City an amount of Funds equal to the difference between the City's Financial Commitment and the total cost of the Project. In no case shall the City retain Funds which it does not utilize in the Project or that it utilizes in the Project without first exhausting the City's Financial Commitment. Should an overpayment occur, the County shall give written notice to the City of the overpayment,

and within thirty (30) days of the notice of overpayment the City shall return to the County the overpaid Funds plus interest at the rate of twelve percent (12%) per annum beginning thirty (30) days from the date of the notice of overpayment.

5.4 Accounting. The City shall maintain a system of accounting and internal controls that complies with generally accepted accounting principles and governmental accounting and financial reporting standards and provisions concerning preservation and destruction of public documents in accordance with applicable laws, including Chapter 40.14 RCW.

5.5 Recordkeeping. The City shall maintain adequate records to support billings. The records shall be maintained by the City for a period of five (5) years after completion of this Agreement. The County, or any of its duly authorized representatives, shall have access to books, documents, or papers and records of the City relating to this Agreement for purposes of inspection, audit, or the making of excerpts or transcripts.

5.6 Audit and Repayment. The City shall return Funds disbursed to it by the County under this Agreement upon the occurrence of any of the following events:

5.6.1 If overpayments are made; or

5.6.2 If an audit of the Project by the State or the County determines that the Funds have been expended for purposes not permitted by the REET 2 statute, the State, the County, or this Agreement.

In the case of 5.6.1 or 5.6.2, the County shall make a written demand upon the City for repayment, and the City shall be obligated to repay to the County the Funds demanded within sixty (60) calendar days of the demand. The County's right to demand repayment from the City may be exercised as often as necessary to recoup from the City all Funds required to be returned to the County.

The City is solely responsible for seeking repayment from any subcontractor in conformance with its debt collection policy.

6. Independent Contractor. The City will perform all work associated with the Project as an independent contractor and not as an agent, employee, or servant of the County. The City shall be solely responsible for control, supervision, direction and discipline of its personnel, who shall be employees and agents of the City and not the County. The County shall only have the right to ensure performance.

7. Indemnification/Hold Harmless.

The City shall assume the risk of liability for damage, loss, costs and expense arising out of the activities under this Agreement and all use of any improvements it may place on the Property. The City shall hold harmless, indemnify and defend the County, its officers, elected and appointed officials, employees and agents from and against all claims, losses, lawsuits, actions, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to

any property or business and/or any death, injury or disability to or of any person or party, including but not limited to any employee, arising out of or suffered, directly or indirectly, by reason of or in connection with the acquisition or use of the Property and this Agreement; PROVIDED, that the above indemnification does not apply to those damages solely caused by the negligence or willful misconduct of the County, its elected and appointed officials, officers, employees or agents. This indemnification obligation shall include, but is not limited to, all claims against the County by an employee or former employee of City, and City, by mutual negotiation, expressly waives all immunity and limitation on liability, as respects the County only, 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.

8. Liability Related to City Ordinances, Policies, Rules and Regulations.

In executing this Agreement, the County does not assume liability or responsibility for or in any way release the City from any liability or responsibility which arises in whole or in part from the existence or effect of City ordinances, policies, rules or regulations. If any cause, claim, suit, action or administrative proceeding is commenced in which the enforceability and/or validity of any such City ordinance, policy, rule or regulation is at issue, the City shall defend the same at its sole expense and, if judgment is entered or damages are awarded against the City, the County, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

9. Insurance.

The City shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, exercise of the rights and privileges granted by this Agreement, by the City, its agents, representatives, and employees/subcontractors. The cost of such insurance shall be paid by the City.

9.1 Minimum Scope and Limits of Insurance. General Liability: Insurance Services Office Form No. CG 00 01 Ed. 11-88, covering COMMERCIAL GENERAL LIABILITY with limits no less than \$1,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

9.2 Other Insurance Provisions. Coverage shall be written on an "Occurrence" form. The insurance policies required in this Agreement are to contain or be endorsed to contain the County, its officers, officials, employees, and agents as additional insureds as respects liability arising out of activities performed by or on behalf of the City in connection with this Agreement.

9.3 Verification of Coverage. The City shall furnish the County with certificate(s) of insurance and endorsement(s) required by this Agreement.

9.4 In lieu of the insurance required in this Section 9, the City may, upon request of and acceptance by the County, provide the County a letter certifying the City's self-insurance program.

10. Compliance with Laws.

In the performance of its obligations under this Agreement, each party shall comply with all applicable federal, state, and local laws, rules and regulations.

11. Default and Remedies.

11.1 Default. If either the County or the City fails to perform any act or obligation required to be performed by it hereunder, the other party shall deliver written notice of such failure to the non-performing party. The non-performing party shall have twenty (20) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said twenty (20) day period, then the non-performing party shall not be in Default if it commences cure within said twenty (20) day period and thereafter diligently pursues cure to completion.

11.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 11.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

12. Early Termination.

12.1 30 Days' Notice. Except as provided in Section 12.2 below, either party may terminate this Agreement at any time, with or without cause, upon not less than thirty (30) days advance written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

12.2 Termination for Breach. In the event that the City fails to complete the Project by December 31, 2023, and/or otherwise commits a Default as described in Section 11, the County may terminate this Agreement immediately by delivering written notice to the City. Within thirty (30) days of such early termination, the City shall return to the County all Funds previously disbursed from the County to the City for the Project plus interest at the rate of twelve percent (12%) per annum beginning thirty (30) days from the date of early termination.

13. Dispute Resolution.

In the event differences between the Parties should arise over the terms and conditions or the performance of this Agreement, the Parties shall use their best efforts to resolve those differences on an informal basis. If those differences cannot be resolved informally, the matter may be referred for mediation to a mediator mutually selected by the Parties. If mediation is not successful or if a party waives mediation, either of the Parties may institute legal action for specific performance of this Agreement or for damages. The prevailing party in any legal action shall be

entitled to a reasonable attorney's fee and court costs.

14. Notices.

All notices required to be given by any party to the other party under this Agreement shall be in writing and shall be delivered either in person, by United States mail, or by electronic mail (email) to the applicable Administrator or the Administrator's designee. Notice delivered in person shall be deemed given when accepted by the recipient. Notice by United States mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, and addressed to the Administrator, or their designee, at the addresses set forth in Section 3 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

15. Miscellaneous.

15.1 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the Parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document executed with the same formalities as required for this Agreement and signed by the party against whom such modification is sought to be enforced.

15.2 Conflicts between Attachments and Text. Should any conflicts exist between any attached exhibit or schedule and the text or main body of this Agreement, the text or main body of this Agreement shall prevail.

15.3 Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County. In the event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

15.4 Interpretation. This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either of the Parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

15.5 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or

circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

15.6 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.

15.7 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 and shall constitute a Default under this Agreement.

15.8 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.

15.9 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.

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

15.11 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.


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

15.13 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.


COUNTY:

Snohomish County, a political subdivision
of the State of Washington

By 
Lacey Harper (Aug 12, 2022 14:56 PDT)
Name: Dave Somers
Title: County Executive

CITY:


City of Mukilteo

By 
Joe Marine (Aug 12, 2022 14:47 PDT)
Name: Joe Marine:
Title: Mayor


Approved as to Form:

/s/ Sean Reay 4/18/22
Deputy Prosecuting Attorney

Attest/Authenticate

By 
Kara Johnson (Aug 12, 2022 10:35 PDT)
Name:
Title:

Approved as to Form:


Daniel Kenny (Aug 10, 2022 16:56 PDT)
Office of the City Attorney

Attachment A
Ownership Interest



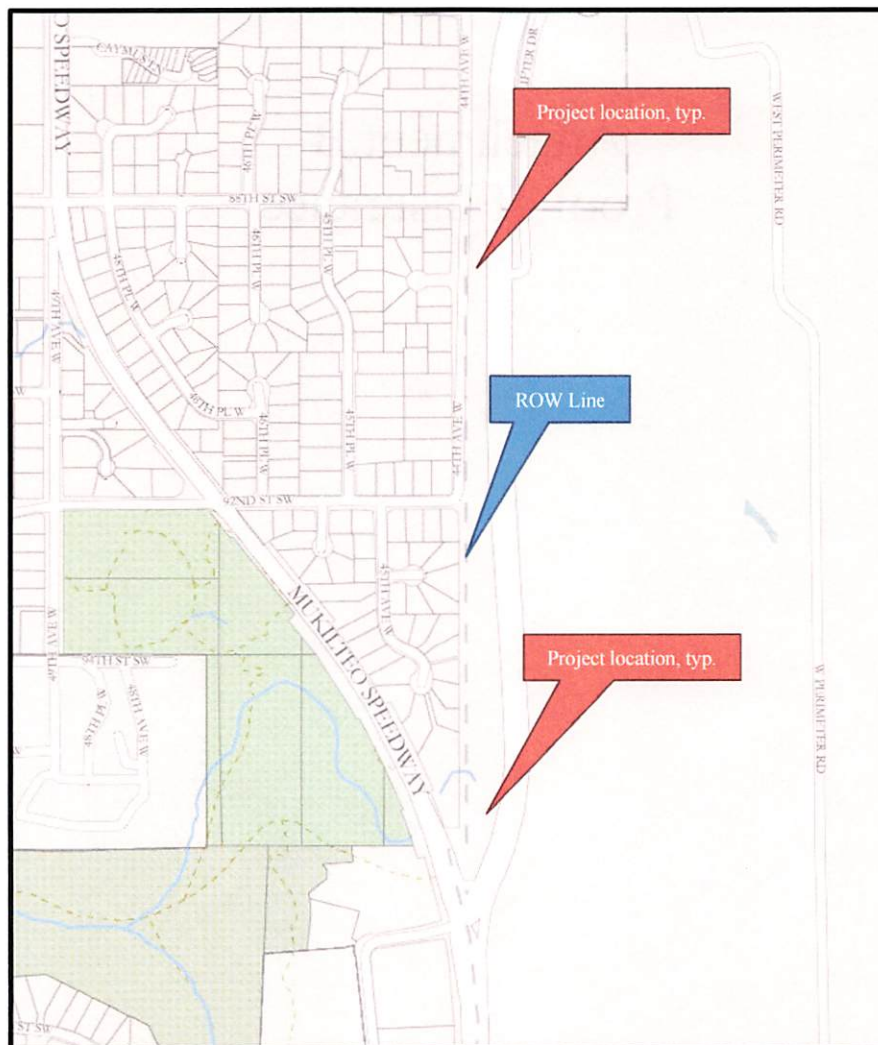
CITY OF MUKILTEO

Public Works Department

Mukilteo Paine Field Blvd Path Repairs Confirmation of Ownership of Project/Location

The Paine Field Blvd Path Repairs project will repair and replace damaged segments to the existing asphalt shared-use path pavement that runs along southbound SR526, between SR525 and 44th Ave W/92nd St SW, due to tree root intrusion and cracking.

The project is located within City right-of-way along SR 526. All County funds will be spent to construct the improvements located within City-owned right-of way.



Attachment B
Proof of Insurance



P.O. Box 88030

Tukwila, WA 98138

Phone: 206-575-6046

Fax: 206-575-7426

www.wciapool.org

5/10/2021

Ref#: 13294

Snohomish County Dept of Parks, Recreation & Tourism
Attn: Tom Teigen, Director
6705 Puget Park Drive
Snohomish, WA 98296

Re: City of Mukilteo
Grant Funding

Evidence of Coverage

The City of Mukilteo is a member of the Washington Cities Insurance Authority (WCIA), which is a self-insured pool of over 160 public entities in the State of Washington.

WCIA has at least \$4 million per occurrence limit of liability coverage in its self-insured layer that may be applicable in the event an incident occurs that is deemed to be attributed to the negligence of the member. Liability coverage includes general liability, automobile liability, stop-gap coverage, errors or omissions liability, employee benefits liability and employment practices liability coverage.

WCIA provides contractual liability coverage to the City of Mukilteo. The contractual liability coverage provides that WCIA shall pay on behalf of the City of Mukilteo all sums which the member shall be obligated to pay by reason of liability assumed under contract by the member.

WCIA was created by an interlocal agreement among public entities and liability is self-funded by the membership. As there is no insurance policy involved and WCIA is not an insurance company, your organization cannot be named as an additional insured.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rob Roscoe".

Rob Roscoe
Deputy Director

cc: Steve Powers
Andrea Swisstack, Public Works Director

Attachment C
Capital Facilities Plan



Annual Sidewalk Repair Program

Date Discussed by Council: This is an ongoing, sustaining program, begun in 2019

Repairs to the existing sidewalk network to fix broken, offset and/or damaged areas.

Fund Name
Capital Projects

Amount Requested

\$25,000

Nature of the expenditure?

Ongoing

Any Additional Revenue? If Yes, Identify Below

NO

Project eligible for REET II Funding

Yes

Expenditure Purpose and Justification

In 2019, the City funded the Annual Sidewalk Repair Program with the vision to invest annually in preserving the City's existing sidewalk infrastructure. Many sidewalks and paths within the City are in need of repairs due to tree root intrusion, cracking, spalling or old age. If left unrepaired, these locations can become tripping hazards to the users.

This program only includes repairs to existing sidewalks and does not fund the construction of new sidewalks. New sidewalks are funded via the adopted Bike Transit Walk program.

Funding Summary	Total
2020 Estimated Carry Forward	\$ 144,426
2021 Budget	\$ 25,000
Total	\$ 169,426

Alternatives and Potential Costs

The Council could choose to increase or decrease funding for this program.

Identify Additional Related Revenue and Expenses and Whether One-Time or On-Going

This is an ongoing program. Total proposed expenses are summarized in the table above.

Department:	Public Works
Division:	Engineering
Prepared by:	Andrea Swisstack, Public Works Director

Expenditure Account # & Title	Amount
Capital Projects: Sidewalk Repairs	\$ 25,000

Revenue Account # & Title	Amount
Transfer in from REET II	\$ 25,000

2022 Budget



Annual Sidewalk Repair Program

Previous Review: This is an ongoing, sustaining program, begun in 2020.

Repairs to the existing sidewalk network to fix broken, offset and/or damaged areas. The 2022 Program will focus on repairing damaged shared use path along Paine Field Boulevard.

Council Priority

Fund Name

Capital Projects

Amount Requested

\$185,000

Nature of the expenditure?

Ongoing

Any Additional Revenue? If Yes, Identify Below

No

Project eligible for REET II Funding

Yes

Expenditure Purpose and Justification

In 2019, the City funded the Annual Sidewalk Repair Program with the vision to invest annually in preserving the City's existing sidewalk infrastructure. Many sidewalks and paths within the City are in need of repairs due to tree root intrusion, cracking, spalling or old age. If left unrepaired, these locations can become tripping hazards to the users.

This program only includes repairs to existing sidewalks and does not fund the construction of new sidewalks. New sidewalks are funded via the adopted Bike Transit Walk program.

The 2022 Program will focus on repairing damaged shared use path along Paine Field Boulevard. The project will involve removing and replacing several trees that align the existing path and repairing the pathway that has been severely damaged due to root intrusion. Preliminary design began in 2021 with an anticipated construction date of Spring-Summer 2022. Total estimated costs for the design and construction of the repair of the shared use path is approximately \$340,000. It is estimated that \$35,000 will be spent in 2021 for the design of the project, leaving \$305,000 of the total project costs to be spent in 2022.

Funding History

Total

2021 Estimated Carry Forward	\$ 134,426
2022 Budget	\$ 185,000
Total	\$ 319,426

Alternatives and Potential Costs

The Council could choose to increase or decrease funding for this program.

Identify Additional Related Revenue and Expenses and Whether One-Time or On-Going

This is an ongoing program.

Department:	Public Works
Division:	Engineering
Prepared by:	Andrea Swisstack, Public Works Director

Expenditure Account # & Title

Amount

Capital Projects: Sidewalk Repairs	\$ 185,000
	\$ -
	\$ -
	\$ -

Revenue Account # & Title

Amount

Transfer in from REET II	\$ 185,000
	\$ -
	\$ -
	\$ -











SnoCo FINAL ILA - Mukilteo Shared Path_2022.04.18

Final Audit Report

2022-08-12


Created:	2022-08-10
By:	Matt Nienhuis (MNIENHUIS@MUKILTEOWA.GOV)
Status:	Signed
Transaction ID:	CBJCHBCAABAACK15rg88tiv9Ov_jiWJjWUw-aCTFWIL_


"SnoCo FINAL ILA - Mukilteo Shared Path_2022.04.18" History


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-  Document emailed to Daniel Kenny (dpkenny@omwlaw.com) for signature
2022-08-10 - 8:55:27 PM GMT
-  Email viewed by Daniel Kenny (dpkenny@omwlaw.com)
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Adobe Acrobat Sign


 Document e-signed by Joe Marine (jmarine@mukilteowa.gov)
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 Signer lacey.harper@co.snohomish.wa.us entered name at signing as Lacey Harper
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 Document e-signed by Lacey Harper (lacey.harper@co.snohomish.wa.us)
Signature Date: 2022-08-12 - 9:56:19 PM GMT - Time Source: server- IP address: 174.231.128.137

 Agreement completed.
2022-08-12 - 9:56:19 PM GMT

