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SEP 21 2018

CITY OF MUKILTEO

**INTERLOCAL COOPERATION AGREEMENT FOR
ROADWAY REPAIR FUNDING**

This Interlocal Cooperation Agreement for Roadway Repair Funding (“Agreement”) is made and entered by and between the City of Mukilteo, Washington, (“the City”), and the Mukilteo Water and Wastewater District (“the District”) (each individually a “Party” and collectively the “Parties”) for the purpose set forth herein.

Recitals

WHEREAS, during the winter and spring of 2017, a series of landslides occurred on private property adjacent to the 61st Place W. public right-of-way (“the 61st Place W. Roadway”), which deposited significant volumes of debris onto the 61st Place W. Roadway; and

WHEREAS, due to safety concerns related to the stability of the slopes on the adjacent private property, the City as of February 2017, temporarily closed the segment of the 61st Place W. Roadway depicted on Exhibit A, attached hereto and incorporated herein by reference as if set forth in full (“the 61st Place West Slide Area”), to public entry and use; and

WHEREAS, the District owns and operates a wastewater lift station known as Lift Station No. 5 (“the Lift Station”) in the Smuggler’s Gulch neighborhood of Mukilteo, which pumps wastewater from approximately 170 residences to the District’s wastewater treatment plant; and

WHEREAS, the District requires periodic vehicular access to the Lift Station for servicing and maintenance, and 61st Place W. is the only public roadway by which the Lift Station can be physically reached; and

WHEREAS, the District has requested that the City perform the remedial work necessary to reopen 61st Place W. on an expedited basis, and is willing to contribute financially to said undertaking in the amount and manner set forth herein; and

WHEREAS, Chapter 39.34 RCW authorizes one or more public agencies to cooperate on the basis of mutual advantage;

NOW THEREFORE, in consideration of the terms herein, the public health, safety and welfare, and other consideration the receipt and sufficiency of which are mutually acknowledged, the Parties agree and covenant as follows:

Terms

Section 1. Purpose. The purpose of this Agreement is to establish a contractual relationship between the Parties under which the District will contribute funding in the event that the City, in its discretion, undertakes and completes a public works project to reopen the 61st Place W. Roadway within the timeframe specified hereunder. This Agreement shall be reasonably construed in furtherance of such purpose.

Section 2. 61st Place W. Remediation Project. The Parties mutually acknowledge that the City is currently exploring potential options to remediate the current slope stability conditions within the 61st

Place West Slide Area as necessary to reopen the 61st Place W. Roadway to use by the traveling public, including the District. Such efforts may, in the City's sole discretion, include a public works project involving design, engineering and construction work ("the 61st Place W. Remediation Project"). It is expressly understood by the Parties that the means and method utilized with respect to the 61st Place W. Remediation Project are within the exclusive discretion of the City.

Section 3. Funding Contribution. If the City in its discretion undertakes and physically completes 61st Place W. Remediation Project by February 28, 2019, the District shall provide a monetary contribution ("Contribution Payment") to the City equal to the lesser of: (i) twenty-five (25) percent of the total cost incurred by the City to complete the 61st Place W. Remediation Project, or (ii) Fifteen Thousand Dollars (\$15,000). The District shall remit the Contribution Payment to the City within 30 days of receiving: (a) a written notice from the City advising that the 61st Place W. Remediation Project is complete, and authorizing the District to use the 61st Place W. Roadway to access the Lift Station, and (b) a written invoice from City reasonably documenting the total cost incurred by the City for 61st Place W. Remediation Project. It is mutually understood that the District's obligation to remit the Contribution Payment to the City is expressly contingent upon receipt of said notice and invoice. The District's payment obligations under this section shall survive the expiration or termination of this Agreement.

Section 4. Regulatory Compliance. At all times relevant to this Agreement, the Parties shall comply fully with all applicable federal, state and local laws, statutes, ordinances, rules and other regulatory requirements.

Section 5. Indemnification and Hold Harmless. Each Party shall indemnify and hold the other Party, its elected officials, officers, employees, agents and volunteers harmless from any claims, losses, suits, causes or action and costs, including attorneys' fees, arising from, resulting from, or connected with the first Party's negligent performance of this Agreement, except to the extent caused by the negligent acts, errors, or omissions of the other Party. In the event of a claim, loss, or liability based upon the alleged concurrent or joint negligence of the Parties, the Parties shall bear their respective liability, including costs, in accordance with their respective liability established in accordance with the laws of the State of Washington.

FOR PURPOSES OF INDEMNIFICATION ONLY, THE PARTIES, BY MUTUAL NEGOTIATION, HEREBY WAIVE, AS RESPECTS THE OTHER PARTY ONLY, ANY IMMUNITY THAT WOULD OTHERWISE BE AVAILABLE AGAINST SUCH CLAIMS UNDER THE INDUSTRIAL INSURANCE PROVISIONS OF TITLE 51 RCW.

The provisions of this section shall survive the expiration or termination of this Agreement with respect to acts and omissions occurring during the Agreement Term.

Section 6. Disclaimer. Nothing in this Agreement shall be construed as:

- (i) Imposing any obligation upon the City to undertake the 61st Place W. Remediation Project in the first instance;
- (ii) Imposing any obligation upon the City to commence, complete or otherwise perform any part of the 61st Place W. Remediation Project by any particular date;
- (iii) Acknowledging any City duty whatsoever to remediate the slope stability conditions within 61st Place West Slide Area;
- (iv) Acknowledging any City duty whatsoever to reopen or otherwise keep open for public use the 61st Place W. Roadway; or

- (v) Imposing any obligation upon the District to contribute funding toward any future project or undertaking of the City.

Section 7. Term; Termination. This Agreement shall be effective as of the "Effective Date" defined in Section 18 and shall remain in effect until the 61st Place W. Remediation Project is accepted as complete by the City. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party.

Section 8. Regulatory Authority Preserved. The District expressly acknowledges that the City is a municipal corporation organized under the laws of the state of Washington and has executed this Agreement in its capacity as owner and operator of the 61st Place W. public right-of-way. Nothing in this Agreement shall be construed as waiving, abridging or otherwise limiting the City's regulatory authority, police power and/or legislative discretion, which are hereby expressly reserved in full.

Section 9. Notices. Written notices to either Party under this Agreement shall be effective immediately upon hand-delivery, or three (3) days after postmark if sent via U.S. Mail to the following addresses

City of Mukilteo	Mukilteo Water and Wastewater District
Attn: Public Works Director	Attn: General Manager
11930 Cyrus Way	7824 Mukilteo Speedway
Mukilteo, WA 98275	Mukilteo, WA 98275-3355

Section 10. No Employment Relationship or Agency. Nothing herein shall be construed as creating an agency relationship between the City and the District, or as creating an employment relationship between the City and or any employee or agent of the District, or between the District and any employee or agent of the City.

Section 11. No Third-Party Beneficiaries. This Agreement is entered into and executed for the exclusive benefit of the signatory Parties as defined herein, and shall be enforceable only by said Parties. Nothing herein shall be construed as creating any rights, benefits, entitlements or causes of action in or for any other parties.

Section 12. Governing Law; Venue. This Agreement shall be governed by the laws of the State of Washington. The exclusive venue for any litigation occurring under this Agreement shall be the Superior Court for Snohomish County Washington. The substantially prevailing party in any such litigation shall be entitled to an award of its reasonable attorneys' fees.

Section 13. Integration; Modification. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof; no oral agreements or statements shall be binding. This Agreement may be modified or amended only by a writing signed by both Parties.

Section 14. Administration. This Agreement does not create any separate legal or administrative entity to which any power is delegated by the Parties. Administration of this Agreement shall be the responsibility of the Mukilteo City Administrator, for Mukilteo, and the Mukilteo Water and Wastewater District General Manager, for the District. The Parties will cooperatively work together to further the intent and purpose of this Agreement.

Section 15. Property Acquisition. No personal or real property shall be acquired jointly by the Parties.

Section 16. Filing or Posting. Prior to its entry into force, this Agreement shall be filed with the Snohomish County Auditor or, alternatively, listed by subject on each Party's web site or other electronically retrievable public source.

Section 17. Signatory Warranty. Each signatory below represents and warrants that he/she has been authorized to execute this Agreement for the Party on whose behalf he/she is purporting to sign.

Section 18. Effective Date. This Agreement shall be effective upon the date by which is executed by both Parties ("Effective Date").

CITY OF MUKILTEO

By: 
Mayor Jennifer Gregerson
Dated: 10-2-18

**MUKILTEO WATER AND
WASTEWATER DISTRICT**

By: 
Title: General Manager
Dated: 10/12/18

ATTEST/AUTHENTICATED

By: 
City Clerk, Janet Keefe

APPROVED AS TO FORM

By: APPROVED ZACH LELL 10-1-2018.
Office of the City Attorney

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CITY OF MUKILTEO

**MUKILTEO WATER AND
WASTEWATER DISTRICT**

By: _____
Mayor Jennifer Gregerson
Dated: _____

By: *Jan Voithy*
Title: General Manager
Dated: 01/10/18

ATTEST/AUTHENTICATED

By: _____
City Clerk, Janet Keefe

APPROVED AS TO FORM

By: *[Signature]*
Office of the City Attorney