

**INTERLOCAL AGREEMENT BETWEEN
MUKILTEO WATER & WASTEWATER DISTRICT AND
CITY OF MUKILTEO**

RECEIVED

JUL 12 2019

CITY OF MUKILTEO

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 owns real property located at 601 4th Street, Mukilteo, WA (Snohomish County Assessor Parcel Number 00459800500100), commonly referred to as the Byers Park property ("Byers Park property"); and

WHEREAS, as part of its 2019 Water and Sewer Improvements Project, the District is installing a new sanitary sewer force main in the City of Mukilteo (the "Project") in the area of the Byers Park property; and

WHEREAS, as a part of the Project, the District will be replacing the North and South driveways and sidewalk at the Byers Park property; and

WHEREAS, in order to provide for continuity and consistency in the pedestrian path and other efficiencies, the City desires to have the District install two additional curb ramps at the Byers Park property identified as Type 1 ADA Ramps on the approved project plans (the "City Work"); and

WHEREAS, the District is willing to include the City 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 City reimbursing the District for the cost to install the City Work; and

WHEREAS, the District will competitively bid the Project as a public works project and award 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 District, as agent acting for and on behalf of the City, agrees to have the Contractor perform the City Work as part of the Project, in accordance with the Project Plans and Specifications.

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

Section 3. Bidding and Construction. The District is hereby designated the City's bidding and construction agent for the Project. If the bid of the lowest responsible bidder selected by the District includes a cost for the City Work that the City Engineer determines to be excessive, the City has the right to withdraw the City Work from the Project Work, in which event this Agreement shall automatically terminate and the District may continue with the District Work. As construction agent, the District will perform all engineering, survey and field inspections and shall make all payments to the Contractor. The District will keep the City advised as to the progress of the Project work. The District, as construction agent, shall have final decision-making authority, after consulting with the City, 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 City hereby authorizes the District to proceed with construction of the City work for the purpose intended by this Agreement, and as further described in Section 8.

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

Section 6. Acceptance. The District shall conduct a field review of each portion of the City Work with representatives of the City 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 District. The City agrees, upon satisfactory completion of the work as determined by the City, to deliver a Letter of Acceptance of the City Work. The City's acceptance of the City 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 District after inspection by all agencies involved.

Section 7. Payment. The City, in consideration of the faithful performance of the work to be done by the District, agrees to pay and reimburse to the District the total amount for the cost to complete the City Work, which sum shall include all construction costs to complete the City 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 Type 1 ADA Ramp on the awarded bidder's bid tab times the number of Type 1 ADA Ramps installed. Sales tax shall be the prevailing sales tax at the time of payment for the City Work. Construction Management costs shall be 10% of the construction cost for City Work.

Payment shall be made by the City to the District within sixty (60) calendar days of the City's acceptance of the City'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:

If to the District:

Mukilteo Water & Wastewater District
7824 Mukilteo Speedway
Mukilteo, Washington 98275

Attn: Jim Voetberg, General Manager
Email: Jimv@mukilteowwd.org

If to the City:
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: 7/12/19

By: 
Jim Voetberg, General Manager
Date: 7/12/19

APPROVED AS TO FORM:

APPROVED AS TO FORM:

EXHIBIT A
PROJECT PLANS AND SPECIFICATIONS