

**INTERLOCAL AGREEMENT
FOR SURFACE WATER MANAGEMENT BILLING SERVICES**

This INTERLOCAL AGREEMENT FOR SURFACE WATER MANAGEMENT BILLING SERVICES (this "Agreement") is made and entered into by and between the **CITY OF MUKILTEO**, a Washington municipal corporation (the "City"), and **MUKILTEO WATER AND WASTEWATER DISTRICT**, a Washington municipal corporation (the "District") (individually a "Party" and collectively the "Parties").

RECITALS

WHEREAS, the City recognizes the need for comprehensive surface water management to preserve and protect the environment, public and private property, and the health and welfare of its citizens; and

WHEREAS, the City represents that it has adopted the necessary legislation authorizing the City to establish a surface water management program and service charge; and

WHEREAS, the District has systems, staffing and workflows in place for billing surface water management service charges which can be used for another jurisdiction's billing when an inter-local agreement is entered into for that purpose; and

WHEREAS, Chapter 39.34 RCW, the Interlocal Cooperation Act, authorizes public agencies, including cities and districts, to enter into cooperative agreements with one another to make the most efficient use of their respective resources; and

WHEREAS, the City now desires to have the District continue to perform surface water management billing services for the City, and the District agrees to perform said services, all under the terms and conditions described in this Agreement; and

WHEREAS, the Parties intend that this Agreement shall replace and supersede the Storm Water Billing Agreement dated March 16, 1994. Accordingly, as of the Effective Date of this Agreement, the Storm Water Billing Agreement dated March 16, 1994, shall immediately terminate and shall be of no further force or effect;

AGREEMENT

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

1. PURPOSE AND ADMINISTRATION

1.1 Purpose of Agreement

This Agreement is authorized by and entered into pursuant to the Interlocal Cooperation

Act, Chapter 39.34 RCW. The purpose and intent of this Agreement is for the District on the City's behalf to perform surface water management billing and collection services for properties located within the incorporated limits of the City. The Agreement establishes a means whereby the District can act as the City's agent in performing the services. The City shall cooperate with the District to the extent reasonably necessary for accomplishing the services, and shall reimburse the District for the District's costs incurred in performing the services, as more fully described in Section 4 below. The Parties agree that no separate legal or administrative entities are necessary to carry out this Agreement. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by either Party in connection with the performance of this Agreement will remain the sole property of such Party, and the other Party shall have no interest therein.

1.2 Administrators

Each Party shall designate an individual (an "Administrator"), which 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:

City's Initial Administrator:

Finance Director
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275
Telephone: (425) 263-8030
Facsimile: (425) 290-1013
Email: mmeyer@mukilteowa.gov

District's Initial Administrator:

Finance Manager
Mukilteo Water and Wastewater District
7824 Mukilteo Speedway
Mukilteo, WA 98275
Telephone: (425) 355-3355
Facsimile: (425) 348-0645
Email: suep@mukilteowwd.org

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

1.3 Condition Precedent to Effectiveness

As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has been duly executed by both Parties.

2. TERM

The term of this Agreement (the "Term") shall commence on January 1, 2018 (the "Commencement Date"), and shall expire on December 31, 2028 (the "Expiration Date"), unless terminated sooner as provided in this Agreement.

3. SERVICE CHARGE BILLING AND COLLECTIONS SERVICE

3.1 Service Charges

Chapter 13.16 of the Mukilteo Municipal Code ("MMC") imposes on real property located within the City certain service charges (the "Service Charges") to fund the City's storm and surface water management utility. This Agreement provides for the District to undertake, on behalf of the City, the City billing and collection of the Service Charges, as more fully described in this Section 3. The City shall at all times remain responsible for establishing rates for the Service Charges.

3.2 District Responsibilities

- (i) The District will maintain customer information systems as necessary to provide for Service Charges billing and collection.
- (ii) The District shall collect Service Charges received by the District from real property owners within the incorporated limits of the City using a combined utility and surface water billing statement in accordance with rate categories provided by the City.
- (iii) The District shall disburse the Service Charges to the City, plus any accrued interest or late payment charges on the Service Charges, in accordance with Section 3.3(ii) of this Agreement. The District shall not be responsible to the City for any Service Charges not received by the District for any reason whatsoever.
- (iv) The District, through its Utility Billing Division, shall provide the City with billing reports for all accounts and aging reports for all accounts over sixty (60) days past due (the "Delinquent Accounts") at the end of each billing cycle.
- (v) The District shall respond to ratepayer inquiries regarding processes within the District's control and refer to the City all other customer service inquiries related to billing, revenue collection, and actions against Delinquent Accounts.
- (vi) The District may provide other incidental services that are reasonably related to the billing and collection of the Service Charges as requested by the City and determined appropriate by the District.

3.3 City Responsibilities

- (i) For each calendar year during the Term of this Agreement, the City shall ensure it has provided legal authority for this Agreement by enacting legislation which:
 - (a) Authorizes the District to collect Service Charges from owners of real property located in the City;
 - (b) Authorizes the District to collect interest and penalties on the late payment of Service Charges from owners of real property located in the City; and
 - (c) Permits the District to act as the City's agent for collecting the Service Charges and providing related services.

- (ii) On or before December 31 of each calendar year during the Term of this Agreement, the City shall provide to the District the rate structure for the Service Charges as adopted in the MMC for the following calendar year. The City authorizes the District to charge and collect late and delinquent fees in accordance with the District's delinquent policy and applicable Washington statutes. Any delinquent fees collected by the District shall be remitted to the City. The City further agrees that if an exemption is cancelled after the date of mailing of the combined utility and surface water billing statement, the change in exemption status will not go into effect until the following year.
- (iii) The City shall respond to ratepayer inquiries regarding Service Charges and processes within the City's control, including actions against Delinquent Accounts.
- (iv) Upon receiving information from the District about the Delinquent Accounts as provided in section 4.2(iv) above, the City shall, within sixty (60) days, furnish the District with a written authorization to begin collection efforts on the Delinquent Accounts, provided the District shall not be required to file a lien against the real property with a Delinquent Account and the City shall be responsible to file and take enforcement action against any lien the City may file against real property with a Delinquent Account. The City shall be responsible for all actions against Delinquent Accounts more than three years past due. The District shall remit any interest or penalties collected from past due accounts by the District as a result of their collection efforts.
- (v) For each calendar month during the Term of this Agreement, the City shall pay to the District a monthly Service Fee as defined in Section 5 below.
- (vi) In lieu of calculating District capital costs related to District billing system operation and maintenance costs, the City will pay all the District's monthly storm water fees, including taxes, for District property located within the City.

3.4 Delivery of Service Charges

In any calendar month year for which the District collects Service Charges for the City, the District shall deliver to the City the Service Charges it collects, plus any accrued interest or late payment penalties by the twentieth (20th) day of the month following receipt. Payments received from a customer shall be allocated first to the customer's sewer bill, second to the customer's water bill, and third to the customer's storm water management bill

4. COMPENSATION

4.1 District Estimate of Annual Per Account Fee

The City shall reimburse the District a per City storm water account fee for all reasonable costs and expenses incurred by the District related to the billing and collection of Service Charges (the "Per Account Fee") under this Agreement. Beginning January 1, 2018, the Fee shall be ninety eight cents (.98) per account per month. On or before October 15 of each calendar year during the Term of this Agreement, the District shall deliver to the City a written non-binding estimate (the "Estimate") of the annual Per Account Fee for the following calendar year. The Estimate shall

describe in reasonable detail the amount of time anticipated to be spent by the District on services and the cost of any material or equipment expected to be used by the District in performing its obligations under this Agreement.

4.2 City Response to the District Estimate

The City may respond to the Estimate within thirty (30) days by delivering written notice to the District identifying any errors or omissions contained in, or other corrections needed to, the Estimate. If the City fails to respond to the District regarding the Estimate within such thirty (30) day period, the Estimate shall be confirmed thereafter and shall be the Per Account Fee per month to be charged the City by the District for the following calendar year.

4.3 Invoicing and Payment

On or before the twentieth (20th) day of every month during the Term of this Agreement, the District shall submit an invoice for the Per Account Service Fee to the City. Along with the bi-monthly invoices, the District shall provide to the City an accounting of money received, account status, and documentation for other charges invoiced by the District pursuant to this Agreement. The City shall pay the invoice within thirty (30) days of receiving same. An invoice amount not paid within thirty (30) days shall thereafter accrue interest at the rate of one percent (1%) per month until paid in full. The invoice shall be sent to the following address:

Finance Director
City of Mukilteo
11930 Cyrus Way
Mukilteo, WA 98275

4.4 New Accounts

For customers living outside of District boundaries who are not otherwise billed by the District, the District shall charge a new account fee (the "New Account Fee") to cover the cost of opening or changing customer accounts; provided that the initial set-up of the billing system shall be exempt from the New Account Fee. The City will provide in its rate ordinance for a New Account Fee for such customers. The New Accounts Fee for such customers shall be fifty percent (50%) of the New Accounts Fee the District charges its customers.

4.5 Invoice Dispute and Remedy

The City shall respond in writing to the District within ten (10) days of receiving the District invoice advising the District of any errors or omissions contained in, or other corrections needed to the invoice. The District shall respond to each City concern with sufficient documentation to support the charge or adjust the invoice if it is in error. The District shall provide explanation where charges deviate from the estimate. When the City and District have agreed that charges listed in the invoice or adjusted charges accurately represent the true cost of reimbursement, the City shall have twenty (20) days to pay the revised invoice.

4.6 Combined Utility Billing and Surface Water Billing Statement

The District shall incorporate the City's storm water management accounts into the District's regular billing cycle and include the City storm water management charge on the District's utility billing invoice to utility customers.

5. INDEPENDENT CONTRACTOR

All work performed by the District pursuant to this Agreement shall be performed by the District as an independent contractor and not as an agent or employee of the City. The District shall furnish, employ, and have exclusive control of all persons to be engaged in performing the District's obligations under this Agreement (collectively, the "District Personnel") and shall prescribe and control the means and methods of performing such obligations by providing adequate and proper supervision. The District Personnel shall for all purposes be solely the employees or agents of the District and shall not be deemed to be employees or agents of the City for any purpose whatsoever. With respect to the District Personnel, the District shall be solely responsible for compliance with all rules, laws, and regulations relating to employment of labor, hours of labor, working conditions, payment of wages and payment of taxes, such as employment, Social Security, and other payroll taxes including applicable contributions from the District Personnel when required by law.

6. TERMINATION FOR CONVENIENCE

This Agreement may be terminated by either Party for any reason or for no reason, by giving at least ninety (90) days advance written notice of termination to the other Party. Any termination notice delivered to a Party pursuant to this Section 6 shall specify the date on which the Agreement will terminate. If this Agreement is terminated pursuant to this Section 6, the District shall continue performing services through the date of termination. The City shall compensate the District for all services performed by the District through the date of termination. The City's obligation to make such final payment to the District shall survive the termination of this Agreement.

7. COMPLIANCE WITH LAWS

The Parties shall at all times exercise their rights and perform their respective obligations under this Agreement in full compliance with all applicable laws, ordinances, rules and regulations of any public authority having jurisdiction.

8. INDEMNIFICATION

Each Party shall defend, protect and hold harmless and indemnify the other Party from and against all claims, suits or actions arising from any intentional or negligent act or omission of the Party's employees, agents and/or authorized subcontractor(s) while performing under the terms of this Agreement.

9. LIABILITY RELATED TO CITY ORDINANCES, POLICIES, RULES AND REGULATIONS

In executing this Agreement, the District 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 District, or both, the City shall satisfy the same, including all chargeable costs and reasonable attorney's fees.

10. DEFAULT AND REMEDIES

If either Party to this Agreement fails to perform any act or obligation required to be performed by it hereunder, the Party to whom such performance was due shall deliver written notice of such failure to the non-performing Party. The non-performing Party shall have thirty (30) 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 thirty (30) day period, then the non-performing Party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion. In the event of a Party's Default under this Agreement, then after giving notice and an opportunity to cure, the Party to whom the performance was due shall have the right to exercise any or all rights and remedies available to it at law or in equity.

11. PUBLIC DISCLOSURE LAWS

The City and the District each acknowledges, agrees and understands that the other Party is a public agency subject to certain disclosure laws, including, but not limited to Washington's Public Records Act, chapter 42.56 RCW. Each Party understands that records related to this Agreement and the District's performance of services under this Agreement may be subject to disclosure pursuant to the Public Records Act or other similar law. Neither Party anticipates that the performance of either Party's obligations under this Agreement will involve any confidential or proprietary information.

12. NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is required to be given by one Party to the other Party under this Agreement shall be in writing and shall be given or made or communicated by (i) United States registered or certified mail, postage prepaid, return receipt requested, (ii) any nationally recognized overnight carrier or express mail service (such as FedEx or DHL) that provides receipts to indicate delivery, (iii) by personal delivery, or (iv) by facsimile (with proof of successful transmission). All such communications shall be addressed to the appropriate Administrator of this Agreement, as that term is defined in Section 1.2 above. All notices shall be deemed given on the day each such notice is personally delivered, transmitted by facsimile (with evidence of receipt), or delivered by overnight courier service, or on the third business day following the day such notice is mailed if mailed in accordance with this Section.

13. MISCELLANEOUS

13.1 Entire Agreement

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 written agreement executed by both Parties.

13.2 Interpretation

This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. 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.

13.3 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.

13.4 No Waiver

A Party's forbearance or delay in exercising any right or remedy with respect to a Default by the other Party shall not constitute a waiver of the Default at issue. Nor shall a waiver by a Party of any particular Default constitute a waiver of any other Default or any similar future Default.

13.5 Assignment

This Agreement shall not be assigned, either in whole or in part, by either of the Parties hereto. 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.

13.6 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.

13.7 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.

13.8 No Third Party Beneficiaries

This Agreement is made and entered into for the sole benefit of the Parties. No third party shall be deemed to have any rights under this Agreement; there are no third party beneficiaries to this Agreement.

13.9 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.

13.10 Recitals Incorporated by Reference

The Recitals set forth above are incorporated herein by this reference in full.

13.11 Effective Date

This Agreement shall be effective on the later date signed by the Parties (“Effective Date”).

IN WITNESS WHEREOF, the City and the District have executed this Agreement as of the dates set forth below.

THE CITY:

City of Mukilteo, a Washington municipal corporation

By 
Name: Jennifer Gregson
Title: Mayor
Dated: 1.18.18

THE DISTRICT:

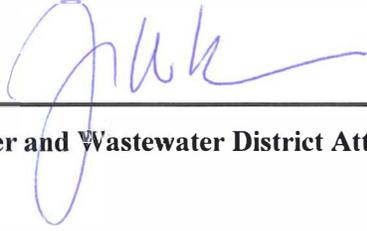
Mukilteo Water and Wastewater District, a Washington municipal corporation

By 
Name: Jim Voetberg
Title: General Manager
Dated: 1/18/18

Approved as to Form:


Mukilteo City Attorney

Approved as to Form:

A handwritten signature in blue ink, appearing to be 'Juk', is written over a horizontal line.

Mukilteo Water and Wastewater District Attorney