Adopted: 05/16/18
Effective: 05/26/18

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 18-030

APPROVING AND AUTHORIZING THE SNOHOMISH COUNTY EXECUTIVE TO SIGN AN INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE MUKILTEO WATER AND WASTEWATER DISTRICT CONCERNING OVERLAY IMPROVEMENTS

WHEREAS, the County, through its Department of Public Works, performs asphalt overlay paving work every year at various locations throughout the County (the "Overlay Program); and

WHEREAS, the Mukilteo Water and Wastewater District (the "District") service area lies within Snohomish County (the "County"); and

WHEREAS, the District holds a franchise for occupancy of public road rights-of-way in the County and is required, as a condition of its franchise and state law, to relocate or adjust its facilities at its own expense to accommodate public road improvements; and

WHEREAS, the District desires to include in the Overlay Program the Utility adjustments within its municipal boundaries; and

WHEREAS, the County and the District agree that it would be more efficient and mutually beneficial for the parties to work together cooperatively in coordinating, designing, and constructing the overlay improvements within the municipal boundaries of the District; and

WHEREAS, the District desires to enter into an Interlocal Agreement for overlay improvements within the District (the "Agreement") whereby the County will design and construct overlay improvements within the boundaries of the District, and the District will reimburse the County for the cost of designing and constructing the overlay improvements; and

WHEREAS, the Agreement is authorized by and is consistent with the requirements of the Interlocal Cooperation Act, chapter 39.34 RCW; and

WHEREAS, the Snohomish County Council held a public hearing on May 16, 2018, to consider approving the Agreement and authorizing the Snohomish County Executive to sign the Agreement on behalf of the County.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council hereby adopts the foregoing recitals as findings of fact and conclusions as if set forth in full herein.

Section 2. The Snohomish County Council hereby approves and authorizes the Snohomish County Executive, or designee, to sign the "Interlocal Agreement for Overlay Improvements within the Mukilteo Water and Wastewater District", a copy of which is attached to this ordinance as Exhibit A.

PASSED this 16TH day of May, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ATTEST:

Clerk of the Council

Council Chair

( ) APPROVED

( ) EMERGENCY

( ) VETOED

DATE:

Dave Somers
County Executive

ATTEST:

Approved as to form only:

5/3/18
Deputy Prosecuting Attorney

D-5

EXHIBIT A
To
ORDINANCE NO. 18-030

APPROVING AND AUTHORIZING THE SNOHOMISH COUNTY EXECUTIVE TO SIGN AN INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND THE MUKILTEO WATER AND WASTEWATER DISTRICT CONCERNING OVERLAY IMPROVEMENTS

[See Attached]

INTERLOCAL AGREEMENT FOR OVERLAY IMPROVEMENTS WITHIN THE MUKILTEO WATER AND WASTEWATER DISTRICT

This INTERLOCAL AGREEMENT FOR OVERLAY IMPROVEMENTS WITHIN THE MUKILTEO WATER AND WASTEWATER DISTRICT (this "Agreement"), is made and entered into this 22 day of February, 2018, by and between SNOHOMISH COUNTY, a political subdivision of the State of Washington (the "County"), and the MUKILTEO WATER AND WASTEWATER DISTRICT, a Washington municipal corporation (the "District") pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

RECITALS

A. The County performs asphalt paving and work related to Americans with Disability Act Ramp work (including but not limited to design, engineering, construction, placement of hot mix asphalt and ADA ramps, road grinding, traffic control, road pulverization, adjusting utilities and other paving related work) every year at various locations throughout the County (the "Overlay Program"). Pursuant to this Agreement, the District has the option of including its own asphalt paving projects (the "District's Projects") in the Overlay Program each year.

B. For purposes of this Agreement, planning and design activities performed by the County with respect to the District's Projects shall be referred to as the "Design Services." For purposes of this Agreement, construction and installation activities performed by the County with respect to the District's Projects shall be referred to as the "Construction Services." Together, the Design Services and the Construction Services may be referred to in this Agreement as the "Services."

C. The County and the District agree that it will be more efficient and mutually beneficial for the County and the District to work together cooperatively in coordinating, designing, and constructing the District's Projects, which will be defined as set forth in Section 3 below.

D. To that end, the County and the District desire for the County to be the entity responsible for the overall planning, design and construction of the District's Projects. The County and the District anticipate that the District's Projects will be completed by October 1 of each year; however, the Overlay Program will remain open until June 1 of each following year throughout the duration of this Agreement as provided in Section 2 below.

E. In exchange for the Services provided by the County, the District shall reimburse the County its actual costs incurred in performing the same, including time, labor, equipment, materials, and administrative overhead, all as more fully described in this Agreement.

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 District agree as follows:

1. Requirements of Interlocal Cooperation Act

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 County and the District to work together efficiently and effectively to accomplish the District's Projects. This Agreement establishes the County as the entity responsible for all aspects of the District's Projects planning, design, and construction. The District shall cooperate with the County to the extent reasonably necessary for accomplishing the District's Projects, and shall reimburse the County for the County's actual costs incurred in performing the Design Services and the Construction Services.

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

1.3 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.

1.4 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:	District's Initial Administrator:
Douglas McCormick, County Engineer Snohomish County DPW 3000 Rockefeller Avenue M/S 607 Everett, Washington 98201	Jim Voetberg General Manager Mukilteo Water and Wastewater District 7824 Mukilteo Speedway Mukilteo, Washington 98275

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

2. Effective Date and Duration

As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it (i) has been duly executed by both parties, and (ii) either filed with the County Auditor or posted on the County's Interlocal Agreements website. This Agreement shall remain in effect through June 30, 2028, unless earlier terminated pursuant to the provisions of Section 11 below.

3. Scope and Definition of District's Projects.

3.1 Process for Determining District's Projects. Upon execution of this Agreement and on the anniversary date of execution each year thereafter, the District shall (1) provide the County a Statement of Intent indicating the amount of funds it has available for its District's Projects for that year, including the source of such funds, and (2) prepare and submit to the County a prioritized list of projects that the District proposes for inclusion that year in the District's Projects. For each project on the list the District shall include the route, beginning and ending termini, and a detailed description of the type of work required. The District shall not submit any projects for which the District's cost for design, right-of-way acquisition, or construction are reimbursable with Federal funds or Federal grants.

Upon receipt by the County of the District's Statement of Intent and list of prioritized projects each year, the County shall review and design the same to ensure that the District's available funds are sufficient to cover the estimated costs of the listed projects. The parties shall cooperate to make a final determination as to which projects to include in the District's Projects for that year, including a determination as to a Final Estimated Cost, which shall be reflected in an Addendum to this Agreement. The Final Estimated Cost will include (1) a total of all estimated materials at the County's estimated bid price (hereinafter referred to as "Materials Estimate"), and (2) a charge of 15% of the Materials Estimate for the cost of engineering work performed by the County on the District's behalf (hereinafter referred to as "Engineering Estimate").

3.2 Changes by the District to District's Projects. After the parties have made a final determination of the District's Projects for that year, the District may request either (1) that additional projects be added to the District's Projects or, (2) that certain projects be eliminated where the actual costs will exceed the estimated costs for specific projects or where unexpected District budget constraints occur.

3.2.1 Additional Projects. Where the District wishes to add projects as provided in this Section 3.2, it may do so by submitting a written change order outlining (1) how much in funds it has available for the additional work, and (2) a description of the work, including the route, beginning and ending termini, and a detailed description of the type of work required. The County may, in its sole discretion, accept or reject the change order. The District shall be liable for all increases in cost, if any, which may be incurred by additions to the District's Projects.

3.2.2 Elimination of Projects. Where the District wishes to eliminate projects as provided in this Section 3.2, it may do so by providing 30 days' written notice of the same to the County's Administrator. The District shall be liable for all costs associated with the elimination of a specific project, including but not limited to clean-up and striping costs and any non-cancelable costs, which will be billed to the District as described in Section 6 below.

3.3 Changes by the County to the District's Projects. After the parties have

made a final determination of the District's Projects for that year, the County shall provide the District with written notification of any changes to the District's Projects required by the County when such changes will substantially alter the nature of the District's Projects or the District's estimated costs. The County shall obtain the District's written approval to any such changes before implementing them.

3.4 Authority of Administrators. By entering into this Agreement and upon it becoming effective as described in Section 2 above, both parties authorize their respective Administrators to accept, deny, and negotiate the Addendums described in Section 3.1 above as well as any addition, elimination, or change to the District's Projects as described in this Section 3, including any associated increase, decrease, or other change to the costs of the District's Projects.

4. Services Provided by County

4.1 Lead Agency. The County shall serve as the lead agency for the District's Projects.

4.2 Design Services. The County shall perform for the District the "Design Services," as that term is defined in Recital B above; namely, all necessary planning and design activities for the District's Projects. The County shall solely determine the schedule for the Design Services. The County will provide the District with a full and complete copy of the construction design plans for the District's Projects. The District may request changes to the construction design plans by submitting a written request to the County, which the County shall accommodate to the extent the requested changes are feasible. The County shall segregate the costs of the Design Services from the total costs of designing the entire Overlay Program each year.

4.3 Construction Services. The County shall perform for the District the "Construction Services," as that term is defined in Recital B; namely, construction activities for the District's Projects. The County shall solely determine the schedule for the Construction Services. Except where required by law, the County shall not be responsible for providing any notification (e.g. flyers, etc.) regarding the Construction Services to residents, businesses, or other third parties that will or may be affected by the District's Projects. The County shall segregate the costs of the Construction Services from the total costs of constructing the entire Overlay Program each year.

4.4 Quality of Services. The Services performed by the County under this Agreement shall adhere to the standards set forth in the Standard Specifications for Road, Bridge, and Municipal Construction manual, Construction manual, and Local Agency Guidelines manual, all published by the Washington State Department of Transportation. The District may, at its sole expense, furnish an inspector to review the District's Projects. The District's inspector may communicate with the County and the County's Administrator. The District's inspector shall not communicate, directly or indirectly, with any contractor or subcontractor hired by the County as described in Sections 4.6 and 4.7 below.

4.5 Preconstruction Meeting. Each year, prior to the performance of any Construction Services, the County shall schedule a preconstruction meeting which the District's Administrator or their designee shall attend.

4.6 Independent Contractor. The County will perform all Services under this Agreement as an independent contractor and not as an agent, employee, or servant of the District. The County has the express right to direct and control the County's activities in providing the agreed Services in accordance with the specifications set out in this Agreement. The District shall only have the right to ensure performance.

4.7 Sub-Contracting. The County may, in its sole discretion, hire one or more contractors and/or sub-contractors to perform some or all of the Services. In hiring a contractor and/or subcontractor, the County shall contract through a competitive bidding process each year. The bid packet shall identify by line item the cost for the District's Projects separately from the rest of the Overlay Program costs for that year. The bid packet shall be posted online with the Builders Exchange of Washington at <http://www.bxwa.com/> and solicitation notices shall be published in The Everett Herald and Daily Journal of Commerce. After bidding closes for that year, the County shall provide to the District a dated, verified copy of the bid tabulations which correspond to the District's Projects, including an estimate of construction costs for the District's Projects.

5. Cooperation by District

5.1 Covenant to Cooperate. The District covenants to the County that it shall cooperate with the County in accomplishing the District's Projects. The District shall make its personnel, including but not limited to its Public Works Department staff, available to the County at reasonable times and upon reasonable advance notice, for purposes of facilitating the County's performance of the Services.

5.2 Grant of Access. The District certifies to the County that the District owns the real property or right-of-ways upon which the District's Projects are located and additional real property or right-of-ways are not needed for the District's Projects. The District further grants to the County, for the purpose of performing Services pursuant to this Agreement, permission and right-of-entry on, over, under, above and through real property owned by the District and those District rights-of-way and WSDOT rights-of-way that the District is responsible for maintaining that are necessary or convenient for the County to access in performing the Services.

5.3 Coordination with WSDOT and Utilities. Should, in providing the Services, it become necessary or convenient for the County to enter in, on, over, under or above a right-of-way owned by WSDOT or any utility or impact any equipment owned by WSDOT or any utility, the County shall notify the District, and the District shall cooperate in the County's efforts to coordinate with WSDOT and/or the utility to obtain any required approvals and/or permits authorizing such activity.

5.4 Permitting. Prior to April 1 of each year, the District shall obtain and provide to the County copies of all permits necessary for the Project.

6. Payment by District

6.1 Actual Costs. The County shall be reimbursed in full by the District for the actual costs of the Services provided by the County on a time and materials basis plus an administrative overhead charge as described in Section 6.2 below. The County agrees that only those costs directly allocable to the Services under generally accepted accounting procedures will be charged to the District.

6.2 Administrative Overhead. For the purpose of fixing the compensation to be paid by the District to the County for the Services, it is agreed that there shall be included in each billing, to cover administrative costs, an amount not to exceed the County administrative rate. This rate is currently set at 20% of the total labor cost to the County for those County employees performing Services for the District under this Agreement. The administrative rate is not included in charges for materials, equipment or payments to contractors or subcontractors.

6.3 Contract Maximum. The maximum amount payable each year to the County from the District under this Agreement is the Final Estimated Cost described in Section 3.1 above plus an additional contingency charge of 10 percent of the Materials Estimate. The County shall not undertake work on the District's Projects when such work is expected to exceed this Contract Maximum absent first obtaining written approval from the District.

6.4 Invoicing and Payment. The County shall invoice the District or its designee for all Services performed by the County. The District shall remain liable for complete and timely payment of all amounts invoiced. Invoices may be sent monthly, quarterly or on any other schedule that is mutually convenient to the parties. The County shall include in each invoice documentation of all costs for labor, materials and equipment included in the invoice. Unless the District delivers written notice to the County disputing the amount of a particular invoice, the District shall make payment on all invoices submitted by the County within thirty (30) days of the invoice date. Amounts not paid within 30 days of the invoice date shall thereafter accrue interest at a rate of twelve percent per annum or one percent per month.

7. Indemnification/Hold Harmless

7.1 County's Indemnification of District. The County shall indemnify, defend and hold the District harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the District may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on, about or around the District's Projects due to or arising out of the County's performance of Services pursuant to this Agreement, but only to the extent such accidents, damages or injuries are due to any

negligent or wrongful act or omission of the County; or (ii) any breach or Default (as such term is defined in Section 10.1 below) by the County under this Agreement.

7.2 District's Indemnification of County. The District shall indemnify, defend and hold the County harmless from and against all liabilities, suits, losses, costs, damages, claims, expenses, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the County may incur or pay out by reason of: (i) any accidents, damages or injuries to persons or property occurring in, on or around the District's Projects during the term of this Agreement, but only to the extent the same are caused by any negligent or wrongful act of the District; or (ii) any breach or Default (as such term is defined in Section 10.1 below) of the District under this Agreement.

7.3 Waiver of Immunity Under Industrial Insurance Act. The indemnification provisions of Section 7.1 and Section 7.2 above are specifically intended to constitute a waiver of each party's immunity under Washington's Industrial Insurance Act, Title 51 RCW, as respects the other party only, and only to the extent necessary to provide the indemnified party with a full and complete indemnity of claims made by the indemnitor's employees. The parties acknowledge that these provisions were specifically negotiated and agreed upon by them.

7.4 Survival. The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Insurance

Each Party shall maintain its own insurance and/or self-insurance for its liabilities from damage to property and/or injuries to persons arising out of its activities associated with this Agreement as it deems reasonably appropriate and prudent. The maintenance of, or lack thereof of insurance and/or self insurance shall not limit the liability of the indemnifying part to the indemnified party(s).

9. 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.

10. Default and Remedies

10.1 Default. If either the County or the District 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 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.

10.2 Remedies. In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 10.1 above, the non-Defaulting party shall have the right to exercise any or all rights and remedies available to it in law or equity.

11. Early Termination

11.1 30 Days' Notice. Except as provided in Section 11.2 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.

11.2 Lack of Funding. This Agreement is contingent upon governmental funding and local legislative appropriations. In the event that funding from any source is withdrawn, reduced, limited, or not appropriated after the effective date of this Agreement, this Agreement may be terminated by either party immediately by delivering written notice to the other party. The termination notice shall specify the date on which the Agreement shall terminate.

11.3 Calculation of Costs Due Upon Early Termination. Upon early termination of this Agreement as provided in this Section 11, the District shall pay the County for all Services performed up to the date of termination, as well as the costs of any and all non-cancelable obligations. The County shall notify the District within thirty (30) days of the date of termination of all remaining costs including non-cancelable costs. Termination costs charged to the District shall not exceed the actual costs incurred as a result of early termination. No payment shall be made by the District for any expense incurred or Services performed following the effective date of termination unless authorized in writing by the District.

12. 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 1.4 of this Agreement. Notice delivered by email shall be deemed given as of the date and time received by the recipient.

13. Miscellaneous

13.1 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. Except as otherwise provided in Section 3 above, this Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

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

13.11 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 _____

Dave Somers
County Executive

DISTRICT:

Mukilteo Water and Wastewater District, a Washington municipal corporation

By _____

Jim Voetberg
General Manager

Approved as to Form:

3/23/18

Deputy Prosecuting Attorney

Approved as to Form:

_____

District Attorney

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