

**INTERLOCAL AGREEMENT
UNION SLOUGH LEVEE REHABILITATION SNO-01-21**

This Interlocal Agreement Regarding Union Slough Levee Rehabilitation SNO-01-21 (this “**Interlocal Agreement**”) is dated for reference purposes as of date of last signature below, by and between the CITY OF EVERETT, a Washington municipal corporation (the “**City**”), and DIKING IMPROVEMENT DISTRICT NO. 5 of SNOHOMISH COUNTY, a Washington special purpose district (the “**Diking District**”).

RECITALS

A. The Diking District is located generally east of the Snohomish River and west of Union Slough, including Smith Island and the City’s water pollution control facility. The Diking District is governed by three commissioners. The City owns over half of the property within the Diking District’s present boundaries. The City and Diking District agree coordinated ownership and control of the flood control systems protecting and benefiting the lands on Smith Island is in the public interest.

B. The Diking District is entering into a Cooperative Agreement “Union Slough Levee Rehabilitation SNO-01-21” (the “**USACE Agreement**”) with the U.S. Army Corps of Engineers (“**USACE**”) for repair of approximately 455 linear feet of levee to restore the level of protection, as generally described in Project Information Report Rehabilitation of Flood Control Works, Union Slough Levee, SNO-01-21, dated September 24, 2021 and approved by the USACE Deputy Commander for Northwestern Division on October 4, 2021, and any amendments or revisions thereto. This repair work is referred to in this Interlocal Agreement as the “**Rehabilitation Work**” or “**Project**.” The Project appears to be located within WSDOT ROW.

C. Under the USACE Agreement, the Diking District must pay a 20% share of “cost shared rehabilitation costs.” This 20% share is projected in the USACE Agreement to be \$100,280, which includes creditable in-kind contributions projected to be in the range of \$18,000 - \$45,000, meaning that the Diking District’s required payment is projected to be \$82,280 on the high end.

D. Under the USACE Agreement, the Diking District must also obtain express easement rights from the Washington State Department of Transportation (“**WSDOT**”) transverse to SR 529 and along the river for the levee area subject to the Rehabilitation Work (the “**WSDOT Easement Rights**”). WSDOT through Brian D. Nielsen, PE Regional Administrator, Northwest Region, has expressed full support for the Work proposed, and states it is lawfully empowered and fully committed to convey a permanent easement to the District via a letter dated April 24, 2025 with a subject line ICN 1-31-17566 Union Slough – Grant of Easement for Levee Repair. There may be several mechanisms to do this, either (a) disposal statutes under RCW 47.12.063, 47.28.050, and 47.12.283, and related process in the Right of Way Manual (M26-01.27), (b) RCW 79.36.540 - .560, or (c) perhaps eminent domain under RCW 85.38 and related applicable eminent domain statutes.

E. Because the City will benefit from the Rehabilitation Work and the coordinated ownership and control of the flood control systems protecting and benefiting the lands and improvements on Smith Island, the City has agreed to reimburse the Diking District for its 20% share paid to USACE, up to an agreed upon maximum amount, as set forth below. The City has also agreed to reimburse the Diking District for the amounts incurred in acquiring WSDOT Easement Rights up to an agreed upon maximum amount, as set forth below. The purpose of this Interlocal Agreement is to formalize that reimbursement agreement, and make the Project budget neutral to the Diking District. The Diking District is not responsible for the culvert and/or tidegate under and through the dike in the Project area within the WSDOT Right of Way. The Project does not propose to do any work to the culvert and/or tide gate.

F. The Diking District commissioners have had an opportunity to review and independently evaluate this Interlocal Agreement, and are satisfied that it is fair and equitable to the Diking District.

G. Until the USACE Agreement is fully executed and the WSDOT Easement Rights are conveyed and recorded, the obligations of the parties hereto remain for any repairs of the levee and, in no way does this recital relieve WSDOT to the extent the law obligates the State, or any other potentially responsible entity for contributing. That is, the status quo with respect to any obligations does not change until the WSDOT Easement Rights are conveyed and recorded and the USACE Agreement is fully executed.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Reimbursement Amounts. The City agrees to reimburse Diking District the following:

A. Cost Share Reimbursement. After the USACE Agreement is fully executed and the Diking District has acquired the WSDOT Easement Rights, the City will reimburse the Diking District for amounts the Diking District pays to USACE under the USACE Agreement as the Diking District's 20% share of "cost shared rehabilitation costs." The maximum total reimbursement from the City for the 20% of "cost shared rehabilitation costs" is \$300,000 unless otherwise approved in writing by the City's Public Works Director or Designee. This reimbursement will include reimbursement for in-kind contributions provided by the Diking District at the amount assigned by the USACE for in-kind contribution. This reimbursement will not include reimbursement for in-kind contributions provided by the City. For example, if the Diking District's 20% share is an \$80,000 payment plus a USACE-valued \$10,000 in-kind contribution provided by the Diking District plus a \$15,000 USACE-valued in-kind contribution provided by the City, then the total reimbursement to the Diking District from the City would be \$90,000. The City will reimburse the Diking District for reasonable attorney fees to negotiate and implement the USACE Agreement up to a maximum of \$25,000. Fees above \$25,000 in total for the USACE Agreement must be contained in a budget (or

revised budget) pre-approved in writing by the Diking District and the City's Public Works Director or designee, with such approvals not unreasonably withheld, delayed or conditioned.

B. WSDOT Easement Rights Reimbursement. The City will reimburse the Diking District for amounts the Diking District pays to WSDOT or otherwise incurs to obtain the WSDOT Easement Rights that are required under the USACE Agreement, whether through WSDOT processes, eminent domain, or otherwise. This reimbursement includes reasonable attorney's fees, expert, appraisal, surveying, and other similar expenses for the acquisition of the real estate interests needed, whether through application, negotiation, and/or eminent domain. The District will not acquire the culvert or tidegate under the dike/levee in the Project area. For clarity, the District will not be responsible for maintenance, repair, changes, or improvements to the culvert or the tidegate in the vicinity of the Project area.

(1) The City is not obligated to reimburse for payment to WSDOT for WSDOT Easement Rights in excess of a total of \$75,000, unless such excess amount is contained in a budget (or revised budget) pre-approved in writing by the Diking District and the City's Public Works Director or designee, with such approvals not unreasonably withheld, delayed or conditioned.

(2) The City is not obligated to reimburse for other costs under this Section 1.B (such as costs of surveying, attorneys' fees or expert costs) in excess of a total of \$100,000, unless such excess amount(s) are contained in a budget (or revised budget) pre-approved in writing by the Diking District and the City's Public Works Director or designee, with such approvals not unreasonably withheld, delayed or conditioned. This budget will identify the professionals, consultants, attorneys and experts to be used by the Diking District.

(3) Reimbursement under this Section 1.B is due after the USACE Agreement is fully executed and the Diking District has acquired the WSDOT Easement Rights.

C. Other Reimbursement. The City is not obligated to reimburse for other costs not covered under Sections 1.A or 1.B in excess of a total of \$10,000, unless such excess amount(s) are contained in a budget (or revised budget) pre-approved in writing by the Diking District and the City's Public Works Director or designee, with such approvals not unreasonably withheld, delayed or conditioned.

2. Mitigation Credits. To the extent that the Rehabilitation Work requires mitigation credits, and credits are available, the Diking District may provide mitigation credits from its own mitigation site(s). In accordance with Section 1.A above, the City will reimburse the Diking District for mitigation credits used as in kind contribution toward the District's 20% share at the amount assigned to the contribution by USACE. Regardless of any other agreement between the City and the Diking District to contrary, the City has no obligation to sell mitigation credits from City mitigation sites to the Diking District for the Rehabilitation Work.

3. Payment Procedure. The Diking District will submit invoices to the City for reimbursement, together with documentation showing that the requested reimbursement amounts match amounts paid by the Diking District to USACE or WSDOT, or other expenses authorized hereunder. The City will pay invoices submitted in accordance with this Interlocal Agreement within 30 days after receipt.

4. General Provisions.

a. Administration/Expiration. Subject to any written agreement(s) between the parties for management of the Diking District or its operations, each party to this Interlocal Agreement shall serve as an administrator of this Interlocal Agreement for the purposes of compliance with RCW 39.34.030 for each party's respective actions in performance of this Interlocal Agreement. Except as may be expressly provided otherwise in this Interlocal Agreement, any real or personal property used or acquired by either party in connection with its performance under this Interlocal Agreement will remain the sole property of such party, and the other party shall have no interest therein. The parties agree that no separate legal or administrative entities are necessary to carry out this Interlocal Agreement. This Interlocal Agreement expires upon completion of the Project and all payments required hereunder have been made, or earlier termination of this Interlocal Agreement.

b. Governing Law. Washington law governs all matters arising out of or relating to this Interlocal Agreement. The Diking District will comply with all applicable laws regarding its execution and performance of the USACE Agreement.

c. Venue. The parties shall bring any litigation arising out of or relating to this Interlocal Agreement only before the Snohomish County Superior Court.

d. Complete Agreement. This Interlocal Agreement constitutes the entire agreement of the parties relating to the subject matter of this Interlocal Agreement. This Interlocal Agreement supersedes and replaces all other written or oral agreements thereto. This Agreement places no responsibility on DD5 for the culvert/tidegate that is in the Project area under and through the dike/levee.

e. Amendment. No amendment to this Interlocal Agreement will be effective unless in writing and signed by the Mayor of the City and by the authorized representatives of each other party.

f. Waiver. No waiver of satisfaction of any condition or nonperformance of an obligation under this Interlocal Agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or nonperformance of any other obligation.

g. Severability. If any provision of this Interlocal Agreement is unenforceable to any extent, the remainder of this Interlocal Agreement, or the application of that provision to any persons or circumstances other than those as to which it is held unenforceable, will not be affected by that unenforceability and will be

enforceable to the fullest extent permitted by law.

h. Notice. For a notice under this Interlocal Agreement to be valid, it must be in writing and the sending party must use one of the following methods of delivery: (A) personal delivery to the address stated below; (B) first class postage prepaid U.S. Mail to the address stated below; or (C) nationally recognized courier to the address stated below, with all fees prepaid.

Notice to City	Notice to District
City of Everett Public Works Attn: Heather Griffin, PE 3200 Cedar Street Everett, WA 98201	Victor M. Loehrer Diking District No. 5 Commissioner Sato Corporation/Dagmars Marina 11225 SE 6 th St., Suite 220 Bellevue, WA 98004

A party may change its address by delivering written notice to the other party of the new address.

i. Attorneys Fees and Costs. The prevailing party in any action brought to enforce any obligations under this Interlocal Agreement shall be entitled to recover from the non-prevailing party or parties an amount equal to the reasonable attorneys fees and costs incurred by the prevailing party, including without limitation any costs incurred on appeal or in any bankruptcy proceeding.

j. No Third-Party Beneficiaries. The provisions of this Interlocal Agreement are for the sole benefit of the parties to this Interlocal Agreement. No other persons have any rights or remedies under this Interlocal Agreement.

k. Compliance with the Washington State Public Records Act. The parties acknowledge they are subject to the Public Records Act, chapter 42.56 RCW. Both parties shall cooperate with each other so that each may comply with all of its obligations under the Public Records Act.

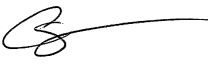
l. Recording of this Interlocal Agreement. This Interlocal Agreement shall be recorded or otherwise made available to the public in accordance with RCW 39.34.040.

m. Counterparts and Signatures. This Interlocal Agreement and any amendment may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. A signature with AdobeSign is fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Interlocal Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.

[REMAINDER OF PAGE BLANK]

The parties have executed this Interlocal Agreement as of the date of last signature below.

CITY OF EVERETT

By:  _____

Cassie Franklin, Mayor

06/24/2025

**DIKING IMPROVEMENT DISTRICT NO. 5
OF SNOHOMISH COUNTY**

By: Victor M. Loehrer _____

Commissioner, Vic Loehrer (Chairman)

06/20/2025

ATTEST:



Office of the City Clerk

By: Asif Iqbal _____

Commissioner, Asif Iqbal

06/23/2025

By: Naeem Iqbal _____

Commissioner, Naeem Iqbal

06/23/2025












06.18.2025_DID5_529Project_ILA_GM_SD


Final Audit Report

2025-06-24

Created:	2025-06-20
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-  Document created by Ashleigh Scott (AScott@everettwa.gov)
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-  Document emailed to Grant Moen (GMoen@everettwa.gov) for approval
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-  Signer vicwithsatocorporation@comcast.net entered name at signing as Victor M. Loehrer
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-  Signer naeem@a1land.com entered name at signing as Naeem Iqbal
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 Email viewed by asif@a1land.com


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 Signer asif@a1land.com entered name at signing as Asif Iqbal


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 Agreement completed.

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