

Adopted: 10/31/18  
Effective: 11/18/18

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 18-071

APPROVING AMENDMENT NO. ONE TO INTERLOCAL AGREEMENT  
BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5  
CONCERNING CONSTRUCTION AND POST CONSTRUCTION  
COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION  
PROJECT

WHEREAS, Snohomish County ("County") and Diking Improvement District No. 5 ("District") previously entered into that Interlocal Agreement Between Snohomish County and Diking Improvement District 5 Concerning Construction and Post Construction Commitments Relative to the Smith Island Restoration Project dated September 16, 2014 ("Interlocal Agreement"), as approved by Ordinance No. 14-066; and

WHEREAS, the County is nearing completion of the Construction Phase of the Project and the parties wish to clarify and amend certain provisions of the Interlocal Agreement regarding Construction Phase and Post-Construction Phase responsibilities of the parties to acknowledge satisfaction of those pre-conditions to breach of the existing dike and modification of the County's post-construction contribution to the cost of repair and rehabilitation of the District's existing dikes along Union Slough downstream of the Project as more fully set forth in that proposed Amendment No. One to Interlocal Agreement attached hereto as Exhibit A; and

WHEREAS, during construction of the Project issues arose regarding the scope or extent of the District's existing easements or rights affecting certain real property within the Project boundaries which is the subject of the habitat restoration which the parties desire to clarify and resolve as more fully set forth in that proposed Amendment No. One to Interlocal Agreement attached hereto as Exhibit A;

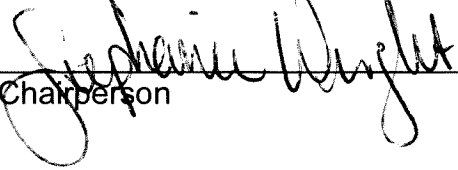
NOW, THEREFORE, BE IT ORDAINED:

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 approves and authorizes the Snohomish County Executive, or designee, to execute Amendment No. One To the Interlocal Agreement between Snohomish County and Diking Improvement District 5 Concerning Construction and Post Construction Commitments Relative to the Smith Island Restoration Project, in the form attached to this Ordinance as Exhibit A.

1 PASSED this 31<sup>st</sup> day of October, 2018.

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5 SNOHOMISH COUNTY COUNCIL  
6 Snohomish County, Washington

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9 Chairperson


10 ATTEST:

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13 Clerk of the Council, ASST.  
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- 15  
16  APPROVED  
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18 ( ) EMERGENCY  
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20 ( ) VETOED  
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23 DATE: 4/8/18  
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26 County Executive  
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29 ATTEST:

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35 Approved as to form only:

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38 Deputy Prosecuting Attorney  
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**EXHIBIT A**  
to  
**ORDINANCE NO. 18-071**

AMENDMENT NO. ONE TO INTERLOCAL AGREEMENT BETWEEN  
SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5  
CONCERNING CONSTRUCTION AND POST CONSTRUCTION  
COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION  
PROJECT

*[See Attached]*

*[The remainder of this page is intentionally left blank.]*

AFTER RECORDING RETURN TO:  
Snohomish County Department of Public Works  
Attn: Stephen Dickson  
3000 Rockefeller, M/S 607  
Everett, Washington 98201

**Parties:** Snohomish County and Diking  
Improvement District 5  
**Tax Account No.:** Not Applicable  
**Legal Description:** Not Applicable  
**Reference No. of Documents Affected:** Not Applicable

**Document Title:**

**AMMENDMENT No. 1**  
to  
**INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND  
DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION AND  
POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH  
ISLAND RESTORATION PROJECT**

WHEREAS, on September 10, 2014 (Ordinance No. 14-066), Snohomish County, the landowners in Appendix A, and Snohomish County Diking and Improvement District 5 entered into the INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION AND POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION PROJECT ("ILA").

WHEREAS, a dispute arose regarding adequacy of studies, and timing of assessments, payment and/or in kind contributions, and certain ownership interests in lands, within the District, as detailed in communications between the District and County in late 2017 and into early 2018;

WHEREAS, the parties agree to resolve their differences and agree to do so in this Amendment No. 1 to the INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION AND POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION PROJECT.

WHEREAS, the INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION



AND POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION PROJECT provides in SECTION 5 thereof:

**Modification.** This **AGREEMENT** may be amended only upon written agreement of the parties and executed in the same manner as provided by law for the execution of this **AGREEMENT**.

NOW THEREFORE, in consideration of the resolution of the dispute between the parties, and the mutual promises contained herein and benefit to the parties hereto, the INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION AND POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION PROJECT is hereby amended, only as follows:

1. **Administrators for AGREEMENT.** The persons responsible for administering this **AGREEMENT** are, unless notice is otherwise provided of a change:

**DIKING IMPROVEMENT DISTRICT 5**

Victor M. Loehrer  
Commissioner/Supervisor  
Diking Improvement District 5  
20607 SR 9 SE  
Snohomish, WA 98296

**SNOHOMISH COUNTY**

Gregg Farris  
Surface Water Management Director  
Snohomish County Public Works  
3000 Rockefeller Avenue, MS 607  
Everett, WA 98201-4046

2. The County shall pay \$330,000.00 cash to the District, payable over time as provided below, in lieu of work in kind or work contribution, with no offset or credit under Section 3.6.2 of the original Interlocal Agreement. Said payment shall be in full and complete satisfaction of all obligations of the County under Section 3.6.2.
3. The District shall quitclaim and release all interest, if any, to those lands title to which is held by the County lying outside the existing deeded dike corridor with the exception of that area to be conveyed by grant or other dedication of easement by the County to the District in accordance with section 3.1.1. The form of the quitclaim deed(s) shall be standard form as described in statute, and may be attached hereto as **Exhibit 1**. The District shall execute and deliver these within 45 days of mutual execution.
4. The District and County agree that the baseline survey is complete as provided for in section 2.4.1.



5. The District and County acknowledge that the County previously gave notice to United States Army Corps of Engineers (USACE) on April 5, 2018, requesting written confirmation signed by the USACE that the new setback dike is, or will be, considered part of the District's existing system of improvements and included in the PL 84-99 Program in accordance with Section 1.10. The USACE has not provided any written response within 30 days of such request advising that it is rejecting acceptance of the new setback dike into the PL 84-99 program; Provided, however, it is recognized that the USACE has tentatively scheduled a date for inspection of the new setback dike for June 1, 2018. Wherefore, the parties acknowledge that all preconditions to breach of the existing dike as provided for in Sections 2.1.8 and 2.3.4 have been satisfied and breach of the existing dike may occur and that there are no other disputes preventing breach; Provided, however, if the USACE shall subsequently provide written notice to the County or the District advising that it rejects the new setback dike for inclusion in the PL 84-99 program the County shall correct or otherwise remedy any such defect or deficiency as necessary to comply with any requirements by the USACE for inclusion of the new setback dike in the PL 84-99 program in accordance with Section 1.10.
6. The County's \$330,000 cash contribution in lieu of work performed in kind under Section 3.6.2 shall be paid to the District in three equal annual installments of \$110,000 commencing January 30, 2020, January 30, 2021, and January 30, 2022. Any payment not paid in full when due shall accrue interest at the rate of Four percent (4%) per annum until paid in full. The County may pre-pay the total at anytime.
7. The County's obligations under Sections, 2.4.1, 2.4.2, 3.4.1, and 3.6.2 (financial and/or work contributions) are deemed modified and satisfied. Should the District, or any of the District Commissioners individually, breach any terms or conditions of this Amendment No. 1, or otherwise assert any objection to breach of the existing dike in 2018 which shall be the sole of cause of the County to forgo breach of the existing dike in 2018, the County's obligation to make payments hereunder shall be null and void and of no effect. Note: the County has breached the dike August 10, 2018.
8. Section 2.1.8 (Breach Notice) and Section 2.3.4 (No breach until all studies in 2.1.8 delivered), Section 3.5.1 (Baseline Bathymetric surveys), Section 3.1.1 (dedication of easement) and other sections including Section 3.4.2 (duty to repair downstream dikes due to impacts caused by Project), are not affected by Paragraph 7.
9. The County has provided the Breach Notice in accordance with Section 2.1.8 (the final County Engineer certification will be after breach), and has complied with Section 2.3.4, and may proceed with breach of the existing dikes in accordance with the ILA.



10. Nothing contained herein shall be construed as waiving or modifying any warranty or guarantee obligation of the County relating to the new setback dike or related system of improvements as provided for in the INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY AND DIKING IMPROVEMENT DISTRICT 5 CONCERNING CONSTRUCTION AND POST CONSTRUCTION COMMITMENTS RELATIVE TO THE SMITH ISLAND RESTORATION PROJECT

Dated this 11<sup>th</sup> day of November, 2018.

**DIKING IMPROVEMENT DISTRICT 5**



Victor M. Loehrer  
Chairman, Commissioner/Supervisor

**SNOHOMISH COUNTY**



Dave Somers  
County Executive





**APPENDIX A**

**CONSENT OF PRIVATE PROPERTY OWNERS WITHIN THE DISTRICT**


**The below private property owners agree to the Amendment No. 1 to**

**Buse Timber and Sales, Inc.**


By   
Tom Parks, President

By   
Dianna Martin, Secretary

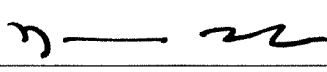
**Dagmars Marina, LLC**

By   
Victor Loehrer, Managing Member

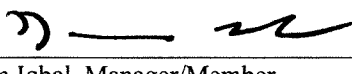
**IFF Holdings, LLC**

By   
Naeem Iqbal, Manager/Member

**Hima Nursery, Inc.**

By   
Naeem Iqbal, President

**Kisan Enterprises, LLC**

By   
Naeem Iqbal, Manager/Member





**EXHIBIT 1**

**[form of quitclaim/release may be attached (not required)]**

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