

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 19-080

APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE THE
INTERLOCAL AGREEMENT BETWEEN SNOHOMISH COUNTY, THE CITY OF
EVERETT, AND MARSHLAND FLOOD CONTROL DISTRICT REGARDING INCREASED
HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND
DEVELOPMENT

WHEREAS, the Marshland Flood Control District, a special purpose district formed under the authority of chapter 86.09 RCW (the "District"), consists of approximately 6,281 acres of land, the boundaries of which roughly coincide with the boundaries of the floodplain portion of the Marshland Drainage Basin; and

WHEREAS, the District owns and operates certain drainage and flood control facilities that are used to improve agricultural production, as well as to control, prevent, abate and ameliorate damage to persons and property caused by flooding in the Marshland Drainage Basin; and

WHEREAS, the District is bordered on the south and west by the upland area of the Marshland Drainage Basin (the "Upland Area"), which consists of approximately 7,731 acres of land, a portion of which is located within unincorporated Snohomish County (the "County"), and a portion of which is located within the City of Everett (the "City"); and

WHEREAS, the County and the City have historically contributed funds to the District to help offset the increased costs borne by the District due to runoff caused by development occurring in the County's and City's respective portions of the Upland Area; and

WHEREAS, the most recent agreement with the District on this issue, executed on September 3, 2013 as authorized by Ordinance 13-065, adopted on August 28, 2013, and amended by Ordinance 17-056, adopted on September 13, 2017, is set to expire on December 31, 2019; and

WHEREAS, the County, the City wish to continue to provide annual monetary contributions to the District to help offset the increased operating cost borne by the District due to the increased total runoff experienced in the Marshland Drainage Basin through a new interlocal agreement;

NOW, THEREFORE, BE IT ORDAINED:

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

EXHIBIT A
to
ORDINANCE NO. 19-080

INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN THE
MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT

[See Attached]

INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT

This INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT (this "Agreement") is made and entered into as of this 20th day of December, 2019 (the "Execution Date"), by and among **SNOHOMISH COUNTY**, a political subdivision of the State of Washington (the "County"), the **CITY OF EVERETT**, a Washington municipal corporation (the "City"), and **MARSHLAND FLOOD CONTROL DISTRICT**, a special purpose district formed under the authority of chapter 86.09 RCW (the "District").

RECITALS

A. The District consists of approximately 6,281 acres of land, 6,098.69 of which are assessed for benefit. Another 31.54 acres are within the District levee at the site of the former Seattle-Snohomish Lumber Mill, and may someday be annexed into the District for assessment. A portion of the present 6,281 acres is located in the unincorporated County, and a portion is located in the City. The boundaries of the District roughly coincide with the boundaries of the floodplain portion of the "Marshland Drainage Basin." The District is bordered on the north and east by the Snohomish River. The District is bordered on the south and west by the upland area of the Marshland Drainage Basin (the "Upland Area"), which consists of approximately 7,731 acres of land.

B. A portion of the Upland Area bordering on the District is within the jurisdiction of the County (the "County Upland Area"). The remainder of the Upland Area is within the jurisdiction of the City (the "City Upland Area").¹

C. The approximate location of the District, the Snohomish River, the County Upland Area and the City Upland Area are depicted on the diagram map attached to this Agreement as Exhibit A.

D. The District owns and operates certain drainage and flood control facilities that are used to improve agricultural production, as well as to control, prevent, abate and ameliorate damage to persons and property caused by flooding in the Marshland Drainage Basin. Those facilities include, but are not limited to, dikes, drainage ditches, a flood canal, six (6) sediment ponds and a cement "Pump Plant" housing two (2) 100 hp and four (4) 250 hp pumps, their controls and associated equipment (collectively, the "Existing District Facilities").

¹ Note, a small amount of area (approx. 15 acres) is located within the City of Mill Creek; however, that acreage comprises less than 1 percent of the 7,731 acres in the Upland Area, and is excluded from the calculations in this Agreement for administrative convenience.

E. Stormwater runoff from the Upland Area into the District has deleterious effects within the District. For purposes of this Agreement, stormwater runoff from the Upland Area shall be referred to as “Hillside Runoff.”

F. On September 3, 2013, the County, the City and the District entered into a five-year Interlocal Agreement (“2013 Agreement”) regarding the increased Hillside Runoff in the Marshland Drainage Basin due to upland development.

G. On September 18, 2017, the County, the City, and the District executed Amendment No. 1 (“Amendment No. 1 to the 2013 Agreement”) to the 2013 Agreement which, among other things, extended the term of the 2013 Agreement through the 2018 calendar year, to allow time to negotiate a new agreement.

H. On December 19, 2018, the County, the City, and the District executed Amendment No. 2 (“Amendment No. 2 to the 2013 Agreement”) to the 2013 Agreement which, among other things, extended the term of the 2013 Agreement through the 2019 calendar year, to allow additional time to negotiate a new agreement.

I. The frequency, amount and extent of Hillside Runoff have increased since pre-development in 1947 due to development within the Upland Area. In particular, County models indicate there is a direct correlation between increased impervious surface due to development in the Upland Area and increased Hillside Runoff over pre-development amounts. The City and County, however, believe runoff from development in the Upland Area has flattened out due to buildout and changes in drainage and stormwater handling requirements that new development and redevelopment must incorporate and implement. On the other hand, between 2010 and 2018, the Snohomish County Public Utility District #1 has documented an 8.1% increase in service hookups due to development in the Upland Area. The Parties have agreed to compromise on a figure of a 14.5% increase over pre-development amounts of Hillside Runoff for purposes of this 5-Year Agreement (the “Increased Hillside Runoff”).

J. The County Upland Area contains approximately seventy percent (70%) of the total impervious surface in the Upland Area and the City Upland Area contains approximately thirty percent (30%) of the total impervious surface in the Upland Area. Accordingly, as of the Effective Date of this Agreement, as between the County and the City, the County’s proportionate share of the Increased Hillside Runoff shall be seventy percent (70%), and the City’s proportionate share of the Increased Hillside Runoff shall be thirty percent (30%).

K. The PUD data available at the time of the 2013 Agreement indicated that the District’s kilowatt energy use increased 17% over the previous two (2) decades. Moreover, in 2019, when one or more of the District’s 250 hp pumps must be turned on there is a large surge of electricity needed which increases District electricity costs from \$.0698 per kilowatt hour to \$5.12 per kilowatt hour. Based on this information, the Parties have also agreed, when calculating the amount of the District’s Pump Plant-related costs that are attributable to the Increased Hillside Runoff, to apply to the 14.5% figure described in Recital I a “peaking

factor” multiplier of 1.6. Application of the peaking factor results in an adjusted Increased Hillside Runoff figure of twenty-three and two tenths percent (23.2%). The Parties agree this adjusted figure of 23.2% is an appropriate percentage to use in calculating the amount of the District’s Pump Plant-related costs that are attributable to the Increased Hillside Runoff, as more fully set forth in the body of this Agreement.

L. The County and the City each desire to provide annual monetary contributions to the District to help offset the increased operating cost borne by the District due to the increase in total runoff experienced in the Marshland Drainage Basin attributable to the Increased Hillside Runoff caused by development in the County Upland Area and the City Upland Area, respectively.

M. The District has established two separate capital improvement funds. One of these funds is intended to be used to fund capital repairs and improvements to the District’s dikes. The other fund is intended to be used to fund capital repairs and improvements to the District’s Pump Plant (the “Pump Plant Capital Improvement Fund”). Provisions were made in the 2013 Agreement, as amended, for the Parties to make certain payments to the District’s Pump Plant Capital Improvement Fund.

N. The County and the City each now desire to continue to provide annual monetary contributions to the District’s Pump Plant Capital Improvement Fund, in amounts proportionate to the District’s increased capital improvement costs attributable to the Increased Hillside Runoff caused by development in the County Upland Area and the City Upland Area, respectively.

O. Neither the County nor the City intends by this Agreement to reimburse the District for any portion of the costs or expenses incurred by the District to control, prevent, abate or ameliorate damage from flooding caused by factors other than Increased Hillside Runoff associated with development. In particular, neither the County nor the City intends to reimburse the District for the costs of ameliorating flooding caused by undeveloped (i.e. baseline) amounts of Hillside Runoff.

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, and pursuant to the authority provided by chapter 39.34 RCW, the Interlocal Cooperation Act, the County, the City and the District agree as follows:

1. TERM

1.1 Condition Precedent - RCW 39.34.040

Pursuant to RCW 39.34.040, it is a condition precedent to the effectiveness of this Agreement that a fully executed copy of this Agreement be either (i) recorded with the

County Auditor, or (ii) posted on the County's Interlocal Agreements website. Unless and until this condition is met, this Agreement shall have no force or effect.

1.2 Term

The "Term" of this Agreement shall cover the following five (5) calendar years: 2020, 2021, 2022, 2023, and 2024. The Term shall commence on the Execution Date and expire when the True-Up required by Section 9 has been performed for calendar year 2024 (the "Expiration Date"). Notwithstanding anything to the contrary contained elsewhere in this Agreement, the County's obligations after December 31, 2019, are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with the Snohomish County Charter, the Snohomish County Code and applicable law. If the County does not so appropriate the necessary funds for the County's obligations under this Agreement, either the District or the City may terminate this Agreement effective on 30 days advance written notice to the other parties, but failure to provide such notice shall not be a "Default" under Section 18.

2. DEFINITION OF OPERATING COSTS

2.1 Total Operating Costs

For purposes of this Agreement, the term "Operating Costs" shall mean the District's regular, recurring costs and expenses incurred in the District's ongoing, ordinary operation and maintenance of the Existing District Facilities. "Capital Expenditures," as that term is defined in Section 3 below, are not included in Operating Costs. A spreadsheet showing the District's Operating Costs and other financial data for recent years is attached to this Agreement as Exhibit B. For purposes of this Agreement, the District's total Operating Costs shall be separated into three distinct categories, as described in Sections 2.2, 2.3 and 2.4 below.

2.2 Ditch, Pond and Canal Operating Costs

That portion of the District's total Operating Costs that is attributable to ditch, pond, and canal maintenance activities shall be referred to in this Agreement as the "Ditch, Pond and Canal Operating Costs."

2.3 Pump Plant O&M Operating Costs

That portion of the District's total Operating Costs that is attributable to the operation and maintenance of the District's Pump Plant, including the cost of major maintenance activities for the pumps, but excluding all costs of electricity used to run the pumps, shall be referred to in this Agreement as the "Pump Plant O&M Operating Costs."

2.4 Pump Electricity Operating Costs

That portion of the District's total Operating Costs that is attributable to paying electrical bills for the electricity used to run the pumps shall be referred to in this Agreement as the "Pump Electricity Operating Costs."

3. DEFINITION OF ALLOWABLE CAPITAL EXPENDITURES

For purposes of this Agreement, the term "Capital Expenditures" shall mean those non-recurring costs incurred by the District to acquire new capital assets or make substantial or significant improvements to one or more of the Existing District Facilities. The District has developed a pump plant concrete refurbishing and safety upgrade project with a cost estimate range of \$120,400 to \$241,200, and adopted Resolution No. 2012-1 on June 11, 2012, to establish a capital improvement fund for said project. A copy of District Resolution No. 2012-1 is attached to this Agreement as Exhibit C. For purposes of this Agreement, the term "Allowable Capital Expenditures" shall mean (i) those Capital Expenditures described and authorized in District Resolution No. 2012-1, and (ii) any other reasonable Capital Expenditures made with respect to the District's Pump Plant, provided that the District has given the County and the City advance written notice describing such Capital Expenditures.

4. ANNUAL INCREASED HILLSIDE RUNOFF OPERATING COST CONTRIBUTION PAYMENTS

4.1 County Increased Hillside Runoff Operating Cost Contributions

Each calendar year during the Term of this Agreement, the County shall remit to the District the "County's Increased Hillside Runoff Operating Cost Contribution Payment," in an amount equal to the sum of the following: (i) the County's proportionate share of the District's anticipated Ditch, Pond and Canal Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.1 and 7.1 below; (ii) the County's proportionate share of the District's anticipated Pump Plant O&M Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.2 and 7.1 below; and (iii) the County's proportionate share of the District's anticipated Pump Electricity Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.3 and 7.1 below. Payment shall be made on or before March 31st of the calendar year at issue, or within sixty (60) days after receiving an invoice for payment, whichever is later.

4.2 City Increased Hillside Runoff Operating Cost Contributions

Each calendar year during the Term of this Agreement, the City shall remit to the District the "City's Increased Hillside Runoff Operating Cost Contribution Payment," in an amount equal to the sum of the following: (i) the City's proportionate share of the District's anticipated Ditch, Pond and Canal Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.1 and 7.2 below; (ii) the City's proportionate share of the District's anticipated Pump Plant O&M Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.2 and 7.2 below; and (iii) the City's proportionate share of the District's anticipated Pump Electricity

Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.3 and 7.2 below. Payment shall be made on or before March 31st of the calendar year at issue, or within sixty (60) days after receiving an invoice for payment, whichever is later.

5. CALCULATING THE DISTRICT'S ANTICIPATED OPERATING COSTS

5.1 Categories of Operating Costs

The methodology for calculating anticipated Operating Costs described in this Section 5 shall be applied separately to each of the sub-categories of Operating Costs described in Sections 2.2, 2.3 and 2.4.

5.2 Five Year Rolling Average Methodology

The District's anticipated Operating Costs for a future calendar year shall be estimated based on a five (5) year rolling average of the District's actual, historic Operating Costs for the five (5) calendar years immediately preceding the calendar year for which anticipated Operating Costs are being calculated. By way of example, the anticipated Operating Costs for the calendar year 2020 would be calculated by averaging the actual, historic Operating Costs for calendar years 2019, 2018, 2017, 2016 and 2015. However, before averaging the five (5) actual, historic annual Operating Costs, the actual, historic Operating Costs for each year included in the five (5) year rolling average shall be adjusted to present value pursuant to the method described in Section 5.3 below.

5.3 Adjusting the District's Actual, Historic Operating Cost Data to Present Value

To obtain the present value of the District's actual, historic Operating Costs for a given year, the actual, historic Operating Costs for such year shall be adjusted to present value using the Consumer Price Index for Seattle-Tacoma-Bremerton, WA, All Urban Consumers, All Items, published every other month by the U.S. Department of Labor, Bureau of Labor Statistics, in which 1982-84 equals 100 (the "CPI"). A chart showing relevant CPI data is attached to this Agreement as Exhibit D. To adjust the actual, historic Operating Costs for a specific year ("Year X") to present value, the historic Operating Costs for Year X shall be increased or decreased by an amount equal to the percentage change in the CPI between Year X and the year in which the calculation is being made (the "Present"). For Year X, the annual CPI for Year X shall be used. For the Present, the most recently published annual CPI shall be used. For reference purposes, an illustrative example of how to adjust an historic value to present value using the CPI data is attached to this Agreement as Exhibit E.

5.4 Calculating Anticipated Operating Cost

The present value adjustment process described in Section 5.3 above shall be applied to the actual, historic Operating Costs for each of the five (5) years being used in the rolling average calculation as shown in Exhibit G to this Agreement. After adjusting all five (5) of

the actual, historic Operating Cost figures to present value, the data shall be averaged. The resulting amount shall equal the District's anticipated Operating Costs for the future calendar year at issue.

5.5 Change In Adjustment Factor

In the event the CPI Index is hereafter converted to a different standard reference base or is otherwise revised, the present value adjustment shall be made with the use of such conversion factor, formula or table for converting the CPI figures as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or base as may be nationally recognized.

6. CALCULATING THE PORTION OF ANTICIPATED OPERATING COSTS ATTRIBUTABLE TO INCREASED HILLSIDE RUNOFF

6.1 Anticipated Ditch, Pond and Canal Operating Costs Attributable to Increased Hillside Runoff

Once the parties have calculated the District's anticipated Ditch, Pond and Canal Operating Costs for a given calendar year pursuant to Section 5 above, the parties shall compute the dollar amount of those anticipated costs that is attributable to Increased Hillside Runoff from the Upland Area (the "Increased Hillside Runoff Ditch, Pond and Canal Operating Costs"). For purposes of this Agreement, the parties agree the currently available data, demonstrate that an average of approximately seventy-two and sixty-four hundredths percent (72.64%) of the District's Ditch, Pond and Canal Operating Costs are allocable to sediment from Increased Hillside Runoff. Accordingly, the Increased Hillside Runoff Ditch, Pond and Canal Operating Costs for a given calendar year during the term of this Agreement shall be equal to seventy-two and sixty-four hundredths percent (72.64%) of the District's total anticipated Ditch, Pond and Canal Operating Costs for that calendar year.

6.2 Anticipated Pump Plant O&M Operating Costs Attributable to Increased Hillside Runoff

Once the parties have calculated the District's anticipated Pump Plant O&M Operating Costs for a given calendar year pursuant to Section 5 above, the parties shall compute the dollar amount of those anticipated costs that is attributable to Increased Hillside Runoff from the Upland Area (the "Increased Hillside Runoff Pump Plant O&M Operating Costs"). For purposes of this Agreement, the parties agree the currently available data, using the methodology described on Exhibit F to this Agreement, demonstrate that an average of twenty-three and two-tenths percent (23.2%) of the District's Pump Plant O&M Operating Costs are attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. Accordingly, the Increased Hillside Runoff Pump Plant O&M Operating Costs for a given calendar year during the term of this Agreement shall be equal to twenty-three and two-tenths percent (23.2%) of the District's total anticipated Pump Plant O&M Operating Costs for that calendar year.

6.3 Anticipated Pump Electricity Operating Costs Attributable to Increased Hillside Runoff

Once the parties have calculated the District's anticipated Pump Electricity Operating Costs for a given calendar year pursuant to Section 5 above, the parties shall compute the dollar amount of those anticipated costs that is attributable to Increased Hillside Runoff from the Upland Area (the "Increased Hillside Runoff Pump Electricity Operating Costs"). For purposes of this Agreement, the parties agree the currently available data, using the methodology described on Exhibit F to this Agreement, demonstrate that an average of twenty-three and two-tenths percent (23.2%) of the District's Pump Electricity Operating Costs are attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. Accordingly, the Increased Hillside Runoff Pump Electricity Operating Costs for a given calendar year during the term of this Agreement shall be equal to twenty-three and two-tenths percent (23.2%) of the District's total anticipated Pump Electricity Operating Costs for that calendar year.

6.4 Increased Hillside Runoff Operating Costs

Once the anticipated (i) Increased Hillside Runoff Ditch, Pond and Canal Operating Costs, (ii) Increased Hillside Runoff Pump Plant O&M Operating Costs, and (iii) Increased Hillside Runoff Pump Electricity Operating Costs for a given calendar year have each been calculated as described above, those three amounts shall be summed to obtain the total anticipated "Increased Hillside Runoff Operating Costs" for the calendar year at issue as set forth by example in Exhibit G to this Agreement.

7. CALCULATING THE COUNTY'S AND THE CITY'S PROPORTIONATE SHARES OF INCREASED HILLSIDE RUNOFF OPERATING COSTS

7.1 County's Proportionate Share

As stated in Recital J, as of the Effective Date of this Agreement, the County Upland Area contains approximately seventy percent (70%) of the total impervious surface in the Upland Area. Accordingly, the County's proportionate share of the Increased Hillside Runoff Operating Costs for a given calendar year shall be equal to seventy percent (70%) of the Increased Hillside Runoff Operating Costs for the calendar year at issue.

7.2 City's Proportionate Share

As stated in Recital J, as of the Effective Date of this Agreement, the City Upland Area contains approximately thirty percent (30%) of the total impervious surface in the Upland Area. Accordingly, the City's proportionate share of the Increased Hillside Runoff Operating Costs for a given calendar year shall be equal to thirty percent (30%) of the Increased Hillside Runoff Operating Costs for the calendar year at issue.

8. PUMP PLANT CAPITAL IMPROVEMENT FUND

8.1 Establishment of Pump Plant Capital Improvement Fund

As described in Recital M, the District has established a Pump Plant Capital Improvement Fund. The monies in the Pump Plant Capital Improvement Fund shall be used solely for Allowable Capital Expenditures, as that term is defined in Section 3 above. In no event shall any portion of the Pump Plant Capital Improvement Fund be used to fund Operating Costs.

8.2 Amount of Pump Plant Capital Improvement Fund Contribution

Beginning in calendar year 2020, and except as otherwise provided in Section 8.6 of this Agreement, each year during the Term of this Agreement, the parties shall make contributions toward the Pump Plant Capital Improvement Fund that together total Forty-Four Thousand One Hundred Forty Six Dollars (\$44,146) (the "Pump Plant Capital Improvement Fund Contribution"). This Section 8 specifies the amounts each of the parties must contribute towards the annual Pump Plant Capital Improvement Fund Contribution.

8.3 Amount of Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution

The County and the City desire to make reasonable monetary contributions to the Pump Plant Capital Improvement Fund that reflect the increased burden borne by the District's pump station as a result of the Increased Hillside Runoff from the Upland Area. The parties agree that the District's pump station is not significantly impacted by the increased sediment from Increased Hillside Runoff. Instead, it is the increased surface water flow from Increased Hillside Runoff that affects the pump station. As stated in Sections 6.2 and 6.3 above, currently available data demonstrate that approximately twenty-three and two-tenths percent (23.2%) of the District's pump-related Operating Costs are attributable to the additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. Accordingly, the parties agree it is appropriate to allocate responsibility for twenty-three and two-tenths percent (23.2%) of the annual Pump Plant Capital Improvement Fund Contribution to the Upland Area. Twenty-three and two-tenths percent (23.2%) of Forty-Four Thousand One Hundred Forty Six Dollars (\$44,146) equals approximately Ten Thousand Two Hundred Forty Two Dollars (\$10,242). This amount shall be referred to as the "Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution."

8.4 Amount of the County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment

As stated in Recital J and Section 7.1 above, the County Upland Area contains approximately seventy percent (70%) of the total impervious surface in the Upland Area. Accordingly, the County's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution shall be equal to seventy percent (70%). Seventy percent (70%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals

approximately Seven Thousand One Hundred Sixty-Nine Dollars (\$7,169). Accordingly, the “County’s Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment” shall be equal to Seven Thousand One Hundred Sixty-Nine Dollars (\$7,169).

8.5 Amount of the City’s Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment

As stated in Recital J and Section 7.2 above, the City Upland Area contains approximately thirty percent (30%) of the total impervious surface in the Upland Area. Accordingly, the City’s proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution shall be equal to thirty percent (30%). Thirty percent (30%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals approximately Three Thousand Seventy-Three (\$3,073). Accordingly, the “City’s Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment” shall be Three Thousand Seventy-Three Dollars (\$3,073).

8.6 Amount of the District’s Pump Plant Capital Improvement Fund Contribution

That portion of the annual Pump Plant Capital Improvement Fund Contribution that is not allocable to the Upland Area pursuant to Section 8.3 above shall be the responsibility of the District. Specifically, the District shall be responsible for seventy-six and eighty hundredths percent (76.80%) of the annual Pump Plant Capital Improvement Fund Contribution. Seventy-six and eighty hundredths percent (76.80%) of Forty-Four Thousand One Hundred Forty Six Dollars (\$44,146) equals approximately Thirty-three Thousand Nine Hundred Four Dollars (\$33,904). Accordingly, the District’s portion of the Pump Plant Capital Improvement Fund Contribution for each calendar year during the Term of this Agreement shall be Thirty-Three Thousand Nine Hundred Four Dollars (\$33,904). The District shall pay its portion of the Pump Plant Capital Improvement Fund Contribution into the Pump Plant Capital Improvement Fund on or before November 30th of each year.

8.7 Contingency

The annual obligations of the County and the City to make their respective Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payments pursuant to Section 3 and this Section 8 are expressly contingent upon the District making the full amount of its Pump Plant Capital Improvement Fund Contribution payment as and when specified in Section 8.6 above. If, in any given calendar year, the District does not make the full amount of its Pump Plant Capital Improvement Fund Contribution payment as and when provided in Section 8.6 above, then the amount of the County’s and the City’s respective Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payments shall be reduced by the same proportion as the District reduced its Pump Plant Capital Improvement Fund Contribution. The District’s failure to make the full amount of its Pump Plant Capital Improvement Fund Contribution payment in any given calendar year shall not constitute a Default by the District under this Agreement, as that term is defined in Section 18.1 below. Instead, such failure by the District shall simply result in the above-

described reduction in the amount of Pump Plant Capital Improvement Fund Contribution Payments to be made by the County and the City.

8.8 Invoicing and Payment

As soon as reasonably practicable after the District has paid (or decided not to pay) into the Pump Plant Capital Improvement Fund some or all of its Pump Plant Capital Improvement Fund Contribution for a given calendar year, the District shall calculate the corresponding total amounts of the County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment and the City's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment for the calendar year at issue and shall send a written invoice for the appropriate amount to each of them. The District shall include in the invoices sufficient documentation to support the amounts charged. The County and the City shall each pay its respective invoice within sixty (60) days of receiving same.

8.9 Additional Capital Expenditures by District

Notwithstanding anything to the contrary contained elsewhere in this Agreement, the District shall have the right, in its sole discretion, at any time and from time to time during the Term of this Agreement, to dedicate additional funds and resources to its Pump Plant Capital Improvement Fund, the capital improvement fund established for the District's dikes described in Recital M, or other capital projects that are in addition to but not included within the definition of Allowable Capital Expenditures in Section 3. However, any such additional capital funding on the part of the District shall have no effect on the obligations of the County and the City to contribute to the Pump Plant Capital Improvement Fund in the amounts and subject to the conditions and limitations described in this Section 8.

9. TRUE-UP OF PUMP ELECTRICITY OPERATING COSTS

As soon as reasonably possible after the close of each calendar year during the Term, but in no event later than 90 days after the close of such calendar year, the parties shall True-Up the amount of Increased Hillside Runoff Pump Electricity Operating Costs paid to the District for the calendar year at issue (the "True-Up"). The District shall provide the County and the City with its actual, documented Operating Cost data for the immediately preceding calendar year within 30 days after such data becomes available. The District's actual Operating Costs shall be divided into the three categories described in Section 2 above. The parties shall compare the amount of anticipated Pump Electricity Operating Costs calculated for the calendar year at issue to the actual Pump Electricity Operating Costs the District incurred for that calendar year. The parties shall then True-Up the amount of Increased Hillside Runoff Pump Electricity Operating Costs paid to the District by the County and the City for the calendar year at issue. If the actual Pump Electricity Operating Costs incurred by the District exceeded the anticipated Pump Electricity Operating Costs, the parties shall calculate the correct amount of the Increased Hillside Runoff Pump Electricity Operating Costs due to the District under Section 6.3 above and the amount of underpayment shall be divided between the County and the City in the proportions described in Section 7 above and

invoices for any deficit shall be paid within sixty (60) days of receipt. If the actual Pump Electricity Operating Costs were lower than the anticipated Pump Electricity Operating Costs, the District shall reimburse the County and the City for their respective shares of the overpayment of Increased Hillside Runoff Pump Electricity Operating Costs within the 90 day time limit specified above. A spreadsheet showing the calculation for anticipated cost and True-Up is attached to this Agreement as Exhibit G.

10. ACCOUNTING FOR GRANT FUNDS RECEIVED BY DISTRICT

10.1 General Principles

From time to time the District may receive donative funding from an outside source such as, by way of example and not by way of limitation, grant funds from FEMA (any such funding, the "Grant Funds"). The parties agree that the benefit of any Grant Funds received by the District should be shared by the parties on an equitable, pro-rata basis, based on (i) the category of the District's expenses to which the Grant Funds are applied, and (ii) each party's respective proportionate share of that category of the District's expenses pursuant to this Agreement.

10.2 Grant Funds for Capital Expenditures

Any Grant Funds received and used for Capital Expenditures shall not affect the parties' respective obligations to contribute monies to the District's Pump Plant Capital Improvement Fund under Section 9 above. However, no Grant Funds used for Capital Expenditures or placed in the Pump Plant Capital Improvement Fund shall be counted towards the District's annual contribution of monies to the Pump Plant Capital Improvement Fund under Section 8.6 above. By way of example, should the District elect, for any given calendar year, to contribute only Grant Funds to the Pump Plant Capital Improvement Fund, the amount of the District's Pump Plant Capital Improvement Fund Contribution for said calendar year shall be deemed to be \$0.00. In such event, consistent with Section 8.7 above, neither the County nor the City shall have any obligation to contribute monies to the Pump Plant Capital Improvement Fund for such calendar year.

10.3 Grant Funds for Operating Costs

10.3.1 If the District receives Grant Funds for Operating Costs, the parties shall first determine for which of the following types of Operating Costs the Grant Funds, or any portion of the Grant Funds, are to be used: (i) Ditch, Pond and Canal Operating Costs, (ii) Pump Plant O&M Operating Costs, and/or (iii) Pump Electricity Operating Costs.

10.3.2 If any portion of the Grant Funds is used for Ditch, Pond and Canal Operating Costs, then seventy-two and sixty-four-hundredths percent (72.64%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Ditch, Pond and Canal Operating Costs, according to their respective shares of the Increased Hillside Runoff Ditch, Pond and Canal Operating Costs, as calculated in Section 6.1 and Section 7 above.

10.3.3 If any portion of the Grant Funds is used for Pump Plant O&M Operating Costs, then twenty-three and two-tenths percent (23.2%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Pump Plant O&M Operating Costs, according to their respective shares of the Increased Hillside Runoff Pump Plant O&M Operating Costs, as calculated in Section 6.2 and Section 7 above.

10.3.4 If any portion of the Grant Funds is used for Pump Electricity Operating Costs, then twenty-three and two-tenths percent (23.2%) of that portion of the Grant Funds shall be deducted from the payment obligations of the County and the City for the Increased Hillside Runoff Pump Electricity Operating Costs, according to their respective shares of the Increased Hillside Runoff Pump Electricity Operating Costs, as calculated in Section 6.3 and Section 7 above.

10.3.5 For the calendar year in which the Grant Funds are used by the District, the amount of the County's Increased Hillside Runoff Operating Cost Contribution Payment and the amount of the City's Increased Hillside Runoff Operating Cost Contribution Payment shall each be reduced by the deductions described in this Section 10.3. If either the County or the City has already made its Increased Hillside Runoff Operating Cost Contribution Payment for the calendar year at issue, the District shall promptly refund to said party the amount it overpaid.

11. EXTRAORDINARY COSTS RELATED TO REMOVAL OF SEDIMENT POND SPOILS

If a government agency with jurisdiction requires sediment pond spoils to be disposed of outside of the Snohomish River floodplain, the Parties agree that costs associated with such removal are extraordinary costs that should not be borne solely by the District and the Parties shall meet and confer to determine how costs associated with such removal shall be equitably apportioned.

12. RECALCULATION IN EVENT OF ANNEXATION

12.1 In the event all or any portion of the County Upland Area is annexed, the amounts due to the District from the County shall be recalculated to reflect the County's new proportionate share of the total impervious surface in the Upland Area. From and after the effective date of any such annexation, the County shall be relieved of any obligation to make payments to the District that exceed or otherwise do not reflect the County's new proportionate share of the total impervious surface in the Upland Area. The parties shall memorialize the new proportionate shares due from the County in an amendment to this Agreement as soon after annexation as may be reasonably feasible; however, no delay or failure by the parties to execute such an amendment shall prevent the provisions of this Section 12.1 from taking effect.

12.2 If the City is not the entity performing an annexation described in Section 12.1 above, such annexation will not change the amounts due to the District from the City under

this Agreement. However, if the City is the entity performing an annexation described in Section 12.1 above, the amounts due to the District from the City shall be recalculated to reflect the City's new proportionate share of the total impervious surface in the Upland Area. In such event, the parties shall memorialize the new proportionate share due from the City in an amendment to this Agreement as soon after annexation as may be reasonably feasible; however, no delay or failure by the parties to execute such an amendment shall prevent the provisions of this Section 12.2 from taking effect.

13. COVENANTS BY DISTRICT

13.1 Covenant to County

The District covenants to the County that it shall use the entirety of all Increased Hillside Runoff Contribution Payments received from the County under this Agreement for the purposes specified in this Agreement and for no other purpose or use whatsoever. Any failure by the District to abide by the foregoing covenant shall constitute a Default by the District under Section 18 below, and shall entitle the County to immediately terminate this Agreement.

13.2 Covenant to City

The District covenants to the City that it shall use the entirety of all Increased Hillside Runoff Contribution Payments received from the City under this Agreement for the purposes specified in this Agreement and for no other purpose or use whatsoever. Any failure by the District to abide by the foregoing covenant shall constitute a Default by the District under Section 18 below, and shall entitle the City to immediately terminate this Agreement.

14. INTERLOCAL COOPERATION ACT (Chapter 39.34 RCW)

The purpose of this Agreement is for the County and the City to provide monetary contributions to the District to help offset the District's increased stormwater management costs that are attributable to the Increased Hillside Runoff caused by development in the Upland Area. Each of the parties to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer that party's participation in this Agreement. The parties' initial Administrators shall be the individuals specified in Section 19 below. Any party may change its Administrator at any time by delivering written notice of the party's new Administrator to the other parties. 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. As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has been either filed with the County Auditor or posted on the County's Interlocal Agreements website.

15. COVENANT TO COOPERATE

The County, the City and the District each hereby covenant to the other parties to this Agreement that it shall use good-faith efforts to cooperate with the other parties in implementing the intent and furthering the goals of this Agreement.

16. COMPLIANCE WITH LAWS

The County, the City and the District 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.

17. INDEMNIFICATION

17.1 Indemnification by District – Claims Involving Flood Control Facilities

The District shall indemnify, defend and hold the County, the City and each of their respective elected officials, employees, agents and contractors harmless from and against any and all costs, expenses, liabilities, suits, losses, damages, claims, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, arising out of, occurring due to, or resulting from the operation, maintenance, repair, improvement, reconstruction or restoration of, or any accidents, casualties or damages occurring to persons or property due to or involving, any of the District's infrastructure, facilities or equipment, except to the extent any such claims are due to the negligence or willful misconduct of the County or the City, respectively. By contributing funds to the District pursuant to this Agreement, neither the County nor the City has or shall be deemed to have approved, endorsed, recommended, guaranteed or warranted the performance, suitability or design of any particular repair project, maintenance work, or other similar construction activity undertaken by the District, notwithstanding the fact that such project, work or activity may have been undertaken in whole or in part using funds contributed by the County or the City pursuant to this Agreement. Neither the County nor the City shall be liable for any of the foregoing matters.

17.2 Mutual Indemnification – Claims Involving Breach or Default

Each party to this Agreement shall indemnify, defend and hold every other party and its elected officials, employees, agents and contractors harmless from and against any and all costs, expenses, liabilities, suits, losses, damages, claims, penalties or charges, including, without limitation, reasonable attorneys' fees and disbursements, that the other parties may incur or pay out by reason of any breach or Default (as such term is defined in Section 18.1 below) of the indemnifying party under this Agreement.

17.3 Survival

The provisions of this Section 17 shall survive the expiration or earlier termination of this Agreement.

18. DEFAULT AND REMEDIES

18.1 Default

If any party to this Agreement fails to perform any act or obligation required to be performed by it hereunder, the party or parties 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.

18.2 Remedies

In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 18.1 above, the party or parties 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.

19. NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is permitted or required to be given by one party to another 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, (iv) by facsimile (with proof of successful transmission) or by email (with a request for and receipt of proof of successful transmission). All such communications shall be addressed to the appropriate Administrator of this Agreement as follows:

To the County:

Snohomish County
Department of Public Works
Surface Water Management Division
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201
Attention: Gregg Farris, SWM Director

Telephone: (425) 388-6454
Facsimile: (425) 388-6455
Email: GFarris@snoco.org

To the City:

City of Everett
Public Works Department
Surface Water Section
3200 Cedar Street
Everett, WA 98201
Attention: Heather Griffin, SW Manager

Telephone: (425) 257-7206
Facsimile: (425) 257-8882
Email: HGriffin@everettwa.gov

To the District:

Marshland Flood Control District
125 Union Avenue
P.O. Box 85
Snohomish WA 98291-0085
Attention: Gary Brandstetter, Sec/Mgr
Telephone: (360) 568-6044 and/or (425) 760-4262
Facsimile: None
Email: marshlandfloodcontrol@gmail.com

Any party hereto may, by reasonable notice to the other parties, designate such other address, facsimile telephone number or email for the giving of notices as deemed necessary. 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, or on the same day as the day such notice is emailed if emailed in accordance with this Section.

For email delivery, the following receipt of proof of successful transmission shall be deemed acceptable:

A mutually agreeable delivery receipt message agreed to in writing (using the methods in this section) by the Administrators of this Agreement; or,

Using Microsoft Outlook®, any of the following delivery receipt messages:

“Your message has been delivered to the following recipients: (name and email of recipient(s));” or,

“Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server: (name and email of recipient(s)).”

20. MISCELLANEOUS

20.1 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 a written document signed by the party against whom such modification is sought to be enforced.

20.2 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.

20.3 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.

20.4 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 by a court of competent jurisdiction, 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.

20.5 No Waiver

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

20.6 Assignment

This Agreement shall not be assigned, either in whole or in part, by any party without the express written consent of each other party, which may be granted or withheld in each 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.

20.7 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.

20.8 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.

20.9 No Third Party Beneficiaries

This Agreement is for the exclusive benefit of the parties hereto. There are no third party beneficiaries to this Agreement; no third party shall be deemed to have any rights in, under or to this Agreement.

20.10 Exhibits

The following Exhibits, which are attached to this Agreement, are incorporated herein and by this reference made a part of this Agreement:

- EXHIBIT A - Map Showing Features of the Marshland Drainage Basin
- EXHIBIT B - Financial Data for the District
- EXHIBIT C - District Resolution No. 2012-1
- EXHIBIT D - CPI Data
- EXHIBIT E - Sample CPI Adjustment to Present Value
- EXHIBIT F - Percentage of Pump-Related Operating Costs Allocable to Hillside Runoff Based Upon Peaking Factor
- EXHIBIT G - Calculation Sheet for Anticipated Cost and True-Upping

20.11 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 hereto have executed this Agreement as of the date first above written.

THE COUNTY:

THE CITY:

Snohomish County, a political subdivision of the State of Washington

The City of Everett, a Washington municipal corporation

By [Signature]
Name: DAVE SOMERS
Title: EXECUTIVE

By [Signature]
Name: _____
Title: _____

Approved as to Form:

Approved as to Form:

[Signature] 10/22/19
Deputy Prosecuting Attorney

City Attorney [Signature]
Office of the City Attorney
APPROVED AS TO FORM
David C. Hall, City Attorney

THE DISTRICT:

COUNCIL USE ONLY
Approved: 12.18.19
Docfile: D-18

Marshland Flood Control District, a special purpose district formed under the authority of chapter 86.09 RCW

ATTEST:
[Signature]
City Clerk

By [Signature]
Name: Don Bailey
Title: Chairperson of District Commissioners

By [Signature]
Name: Marv Thomas
Title: Commissioner

By [Signature]
Name: Tim Stocker
Title: Commissioner

Approved as to Form:

[Signature] 9/10/19
Attorney for the District WSBA # 7461

City of Everett

City of Snohomish

City of Mill Creek

Marshland Flood Control District
6,281 AC

Upland Drainage
7,731 AC

Marshland (County, UGA)

(County, Non-UGA)

Legend

- Sediment Pond Locations
- Flood Canal
- Artificial Ditch Without Headwaters
- Managed Ditch With Headwaters
- Major Roads
- Cities
- UGA
- Uplands
- Marshland

Map Labels: Pump Plant, Lowell Lanner Rd, Lowell Snohomish River Rd, Marsh Rd, Flood Canal, Soatle Hill Rd, Cathcart Way, Snohomish River, Marshland Upland Drainage Area (Everett).

Scale: 0 0.5 1 Miles

North Arrow

Marshland Flood Control District Location Map

06/12/2018

KS&W-Norwest/Special Projects-ILA Marshland Marshland Map_20180612.mxd, 06/12/2018

EXHIBIT B
Historic Financial Data for the District

District's Historic Operating Costs			
Year	Ditch, Pond & Canal	PUD / Electrical	Pump O & M
2007	\$125,014	\$58,571	\$9,769
2008	\$54,768	\$68,231	\$11,294
2009	\$56,202	\$79,612	\$25,094
2010	\$96,470	\$68,331	\$38,596
2011	\$83,860	\$85,980	\$12,027
2012	\$57,059.46	\$85,400.66	\$13,044.53
2013	\$71,195.07	\$67,325.80	\$16,742.50
2014	\$98,438.79	\$80,232.43	\$11,886.44
2015	\$95,025.20	\$76,164.57	\$39,031.28
2016	\$97,657.00	\$93,451.45	\$10,545.92
2017	\$67,463.00	\$110,960.00	\$10,393.00
2018	\$125,690.00	\$98,022.00	\$13,137.00

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

EXHIBIT C
District Resolution No. 2012-1

MARSHLAND FLOOD CONTROL DISTRICT

Resolution No. *2012 - 1*

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE
MARSHLAND FLOOD CONTROL DISTRICT REGARDING CREATION
OF CAPITAL IMPROVEMENT FUNDS FOR PUMP PLANT
REFURBISHING, REPLACEMENT AND/OR RELOCATION AND
ANNUAL DIKE REPAIR

WHEREAS, Marshland Flood Control District (MFCD) has paid off its loan to the Bank of America under MFCD Account No. 522 (identified as sub-fund 770722 by the Snohomish County Treasurer's Office); and

WHEREAS, MFCD has also paid off its obligation to the State Public Works Trust Fund under MFCD Account No. 526 (sub-fund 770726 per the County Treasurer); and

WHEREAS, as a condition of receiving further Surface Water runoff contributions from Snohomish County and the City of Everett, MFCD has been encouraged to establish a Capital Improvement Plan (CIP) and Fund (CIF) for Pump Plant refurbishing, replacement and/or restoration in light of Everett's long range plan for relocation and/or replacement of the Pump Plant in order for Everett to meet Department of Ecology (DOE) mitigation compliance; and

WHEREAS, MFCD commissioned a report dated June 29, 2011 from the Natural Resources Conservation Service (NRCS), the federal sponsor for MFCD, encouraging maintenance and upgrades to MFCD's Pump Plant, including refurbishing its concrete, updating safety features, establishing a program for pump motor replacement and continuing "soft start" and fuse upgrades in order to decrease electrical power needs; and

WHEREAS, NRCS also provided a concrete refurbishing estimate on October 6, 2011 of between \$120,400 and \$241,200; and

WHEREAS, the Pump Plant will only have a useful life of another 50 years if the concrete refurbishing is done; and

WHEREAS, there is no designated implementation date for MFCD's Pump Plant replacement or relocation as a result of Everett's long range plan for DOE mitigation

compliance so that concrete refurbishing is the most pressing and apropos CIP and use of CIF; and

WHEREAS, MFCD has been engaged for the past several years in repairing several dike sections, using an environmentally preferred soil wrap methodology, at cost between \$1,000 and \$1,400 per lineal foot; and

WHEREAS, MFCD expects, with assistance from the Snohomish County Flood Damage Reduction Grant program, to continue dike repairs which have a known cost per lineal foot which will require between \$10,000 and \$37,500 of MFCD funds per year; and

WHEREAS, a Pump Plant CIP and CIF, as well as a Dike Repair CIP and CIF, are desirable; but

WHEREAS, MFCD membership cannot afford, during a recession, to bear a significant increase in per acre assessments in order to fund CIFs for the Pump Plant and Dike Repair, NOW, THEREFORE

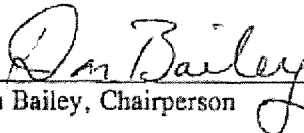
THE BOARD OF COMMISSIONERS OF THE MARSHLAND FLOOD CONTROL DISTRICT HEREBY RESOLVES THAT:

1. Account No. 522 shall henceforth be designated as the CIF for MFCD's Pump Plant;
2. Account No. 526 shall henceforth be designated as the CIF for Dike Repair;
3. Account No. 526, which has a current balance of \$88,063.76, shall be and hereby is reduced to a level of \$38,063.76 and the excess shall be transferred to Account 522 for aid in implementing the Pump Plant CIP as soon as possible;
4. The Account No. 522 per acre assessment of approximately \$4.75 since 2004 and the Account No. 526 per acre assessment of between \$1.90 and \$2.50 since 2002 shall be totaled and a level of assessment of between \$6.65 and \$7.25 per acre shall be maintained for both the Pump Plant and Dike Repair CIFs and that per acre level of assessment shall be maintained until otherwise amended by the Board of Commissioners for both Pump Plant and Dike Repair CIFs in order to avoid a significant increase in per acre assessments for the MFCD membership;
5. The Account 522 CIF for the Pump Plant CIP shall receive as large as possible a share of the combined total CIF assessment of \$6.65 to \$7.25 per acre, the exact amount to be determined during each year's budget cycle;
6. The estimated per acre assessments for 2013 are expected to be approximately \$ 5.75 for the Pump Plant CIF in Account 522 and \$ 1.00 for the Dike Repair CIF in Account 526;
7. Based on the above information, MFCD hopes to undertake concrete refurbishing of the Pump Plant as soon as possible, with implementation to be determined after more precise estimates are solicited from contractors in order to determine how quickly


sufficient funds can be collected from assessments in order to cover said cost without accumulating additional MFCD debt.

RESOLVED this 11th day of June, 2012.


MARSHLAND FLOOD CONTROL DISTRICT By:


Don Bailey, Chairperson


Marv Thomas, Commissioner


Tim Stocker, Commissioner

Attest:


Paul Reasoner, Secretary/Manager

Approved As To Form:



Gary W. Brandstetter, WSBA # 7461
Attorney for the District

EXHIBIT D
CPI Data

Consumer Price Index - All Urban Consumers
Original Data Value

Series Id: CUURA423SA0,CUUSA423SA0
Not Seasonally Adjusted
Area: Seattle-Tacoma-Bremerton, WA
Item: All items, all Urban Consumers
Base Period: 1982-84=100
Years: 2001 to 2018

Year	Annual CPI Figure
2001	185.7
2002	189.3
2003	192.3
2004	194.7
2005	200.2
2006	207.6
2007	215.7
2008	224.719
2009	226.028
2010	226.693
2011	232.765
2012	238.663
2013	241.563
2014	246.018
2015	249.364
2016	254.886
2017	262.668
2018	271.089

Source:

https://www.bls.gov/regions/west/data/consumerpriceindex_seattle_table.pdf-
(last visited 04/30/2019)

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

EXHIBIT E
Sample CPI Adjustment to Present Value

The following example illustrates how the CPI data shall be used to calculate the present value of historic Ditch, Pond and Canal Operating Costs for a particular year ("Year X"). For purposes of this example the following values are used: (i) "Year X" equals 2014; (ii) the "Present" equals June 2019; and (iii) the historic Ditch, Pond and Canal Operating Cost for 2014 equal \$98,439.

Step A: Calculate the percentage change in the CPI between Year X and the Present, as follows:

- | | |
|---|------------------------|
| (1) Take the CPI for the Present (the most recently published annual CPI is for 2018) | 271.089 |
| (2) Take the annual CPI for 2014 | 246.018 |
| (3) Divide the Present CPI by the 2014 CPI | $271.089 \div 246.018$ |
| (4) The result is the CIP adjustment factor. | 1.102 |

Step B: Apply the percentage change in the CPI to the historic Ditch, Pond and Canal Operating Cost for 2014, as follows:

- | | |
|---|-----------|
| (1) Take the actual Ditch, Pond and Canal Operating Cost for 2014 | \$98,439 |
| (2) Take the CPI adjustment factor from Step A(4), expressed in percent. | 110.2% |
| (3) Multiply the actual Ditch, Pond and Canal Operating Cost for 2014 by the CPI adjustment factor to get the result equal to the Ditch, Pond and Canal Operating Cost for 2014, adjusted to Present value. | \$108,480 |

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

EXHIBIT F
Percentage of Pump-Related Operating Costs Allocable to Hillside Runoff Based Upon
“Peaking Factor”

For purposes of this Agreement, the parties agree the currently available data demonstrate that an average of approximately fourteen and five-tenths percent (14.5%) of the District’s pump-related Operating Costs are attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff. However, the parties also agree that using that percentage does not appropriately allocate a sufficient portion of the District’s pump-related Operating Costs to the Increased Hillside Runoff. This is because the additional surface water flow from the Increased Hillside Runoff is not distributed within the Marshland Drainage Basin in an even manner, but instead tends to impact the Marshland Drainage Basin via high peak flows during storm events. During recent years, the District has increasingly needed to operate additional pumps during storm events due to the peak volume of Increased Hillside Runoff flowing into the Marshland Drainage Basin. Operating additional pumps causes additional wear and tear on the pumps. Additionally, the high electrical demands of operating additional pumps, especially the large 250 hp pumps, results in disproportionately higher electrical costs for the District. To account for the disproportionate increase in Pump Plant O&M Operating Costs and Pump Electricity Operating Costs caused by the Increased Hillside Runoff, the parties agree, that it is appropriate to apply a peaking factor of one point six (1.6) to the percentage set forth above in order to derive an equitable percentage allocation of the total pump-related Operating Costs to the Increased Hillside Runoff. Multiplying fourteen and five-tenths percent (14.5%) by the 1.6 peaking factor results in a proportionate share of twenty-three and two-tenths percent (23.2%). Accordingly, the appropriate proportion of the District’s pump-related Operating Costs to allocate to the Increased Hillside Runoff is twenty-three and two-tenths percent (23.2%).

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

EXHIBIT G **Calculation Sheet for Anticipated Cost and True-Upping**

Exhibit G -- Calculation Sheet for Anticipated Cost and True-Upping

YEAR	CPI ¶5.3	PV Adjust Exh E	Ditch, Pond & Canal; ¶6.1	PV Adjust Exh E	Pump Plant O&M; ¶6.2	PV Adjust Exh E	PUD ¶6.3	PV Adjust Exh E
2015	249,364		95,025		39,031		76,165	
2016	254,886		97,657		10,546		93,451	
2017	262,668		65,371		10,393		110,960	
2018	271,089		125,690		13,137		98,022	
2019		1.000						
			TOTALS					
				± 5		± 5		± 5
		¶5.2	5 yr avg					
				x .7264		x .232		x .232
			Upland Share					
				x .70		x .70		x .70

County Share
City Share (.30)

**Payments Due March 31 (¶s 4.1 & 4.2),
or 60 days after invoice (whichever is later)**

County City

**True Up for PUD due March 31; (¶10)
or 60 days after invoice (whichever is later)**

2019 Cost \$ 0
5 Yr Avg (2018) (96,634)
Deficit/Excess

X .232

X .70

TOTAL

True-Upping Deficit/Excess

County Share
City Share (.30)

\$ plus \$ = \$

