

Adopted: 12/12/2018

Effective: 12/29/2018

1 SNOHOMISH COUNTY COUNCIL  
2 SNOHOMISH COUNTY, WASHINGTON

3  
4 ORDINANCE NO. 18-090

5  
6 APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE  
7 AMENDMENT NO. 2 TO THE INTERLOCAL AGREEMENT BETWEEN SNOHOMISH  
8 COUNTY, THE CITY OF EVERETT, AND MARSHLAND FLOOD CONTROL DISTRICT  
9 REGARDING INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE  
10 BASIN DUE TO UPLAND DEVELOPMENT  
11  
12

13 WHEREAS, the Marshland Flood Control District, a special purpose district formed  
14 under the authority of chapter 86.09 RCW (the "District"), consists of approximately 6,212 acres  
15 of land, the boundaries of which roughly coincide with the boundaries of the floodplain portion  
16 of the Marshland Drainage Basin; and  
17

18 WHEREAS, the District owns and operates certain drainage and flood control facilities  
19 that are used to improve agricultural production, as well as to control, prevent, abate and  
20 ameliorate damage to persons and property caused by flooding in the Marshland Drainage Basin;  
21 and  
22

23 WHEREAS, the District is bordered on the south and west by the upland area of the  
24 Marshland Drainage Basin (the "Upland Area"), which consists of approximately 7,826 acres of  
25 land, a portion of which is located within unincorporated Snohomish County (the "County"), and  
26 a portion of which is located within the City of Everett (the "City"); and  
27

28 WHEREAS, stormwater runoff from the Upland Area into the District (the "Hillside  
29 Runoff") has deleterious effects within the District; and  
30

31 WHEREAS, the frequency, amount and extent of Hillside Runoff have increased over the  
32 years due to development within the Upland Area; and  
33

34 WHEREAS, the County and the City have historically contributed funds to the District to  
35 help offset the increased costs borne by the District due to the increase in total runoff  
36 experienced in the Marshland Drainage Basin attributable to the increased Hillside Runoff  
37 caused by development occurring in the County's and City's respective portions of the Upland  
38 Area; and  
39

40 WHEREAS, the current agreement between the County, the City, and the District on this  
41 issue, executed on September 3, 2013 as authorized by Ordinance 13-065, adopted on August 28,  
42 2013, and later amended as authorized by Ordinance 17-056, adopted on September 13, 2017, is  
43 set to expire on December 31, 2018; and  
44

1 WHEREAS, the County, the City and the District wish to amend the agreement a second  
2 time to extend the term through December 31, 2019, to explore the possibility of negotiating a  
3 new agreement; and  
4

5 WHEREAS, the Snohomish County Council ("County Council") has determined that it is  
6 in the public interest to approve Amendment No. 2 to the Interlocal Agreement Regarding  
7 Increased Hillside Runoff in the Marshland Drainage Basin Due to Upland Development and  
8 authorize the Snohomish County Executive to execute same;  
9

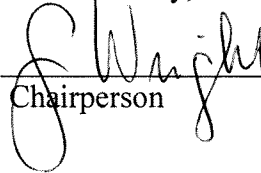
10 NOW, THEREFORE, BE IT ORDAINED:

11  
12 Section 1. The County Council hereby adopts the foregoing recitals as findings of fact  
13 and conclusions as if set forth in full herein.  
14

15 Section 2. The County Council hereby approves and authorizes the Snohomish County  
16 Executive to execute AMENDMENT NO. 2 TO INTERLOCAL AGREEMENT REGARDING  
17 INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO  
18 UPLAND DEVELOPMENT, in the form attached hereto as Exhibit A.  
19

20 PASSED this 12<sup>th</sup> day of December, 2018.  
21

22 SNOHOMISH COUNTY COUNCIL  
23 Snohomish County, Washington

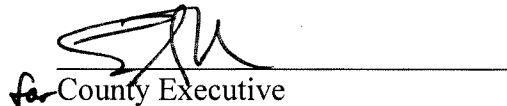
24  
25   
26 \_\_\_\_\_  
27 Chairperson

27 ATTEST:

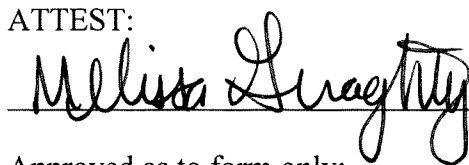
28   
29 \_\_\_\_\_  
30 Clerk of the Council, ASST.

- 31  APPROVED  
32 ( ) EMERGENCY  
33 ( ) VETOED  
34

35 DATE: 12-19-18  
36

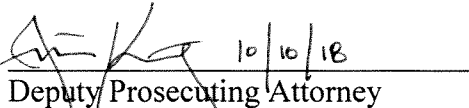
37   
38 \_\_\_\_\_  
39 for County Executive

38 ATTEST:

39   
40 \_\_\_\_\_  
41

42 ERIC PARKS  
43 Deputy Executive

42 Approved as to form only:  
43

44   
45 \_\_\_\_\_  
46 Deputy Prosecuting Attorney

ORDINANCE NO. 18- 090  
APPROVING AND AUTHORIZING THE COUNTY EXECUTIVE  
TO SIGN AMENDMENT NO. 2 TO 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 - 2

D-17



**AMENDMENT NO. 2 TO  
INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN  
THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT**

THIS AMENDMENT NO.2 TO INTERLOCAL AGREEMENT REGARDING INCREASED HILLSIDE RUNOFF IN THE MARSHLAND DRAINAGE BASIN DUE TO UPLAND DEVELOPMENT (the "Amendment No. 2") is made and entered into this 19<sup>th</sup> day of December, 2018, by and among SNOHOMISH COUNTY, 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 owns and operates certain drainage and flood control facilities in the Marshland Drainage Basin which collects runoff from the upland area development. A portion of the upland area of the District is within the jurisdiction of the County and the remainder of the upland area is within the jurisdiction of the City;

**B.** On September 3, 2013, the County, the City and the District entered into a five-year Interlocal Agreement ("Original Agreement") regarding the increased hillside runoff in the Marshland Drainage Basin due to upland development;

**C.** On September 18, 2017, the County, the City, and the District executed Amendment No. 1 ("Amendment No. 1") to the Original Agreement which, among other things, extended the term of the Original Agreement through the 2018 calendar year;

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

**E.** The County, the City, and the District wish to amend the Interlocal Agreement a second time via this amendment to extend the term through the 2019 calendar year allowing the parties additional time to consider negotiating a new agreement;

**F.** It is the County, the City, and the District's intent that this Amendment No. 2 only extend the term of the Original Agreement through December 31, 2019, and that all other substantive terms in the Original Agreement, as amended by Amendment No. 1, remain in effect through December 31, 2019.

NOW, THEREFORE, for and in consideration of the mutual benefits conferred on all three parties, the parties agree as follows:

**Section 1** Section 1 "TERM" last amended by Amendment No. 1, is deleted and replaced with the following:

1. TERM

1.1 Condition Precedent – RCW 39.24.040

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 seven (7) calendar years: 2013, 2014, 2015, 2016, 2017, 2018, and 2019. The period covering the calendar years 2013 through 2017 shall be referred to in this Agreement as the “Original Term,” the period covering calendar year 2018 shall be referred to in this Agreement as the “2018 Original Term Extension,” and the period covering calendar year 2019 shall be referred to in this Agreement as the “2019 Original Term Extension.” The Term shall commence on the Execution Date and expire when the true-up required by Section 10 has been performed for calendar year 2019 (the “Expiration Date”). Notwithstanding anything to the contrary contained elsewhere in this Agreement, the County’s obligations after December 31, 2013, 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 17.

**Section 2** The proviso added to the Original Agreement by Amendment No. 1 in Subsection 5.1 “County Increased Hillside Runoff Operating Cost Contributions” is amended to read:

PROVIDED, that during the 2018 Original Term Extension and the 2019 Original Term Extension, that Payment shall be made on or before March 31 of the calendar year at issue, or within sixty (60) days after receiving an invoice for payment, whichever is later.

**Section 3** The proviso added to the Original Agreement by Amendment No. 1 in Subsection 5.2 “City Increased Hillside Runoff Operating Cost Contributions” is amended to read:

PROVIDED, that during the 2018 Original Term Extension and the 2019 Original Term Extension, that Payment shall be made on or before March 31 of the calendar year at issues, or within sixty (60) days after receiving an invoice for payment, whichever is later.

**Section 4** The proviso added to the Original Agreement by Amendment No. 1 in Subsection 7.1 “Anticipated Ditch, Pond and Canal Operating Costs Attributable to Increased Hillside Runoff” is amended to read:

PROVIDED, that during the 2018 Original Term Extension and the 2019 Original Term Extension, that approximately seventy-two and sixty-four hundredths percent (72.64%) of the District's Ditch, Pond and Canal Operating Costs will be allocable to sediment from Increased Hillside Runoff.

**Section 5** Subsection 7.2 "Anticipated Pump Plant O&M Operating Costs Attributable to Increased Hillside Runoff" of the Original Agreement last amended by Amendment 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that, for 2019, twenty-three and twenty hundredths percent (23.20%) of the District's Pump Plant O&M Operating Costs will be attributable to additional surface water flow that comes into the Marshland Drainage Basin from Increased Hillside Runoff.

**Section 6** Subsection 7.3 "Anticipated Pump Electricity Operating Costs Attributable to Increased Hillside Runoff", last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that, for 2019, twenty-three and twenty hundredths percent (23.20%) 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.

**Section 7** Subsection 9.3 "Amount of Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution," last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that, for 2019, twenty-three and twenty hundredths percent (23.20%) of the District's pump-related Operating Costs will be 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 for the calendar year 2019, to allocate responsibility for twenty-three and twenty hundredths percent (23.20%) of the annual Pump Plant Capital Improvement Fund Contribution to the Upland Area. Twenty-three and twenty hundredths percent (23.20%) 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 for 2019."

**Section 8** Subsection 9.4 "Amount of the County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment," last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that the County's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution for 2019 shall be equal to sixty-nine percent

(69%). Sixty-nine percent (69%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals approximately Seven Thousand Sixty-Seven Dollars (\$7,067). Accordingly, the "County's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" shall be equal to Seven Thousand Sixty-Seven Dollars (\$7,067).

**Section 9** Subsection 9.5 "Amount of the City's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment," last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that the City's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution for 2019 shall be equal to thirty-one percent (31%). Thirty-one percent (31%) of Ten Thousand Two Hundred Forty Two Dollars (\$10,242) equals approximately Three Thousand One Hundred Seventy-Five Dollars (\$3,175). Accordingly, the "City's Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution Payment" shall be Three Thousand One Hundred Seventy-Five Dollars (\$3,175).

**Section 10** Subsection 9.6 "Amount of the District's Pump Plant Capital Improvement Fund Contribution," last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that the portion of the annual Pump Plant Capital Improvement Fund Contribution that is not allocable to the Upland Area pursuant to Section 9.3 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 2019.

**Section 11** Subsection 11.3.2, last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that 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 7.1 and Section 8 above.

**Section 12** Subsection 11.3.3, last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that if any portion of the Grant Funds is used for Pump Plant O&M Operating Costs, then twenty-three and twenty hundredths percent (23.20%) 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 7.2 and Section 8 above.

**Section 13** Subsection 11.3.4, last amended by Amendment No. 1, is amended to add the following:

ALSO PROVIDED, that during the 2019 Original Term Extension, the parties agree that if any portion of the Grant Funds is used for Pump Electricity Operating Costs, then twenty-three and twenty hundredths percent (23.20%) 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 7.3 and Section 8 above.

**Section 14** Exhibit G. "Calculation Sheet for Anticipated Cost and True-Upping" attached here to and by reference made part of the Original Agreement, replaces Exhibit G that was attached to Amendment No. 1.

**Section 15.** All other terms and conditions of the Original Agreement, as amended by Amendment No. 1, shall remain in full force and effect except as expressly modified by this Amendment No. 2.


IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 as of the day and year first written above.

**(The remainder of the page left intentionally blank.)**



**COUNTY:**

Snohomish County, a political subdivision of the State of Washington

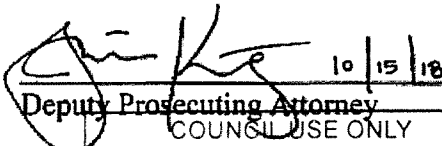
By   
Name: ERIC PARKS  
Title: DEPUTY EXECUTIVE

**DISTRICT:**

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

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairperson of District Commissioners


**Approved as to Form:**

 10/15/18  
Deputy Prosecuting Attorney  
COUNCIL USE ONLY  
Approved: 12.12.18  
Docfile: D-17

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: District Commissioner

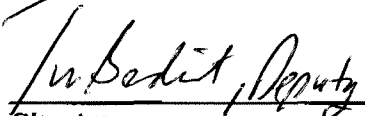
**CITY:**

City of Everett, a Washington municipal corporation.

By   
Name: Cassie Franklin  
Title: Mayor

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: District Commissioner

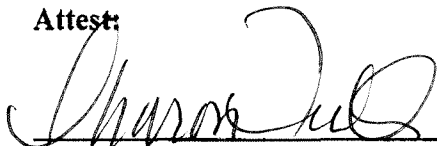
**Approved as to Form:**

  
City Attorney

**Approved as to Form:**

\_\_\_\_\_  
Attorney for the District

**Attest:**

  
City Clerk

**COUNTY:**

Snohomish County, a political subdivision of the State of Washington

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to Form:**

 10 | 15 | 18  
Deputy Prosecuting Attorney

**CITY:**

City of Everett, a Washington municipal corporation.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Approved as to Form:**

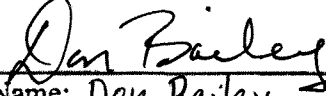
\_\_\_\_\_  
City Attorney

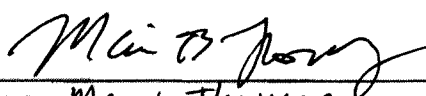
**Attest:**

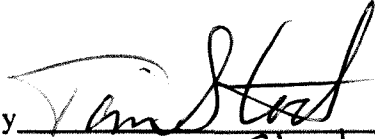
\_\_\_\_\_  
City Clerk

**DISTRICT:**

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

By  \_\_\_\_\_  
Name: Don Bailey  
Title: Chairperson of District Commissioners

By  \_\_\_\_\_  
Name: Marv Thomas  
Title: District Commissioner

By  \_\_\_\_\_  
Name: Tim Stocker  
Title: District Commissioner

**Approved as to Form:**

 \_\_\_\_\_  
Attorney for the District

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

| YEAR | CPI<br>¶6.3 | PV Adjust<br>Exh E | Ditch, Pond &<br>Canal; ¶7.1 | PV Adjust<br>Exh E | Pump Plant<br>O&M; ¶7.2 | PV Adjust<br>Exh E | PUD<br>¶7.3 | PV Adjust<br>Exh E |
|------|-------------|--------------------|------------------------------|--------------------|-------------------------|--------------------|-------------|--------------------|
| 2014 | 246.018     |                    | 98,439                       |                    | 11,886                  |                    | 80,232      |                    |
| 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 |             | 0.000              |                              |                    |                         |                    |             |                    |
|      |             |                    | <b>TOTALS</b>                |                    |                         |                    |             |                    |
|      |             |                    |                              | <u>÷ 5</u>         |                         | <u>÷ 5</u>         |             | <u>÷ 5</u>         |
|      |             | ¶6.2               | 5 yr avg                     |                    |                         |                    |             |                    |
|      |             |                    |                              | <u>x .7264</u>     |                         | <u>x .232</u>      |             | <u>x .232</u>      |
|      |             |                    | Upland Share                 |                    |                         |                    |             |                    |
|      |             |                    |                              | <u>x .69</u>       |                         | <u>x .69</u>       |             | <u>x .69</u>       |

County Share  
City Share (.31)

|  |  | County  | City |
|--|--|---------|------|
|  | <b>Payments Due March 31 (¶s 5.1 &amp; 5.2),<br/>or 60 days after invoice (whichever is later)</b> |         |      |
|  | ¶7.1   |         |      |
|  | ¶7.2   |         |      |
|  | ¶7.3   |         |      |
|  | <b>TOTAL</b>   |         |      |
| <b>True Up for PUD due March 31; (¶10)<br/>or 60 days after invoice (whichever is later)</b> |  |         |      |
| 2018 Cost  | \$ 0   |         |      |
| 5 Yr Avg (2017)  | <u>(89,276)</u>  |         |      |
| Deficit/Excess   |  |         |      |
| X  | <u>.232</u>  |         |      |
|  |  |         |      |
| X  | <u>.69</u>   |         |      |
| County Share   |  | \$      |      |
| City Share (.31)   |  | plus \$ | = \$ |

True-Upping Deficit/Excess