EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

PROJECT TITLE:
Interlocal Agreement for the Smith Island Restoration Project

X	Briefing	COUNCIL BILL #	
	Proposed Action	Originating Department	Public Works
	Consent	Contact Person	Jim Miller
X	Action	Phone Number	425-257-8880
	First Reading	FOR AGENDA OF	June 15, 2016
	Second Reading		
	Third Reading		
	Public Hearing		
	Budget Advisory		

Initialed by:
Department Head
CAA ab
Council President

Location	**Preceding Action**	**Attachments**	**Department(s) Approval**
Smith Island north of City's Treatment Plant		Agreement	Legal, Public Works

Amount Budgeted	2,100,000.	
Expenditure Required	683,900.	Account Number(s):UP 3435
Budget Remaining	1,416,100.	
Additional Required	-0-	

DETAILED SUMMARY STATEMENT:

Snohomish County has been planning a large scale wetlands restoration project on Smith Island for at least the past decade. The City has land adjacent to this proposed project that it wants to also restore in order to gain credits for future project mitigation needs. See page 21 of the agreement for a map of these areas.

The County and City determined it was most efficient for both parties to merge their two projects into one wetland/estuary project. Therefore, an Interlocal Agreement (ILA) was developed that includes the County studying, planning, designing, and constructing certain jointly needed facilities. The total cost for this work is estimated to be $4.13 million. The City's share is not to exceed $670,000 based on the City's restoration area of 49.43 acres constituting about 13% of the total 381.59 acres being restored.

In addition, the City would pay the County $13,900 for the conveyance of some real property interests that the County may have on City lands south of 12th St. NE.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign an Interlocal Agreement with Snohomish County for the Smith Island Restoration Project in the amount of $683,900.

INTERLOCAL AGREEMENT
FOR THE SMITH ISLAND RESTORATION PROJECT
BY AND BETWEEN
SNOHOMISH COUNTY AND THE CITY OF EVERETT

THIS AGREEMENT is entered into this _____ day of _____, 2016, by and between the CITY OF EVERETT (hereinafter the "City") and SNOHOMISH COUNTY (hereinafter the "County") pursuant to the RCW 39.34.

WHEREAS, RCW 39.34 (Interlocal Cooperation Act) permits local governments to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, and thereby provide facilities that meet the needs of local communities; and

WHEREAS, the County is in the process of undertaking a large scale wetland restoration project, commonly known as the Smith Island Restoration Project (the "Smith Island Project"), which, as described below, will restore approximately 400 acres of estuarine/intertidal wetlands in the Snohomish River Estuary, as part of a basin-wide effort to recover endangered Chinook salmon and other salmonid species in the Snohomish River Basin; and

WHEREAS, the approximate location of the Smith Island Project is shown on the diagram map attached to this Agreement as Exhibit A; and

WHEREAS, as shown in Exhibit A, the County owns the majority of the Smith Island Project site (the majority area, henceforth referred to as "Smith Island-County"), and City owns property on the south end of the Smith Island Project site (henceforth referred to as "Smith Island-City"); and

WHEREAS, the County is responsible for the wetland restoration on the Smith Island-County area primarily for the purpose of habitat uplift; and

WHEREAS, the City is responsible for the wetland restoration on the Smith Island-City area primarily for the purpose of aquatic habitat mitigation; and

WHEREAS, the Smith Island Project requires removal and relocation of a portion of the existing system of diking improvements within Diking Improvement District No. 5 of Snohomish County (also known as Diking District No. 5 and hereafter, the "District") as currently abutting and/or located upon property owned by the County and the City as shown on Exhibit A attached hereto; and

WHEREAS, the County has petitioned and enacted the alteration of the system of improvements for the District in accordance with RCW 85.08.540 to build the County setback dike and breach the existing dike along Union Slough north of 12th Street NE; and

WHEREAS, the City and the District entered into a settlement agreement effective November 22, 2002, whereby the District agreed to quitclaim to the City its easements for existing dikes located adjacent to Union Slough, between 12th Street NE and 4th Street SE and convey whatever property interest the District has in such dikes; and

WHEREAS, the District quit claimed all its right title and interest in real estate, dikes, levees or other property located adjacent to Union Slough, between 12th Street NE and 4th Street SE by deed recorded under AFN 200303030331; and

WHEREAS, some dikes, levees or other property located adjacent to Union Slough, between 12th Street NE and 4th Street SE are within an area the City proposes to use for advanced mitigation; and

WHEREAS, the City desires the County to quitclaim property interest it holds per deeds recorded under AFN 511128 and AFN 536725 for dikes located adjacent to Union Slough, between 12th Street NE and 4th Street SE and to convey whatever property interest it holds in the former and existing dikes; and

WHEREAS, the County and the City desire to coordinate and otherwise allocate responsibility for construction and related costs associated with the Smith Island Project; and

WHEREAS, the City has already completed permitting and will be responsible for construction of the new setback dike on the Smith Island-City area as part of a previous program separate from the Smith Island Project, as more fully depicted in Exhibit A, with exception to the dike connection between the County's and City's setback dikes; and

WHEREAS, the County has completed permitting for building that portion of the new setback dike along all other portions of the Smith Island Project (the "County Setback Dike") in the Smith Island-County area, as more fully depicted in Exhibit A; and

WHEREAS, the County will also be responsible for performing the design and construction of the dike connection between the County Setback Dike and the City Setback Dike; and

WHEREAS, the County has already completed permitting for dike breaching and construction of channels in the Smith Island-County area; and

WHEREAS, City has not yet completed permitting for dike breaching and construction of channels in the Smith Island-City area; and

WHEREAS, the County and the City intend to work jointly to bid and manage dike breaching and construction of channels; and

WHEREAS, the City will benefit from the restoration work to occur on the City property located within the Smith Island Project; and

WHEREAS, the City therefore desires to share in the cost of certain elements of the Smith Island Project up to a maximum of $670,000, based on the City's share of the Smith Island Project area and based on work done and to be done on City property by the County; and

WHEREAS, the Smith Island Project is a unique opportunity to restore wetlands, and presents unique challenges to funding, design, construction, and long term monitoring and maintenance, requiring an adaptive partnership between the City and County; and

WHEREAS, in November 2015 the County adopted the 2016 Surface Water Management Annual Construction Program which includes the Project;

WHEREAS, the County and the City desire to see the Smith Island Project completed as a major salmon restoration project in the Snohomish River estuary; and

WHEREAS, the County and the City desire to coordinate dike and drainage improvements on Smith Island with the District; and

WHEREAS, the City and the County desire to execute an interlocal agreement under which they cooperate to share costs and implement elements of the Smith Island Project of mutual interest;

WHEREAS, the City is in the process of annexing certain portions of Smith Island in order to expedite its portion of the Smith Island project by bringing City-owned property in the County into the City limits of Everett;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is agreed:

Section 1. Smith Island Project: Shared Work and Breach and Related Work

The Smith Island Project consists of two parts, "Shared Work" and "Breach and Related Work," as defined below:

1.1 Shared Work – The Shared Work of the Smith Island Project is items contained in the table in the attached Exhibit B. As described in detail below, the County is generally responsible for the pre-design, design and construction of the Shared Work, with the City contributing a portion of the costs, up to a maximum of $670,000.

1.1.1 Specific Inclusions – For the purposes of clarity, the parties agree that Shared Work also includes the following:

1.1.1.1 Dike Connection – Because it is anticipated that the City setback dike will be constructed prior to the County setback dike, and because the City and the County setback dikes are anticipated to end at the north right of way line of 12th Street

Northeast, a connection is required between the two setback dikes (the "Dike Connection"). The Dike Connection is included in Shared Work and is the joint connection between the City and the County setback dikes for the purpose of providing a smooth, seamless transition between the two dikes.

1.1.1.2 Protection Berm, for the regional gas pipeline on Smith Island

1.1.1.3 Adaptive management, which will continue after the completion of Smith Island Project.

1.1.2 Specific Exclusions from Shared Work – For the purposes of clarity, the parties agree that Shared Work does not include the following:

1.1.2.1 Ditch filling in the Smith Island-County area

1.1.2.2 Internal restoration elements

1.1.2.3 Work on City property, except for the Dike Connection

1.1.2.4 Any dike Breach and Related Work

1.1.2.5 Any removal of 12th Street

1.1.2.6 Ditch filling in the Smith Island-City area.

1.2 Breach and Related Work – The Breach and Related Work of the Smith Island Project is work related to two dike breaches in the Smith Island-County area and one dike breach in the Smith Island-City area, including related drainage, and channel work. The Breach and Related Work may also include some or all of the items excluded from Shared Work under Section 1.1 above. In general, the City is responsible for Breach and Related Work in Smith Island-City area, and the County is responsible for Breach and Related Work in Smith Island-County area. However, as described below, the parties intend that the County will bid and construct the Breach and Related Work in Smith Island-City area. In accordance with Section 2.10 below, construction by the County within the Smith Island-City area will also be subject to amendment to this Agreement or separate agreement identifying additional terms of such construction responsibilities, with the City reimbursing the County in full for such work. So as not to unreasonably delay the County's Breach and Related Work, the City will seek to obtain all permits for this work no later than the first quarter of 2017.

Section 2. County Responsibilities.

2.1 Funding – The County will be responsible for:

2.1.1 Assembling funding from grants, mitigation projects, and County sources for the Smith Island Project, with the exception of the City's share of Smith Island Project costs as set forth in this Agreement.

2.1.2 All Shared Work costs not allocated to the City under this Agreement, as shown in Exhibit B. This is in addition to County responsibility for costs for work in the Smith Island-County area, including the County setback dike and drainage.

2.1.3 All Breach and Related Work costs for work in Smith Island-County area.

2.2 SEPA Review – The City and County acknowledge that the County has acted as lead for conducting the SEPA environmental review for the Smith Island Project, including but not limited to EIS, special studies, and appeals. A copy of the lead agency agreement between the City and the County concerning the Smith Island Project is attached as Exhibit E. The Final EIS was issued December 2013.

2.3 Design –

2.3.1 Shared Work – The County is responsible for all Shared Work design. This design work will be done in accordance with Section 4 below. For the purposes of clarity, the parties agree that, in addition to the other Shared Work elements, the design will include:

2.3.1.1 Dike Connection – The County shall design the Dike Connection in collaboration with the City as set forth in Section 4 below.

2.3.1.2 Pipeline Protection Berm – The County shall design the pipeline protection berm, which protects the gas line structures on County property. The County design and maintenance of the berm must take into account the three dike breaches anticipated in Breach and Related Work.

2.3.2 Breach and Related Work – The County is responsible for the design of the Breach and Related Work in the Smith Island-County area. This design work will be done in accordance with Section 4 below. The County is not responsible for design for Breach and Related Work in the Smith Island-City area.

2.4 Permitting – The County will obtain all necessary permits for work to be completed by County contractors and for permit compliance in the Smith Island-County area. The City will assist the County in obtaining permits for the Dike Connection in the Smith Island-City area. The County will be responsible for obtaining and complying with all permits, including City permits. The County will obtain a City ROW Use Permit for construction of the Dike Connection on 12th Street NE.

2.5 District Separate Agreement – The County shall be responsible for the implementation of any separate agreement with the District in connection with the Smith Island Project, as it relates to the Smith Island-County area.

2.6 Public Outreach – The County will support the City on public outreach efforts, including but not limited to the following by way of illustration:

- Attend City meetings to promote the Smith Island Project
- Represent the County in such meetings as partner on the Smith Island Project

2.7 Access – Should easements be needed for access to County property, and such access is not possible via City or County property, the County will obtain all such easements and associated agreements.

2.8 Construction –

2.8.1 Shared Work – The County shall construct the Shared Work with County contractors. For the purposes of clarity, the City and County agree that the County is responsible for the construction of the Dike Connection in the Smith Island-City area. The County will include the Dike Connection in the County's bid package with the County's setback dike construction.

2.8.2 Breach and Related Work – The County shall construct the Breach and Related Work of the Smith Island-County property. The parties intend that the County will construct the Breach and Related Work in Smith Island-City area with County contractors. The City and County agree that County will construct such work on behalf of the City, subject to reimbursement and other matters in Exhibit C and also subject to an additional amendment to this Agreement or separate agreement in accordance with Section 2.10 below.

2.8.2.1 Breach Coordination – The parties agree that neither party nor its contractors will breach a dike without the prior approval of the other party; it is the intent of the City to obtain all permits for Breach and Related Work in Smith Island-City area no later than the first quarter of 2017. The purpose of this is to avoid breaches occurring in an uncoordinated manner or prior to completion of breach preparations and interior channels.

2.8.3 City Materials – If offered by the City, the County may at its discretion elect to receive materials from the City as in-kind contribution towards the City's share of the cost for Shared Work or as part of the City's reimbursement for County construction of Breach and Related Work in Smith Island-City area. Such materials shall be valued at the City's cost of obtaining such materials or as otherwise agreed in writing by the parties.

2.9 Other Permit Requirements for Monitoring – The County is not responsible for additional monitoring or maintenance that may be required of the City or other party, public or private, for wetland requirements of other permits that are not a

part of the Smith Island Project and are not County permits. However, the County will monitor the pipeline protection berm as required in any agreement that the County may have with the pipeline owner.

2.10 Work in Addition to Shared Work–

2.10.1 In General. At the City's request, the County may perform additional tasks for the City not included in Shared Work, to be paid for by the City, which shall be subject to a prior written agreement substantially in the form used in past City-County projects. Compensation for such additional work will be addition to the compensation provided by the City to the County for Shared Work. The scope of such subsequent agreement may include but not be limited to bidding, award and construction management, permit compliance and for any such tasks in addition to this Agreement, the cost share percentage shall be agreed to in writing for each task specifically stated in such agreement. Examples of such an agreement would be an additional agreement regarding Breach and Related Work on Smith Island-City property per Section 2.10.2 below, maintenance and monitoring services at agreed upon levels and rates for improvements which have maintenance and/or monitoring requirements.

2.10.2 Breach and Related Work. The parties have agreed, as set forth in this Agreement, that the Breach and Related Work will be constructed by the County in the Smith Island-City Area at the City's expense. The parties will in good faith negotiate and execute an amendment to this Agreement or a separate agreement containing any additional terms and conditions for such work. The purpose of such an amendment or separate agreement is not to re-negotiate the provisions contained in this Agreement, but is instead to address any additional administrative or other matters not dealt with in this Agreement or matters that may arise after the execution of this Agreement. The parties intend that all such additional matters in the amendment or agreement will be addressed in substantially the same manner as in past City-County construction agreements.

2.11 County Interest in Property and Dikes/Past Work

2.11.1 Conveyances. To facilitate City permitting of the Breach and Related Work in the Smith Island-City area, within six months after the execution of this Agreement the County shall ratify, affirm and convey to the City by quit claim deed all real property interests the County holds per deeds recorded under AFN 511128 and AFN 536725 for dikes located adjacent to Union Slough, between 12th Street NE and 4th Street SE, which also includes any property interest the County holds in the former and existing dikes, this being property to which the District previously conveyed its interest to the City pursuant to that deed recorded under AFN 200303030331, a recorded copy of which is

attached as Exhibit F. The City acknowledges that the County real property interests to be conveyed to the City by the County may be subject to certain title restrictions, and the City will take such property interests subject to the same restrictions. The County acknowledges and agrees that upon such conveyance from County to City the former and existing dikes located adjacent to Union Slough, between 12th Street NE and 4th Street SE, are no longer part of the District system of improvements and therefore not subject to further County approval under Chapter 85.08 RCW regarding the Breach and Related Work. In addition, the County withdraws any objection it may have to the past conveyance from the District to the City (i.e. AFN 200303030331).

Section 3. City Responsibilities

3.1 Funding –

3.1.1 Shared Work – Subject to the City Maximum Shared Work Obligation defined below, the City will be responsible for the following funding toward the Shared Work:

3.1.1.1 Proportionate share of SEPA and Studies to Support SEPA Costs identified in Exhibit B.

3.1.1.2 The City's proportionate share portion of those General Shared Costs (as defined and shown in Exhibit B) incurred by the County after December 31, 2011, as provided for in Exhibit B, and otherwise provided for in this Agreement. The City agrees to timely remit payment to the County for the City's proportionate share portion of all General Shared Costs as provided in Exhibit B.

3.1.1.3 Reimbursement for Dike Connection costs incurred by the County for work performed upon the City property as provided in Exhibit B.

3.1.1.4 Payment of $13,900 to the County upon conveyance of the County property set forth in Section 2.11 above.

3.1.2 The City's total maximum obligation to reimburse or otherwise pay the County under this Agreement for Shared Work will not exceed a total amount of $670,000 ("City Maximum Shared Work Obligation") For purpose of clarity, the parties agree that this $670,000 does not include the $13,900 to be paid separately by the City to the County pursuant to sub-section 3.1.1.4 above.

3.1.3 Breach and Related Work – The City will be responsible for funding Breach and Related Work in the Smith Island-City area, in accordance with Exhibit C.

3.2 SEPA Review – The City will cooperate with the County in supporting the SEPA process for the Smith Island Project referenced in Section 2.2, including City staff assistance in all work contributing to preparation of the Final EIS and work involved in responses to any challenges, excluding actual legal costs.

3.3 Design of Smith Island Project – The City is responsible for the design of Breach and Related Work in the Smith Island-City area. This design is in accordance with Section 4 below. The City is not responsible for design of any Shared Work and the City is not responsible for design of Breach and Related Work in the Smith Island-County area.

3.4 Permitting of Smith Island Project – The City will obtain all necessary permits for work to be completed in the Smith Island-City area. Since it is intended that the County will perform construction of Breach and Related work in the Smith Island-City area, County contractor compliance with such permits will be addressed by amendment to this agreement or separate agreement per Section 2.10. The County will assist the City in obtaining such permits for County contractor work as applicable in the Smith Island-City area.

3.5 Construction of Smith Island Project –

3.5.1 Shared Work. The City will cooperate with the County in the County's construction of the Shared Work. In connection with the Dike Connection, the City will provide the County with the City's available compaction results.

3.5.2 Breach and Related Work. The City will cooperate with the County in the County's construction of the Breach and Related Work. The City will comply with Exhibit C with respect to the County's construction of Breach and Related Work in the Smith Island-County area.

3.6 Public Outreach – The City will support the County on public outreach efforts, including but not limited to the following by way of illustration:

- Attend County meetings to promote the Smith Island Project
- Represent the City in such meetings as partner on the Smith Island Project

3.7 Access – Should easements be needed for access to City property, and such access is not possible via City or County property, the City will obtain all such easements and associated agreements.

3.8 Prior Completion of City Setback Dike, Breach and Starter Channels – The parties acknowledges that the City is completing certain work on City property in Smith Island, relating to the City setback dike and drainage. This work is not part of the Smith Island Project, but is closely related to it. The City will be completely responsible for the design, permitting and construction and associated costs of all such work on City property, including but not limited to the following: funding, SEPA review, design, design coordination with the

County, permitting, any separate agreement between the City and District, public outreach, access, construction, monitoring and maintenance.

3.8.1 The City setback dike shall be completed before the County completes construction of its setback dike.

3.9 District Separate Agreement - The City shall be responsible for the implementation of any separate agreement with the District in connection with the Smith Island Project, as it relates to the City property.

Section 4. Design and Data Coordination

4.1 Design. When a party is assigned design responsibility under this Agreement for Shared Work or Breach and Related Work, that party will cooperate with the other party and will allow the other party to review and comment. The designing party will not proceed with a design without the approval of the other party, which approval will not be unreasonably withheld, or delayed. The parties agreed that designs that have reached 100% by the date of this Agreement are deemed approved.

4.2 Data. The parties agree that data sharing is critical to project success and efficiency. Accordingly, each party will provide the other party with its design materials upon request. For example, each party will provide to the other party upon request its CAD drawings in CAD format and will provide Smith Island GIS data.

Section 5. Payments

5.1 Payments by City

On or after the effective date of this Agreement, the County shall bill the City for the proportionate share (13.0%) of Smith Island Project SEPA and studies to support SEPA costs. The County shall bill the City for Shared Work expenses incurred thereafter as per paragraph 1.4.5 of Exhibit B. The County shall bill the City for Breach and Related Work expenses on Smith Island-City incurred thereafter in accordance with Exhibit C.

Section 6. Project Management and Coordination

6.1 Project Management

The County, having responsibility for performing the Shared Work, shall have day to day project management responsibility for these work items. The County and City will designate specific responsibilities as required for Breach and Related Work.

6.2.1 The County and City shall meet as necessary for the purposes of the Smith Island Project.

6.2 Communication. Both the City and County agree to work in good faith to implement the Shared Work and the Breach and Related Work, and to adapt to work conditions as appropriate within the framework of this Agreement.

6.2.1 Design communication and coordination

- The County will actively involve the City in communications on the Smith Island Project design.
- The City will note any objections in a timely manner, and work with the County on reconciling issues.

6.3 Correction for Defective Work

6.3.1 The County, as lead entity, shall be responsible for undertaking any repair or correction necessary as a result of any defect in design, workmanship or materials in the performance of the Shared Work; Provided, however, any additional cost incurred by the County to the extent that the costs are not recoverable by the parties in correcting such work shall be shared by the parties as a General Shared Cost in accordance with Exhibit B, subject to the City Maximum Shared Cost Obligation.

6.3.2 The City and County, or their respective contractors, shall each be separately responsible for repair or correction to any defect in design, workmanship or materials relating to the respective portions of the setback dikes in the Smith Island-County and Smith Island-City area, and associated work within the Smith Island Project site as required for those setback dikes.

6.4 Costs Unanticipated by this Agreement

6.4.1 The County and City shall quarterly review the Smith Island Project costs to the extent of costs incurred by each party not contemplated by this Agreement but related to an aspect of the work in the Agreement. The parties may meet more frequently as needed.

Section 7. Access to Property

To ensure the County and City are able to promptly and efficiently perform the services and execute the responsibilities in this Agreement, the parties mutually agree to the following:

7.1 City Access to County Property.

The County agrees to provide the City with reasonable access to all properties and regions under their ownership in the Smith Island Project, including any adjacent or adjoining properties over which access is reasonably necessary, until such time as the City's services have been completed and responsibilities

fulfilled according to this Agreement, subject to applicable City requirements. In particular, the County will grant by separate right of entry, in the County's usual and customary form, to City access to County property as necessary for completion of the Breach and Related Work in the Smith Island-City area.

7.2 County Access to City Property.

The City agrees to provide the County with reasonable access to all properties and regions under their ownership in the Smith Island Project, including any adjacent or adjoining properties over which access is reasonably necessary, until such time as the County's services have been completed and responsibilities fulfilled according to this Agreement, subject to applicable County requirements. In particular, the City will grant by agreement in accordance with Section 2.10 access to City property as necessary for completion of the Breach and Related Work in the Smith Island-City area. The County will obtain a City ROW Use Permit, in the City's usual and customary form, for construction of the Dike Connection on 12th Street NE.

Section 8. Dispute Resolution

8.1 Disputes that are not resolved at a working level shall be referred to senior management of each party by either Everett's Project Manager or Snohomish County's Project Manager. Within fifteen (15) days of such referral, each party shall designate one senior manager with authority to resolve the matter in dispute. Senior managers may jointly retain consulting engineers or other experts or facilitators to make recommendations to them, the costs for which shall be shared equally between the County and the City. However, either party may independently retain consultants or experts, provided that the retaining party is responsible for all such costs.

8.2 If the respective senior managers cannot reach agreement within thirty (30) days of receiving a referral, they may initiate either: (i) a fifteen (15) day cooling-off period, or (ii) voluntary non-binding mediation by a mutually agreed-upon mediator. The parties intend that any mediation process or any cooling-off period followed by further negotiations be completed within ninety (90) days of senior managers' receiving the referral.

8.3 If the parties choose to have the dispute mediated, a mediator shall be selected from a pool of mediators who have mediated disputes involving similar issues in the past and who devote a significant portion of their practice to handling mediations or arbitrations, with preference for those who would be available within ninety (90) days of senior management receiving the referral. If the parties cannot reach an agreement on the selection of the mediator within ten (10) days of senior management receiving the referral, either party may apply to the Superior Court of Snohomish County to have the mediator appointed by a judge or commissioner of that court.

8.4 If the parties are still unable to resolve the dispute, either party may file a lawsuit in the Superior Court in Snohomish County.

Section 9. Miscellaneous

9.1 Liability

No liability shall be attached to the City or the County by reason of entering into this Agreement except as expressly provided herein. The City shall hold the County harmless and defend at its expense any legal challenges to the City's requested mitigation and/or allegations alleging failure by the City to comply with chapter 82.02 RCW. The County shall hold the City harmless and defend at its expense any legal challenges to the County's requested mitigation and/or allegations alleging failure by the County to comply with chapter 82.02 RCW

9.2 Indemnification and Hold Harmless

9.2.1 The County shall protect, save harmless, indemnify, and defend at its own expense, the City, its elected and appointed officials, officers, employees and agents from any loss or claim for damages of any nature whatsoever arising out of any act or omission of the County, its officers, directors, agents, employees or contractors arising out of or related to the County 's performance of this Agreement, including claims by the County's agents, employees or third parties, except for those damages to the extent caused by the negligence or willful misconduct of the City, its elected and appointed officials, officers, employees, or agents. For the purpose of this indemnification, the County waives its immunity, as respects the City only, under any industrial insurance act, including Title 51 RCW, or other Worker's Compensation act. The parties have mutually negotiated this waiver.

9.2.2 The City shall protect, save harmless, indemnify and defend, at its own expense, the County, its elected and appointed officials, officers, employees and agents, from any loss or claim for damages of any nature whatsoever arising out of any act or omission of the City, its officers, directors, agents, employees or contractors arising out of or related to the City's performance of this Agreement, including claims by the City's agents, employees or third parties, except for those damages to the extent caused by the negligence or willful misconduct of the County, its elected and appointed officials, officers, employees, or agents. For the purpose of this indemnification, the City waives its immunity, as respects the County only, under any industrial insurance act, including Title 51 RCW, or other Worker's Compensation act. The parties have mutually negotiated this waiver.

9.3 Compliance with Laws.

The parties agree that this Agreement shall not relieve them of any obligation, authority or responsibility imposed upon them by law. Each party shall comply with all applicable federal, state, and local laws, rules, and regulations in performing the Agreement including, but not limited to, laws against discrimination.

9.4 Amendments and Extensions

This Agreement shall constitute the full and complete agreement between the parties. However, the City and County recognize that amendments to this Agreement may be necessary to clarify particular sections or to update and expand the Agreement, including but not limited to project management, construction management, and other additional work. Therefore, either party may pursue an amendment, as necessary. The Agreement may be amended, altered, clarified, or extended only by written agreement of both parties, and shall be addended to this Agreement and recorded by the County Auditor or listed on the public agency's website in the same manner as the filing of the original Agreement.

9.5 Effective Date

This Agreement shall become effective following the approval of the Agreement by the official action of the governing bodies of each of the parties hereto and the signing of the Agreement by the duly authorized representative of each of the parties hereto.

9.6 Duration

This Agreement shall remain in force until five [5] years after construction is completed on the Smith Island Project, defined as full acceptance of the project by the County as defined in the bid award, or completion of monitoring or end of Adaptive Management, whichever is later.

9.7 Direction and Control

The parties agree that each party will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the other. The parties agree that each party is not entitled to any benefits or rights enjoyed by employees of the other. Each party specifically has the right to direct and control its own activities in providing the agreed services in accordance with specifications set out in this agreement. The other party shall only have the right to ensure performance.

9.8 Non-Assignment

Each party shall not subcontract, assign or delegate any of the rights, duties, or obligations covered by this Agreement without the prior express written consent of the other party.

9.9 Access to Books/Records

Each party may, at reasonable times, inspect the books and records of the other party relating to performance of this Agreement. Each party shall keep all records required by this Agreement for five years after termination of this Agreement for audit or inspection by the other party.

9.10 Disposing of Assets

The County and City shall each provide the other with a copy of all significant reports, plans, and other products produced in conjunction with this Agreement. Both parties shall have joint right of use of said documents without restriction.

9.11 Contingency and Termination in the Event of Lack of Funding

The obligations of the County and City in this Agreement are contingent on the availability of funds through legislative appropriation and allocation in accordance with law.

In the event funding is withdrawn, reduced or limited in any way after the effective date of this contract, the County or City may terminate the contract as follows, subject to renegotiation under those new funding limitations and conditions:

9.11.1 Either party may terminate its obligations under this Agreement upon 90 days advance written notice to the other party and subject to the following condition.

9.11.2 Following a termination, the County and City are mutually responsible for fulfilling any outstanding obligations and costs incurred under this Agreement prior to the effective date of the amendment or termination.

9.12 Limitations on Authority

The parties understand that this Agreement does not impose on them in any obligation to exercise the authority or perform the functions of the other; and that neither party is relieved by this Agreement of any obligation or responsibility impressed upon it by law, except to the extent that actual and timely performance thereof is accomplished by the performance by both parties under this Agreement.

9.13 Severability

If any provision of this agreement or its application to any person or circumstance is held invalid, the remainder of the provisions and/or the application of the provisions to other persons or circumstances shall not be affected.

9.14 Administrators and Notices

The persons responsible for administering this Agreement are listed below. All notices required to be given under this agreement shall be in writing and shall be delivered to the Administrators for this Agreement. Notices sent by registered mail shall be deemed served when deposited in the U. S. Mail.

SNOHOMISH COUNTY:

Will Hall, Director
Surface Water Management Division
Snohomish County Public Works Department
3000 Rockefeller Avenue, M/S 607
Everett, WA 98201

Telephone: (425) 388- 6410
Facsimile: (425) 388- 6455
Email: will.hall@snoco.org

CITY OF EVERETT:

Jim Miller,
Engineering Superintendent
City of Everett Public Works Department
3200 Cedar Street
Everett, WA 98201

Telephone: (425) 257-8880
Facsimile: (425) 257-8882
Email: jmiller@everettwa.gov

9.15 Entire Agreement

This Agreement constitutes the entire Agreement between the parties with respect to the framework issues for annexations. It is anticipated that the parties will enter into further interlocal agreements on specific subject areas, as indicated in the text of the Agreement.

9.16 Authority

The parties represent to each other that the persons executing this Agreement have authority to do so and to bind the parties hereunder.

9.17 Governing Law and Stipulation of Venue

This Agreement shall be governed by the laws of the State of Washington. Any action hereunder must be brought in the Superior Court of Washington for Snohomish County.

Section 10. Interlocal Cooperation Act

The parties agree that no separate legal administrative entities are necessary in order to carry out this Agreement. If determined by a court to be necessary for the purposes of Interlocal Cooperation Act, Chapter 39.34 RCW, and administrator or joint board responsible for administering this Agreement will be established by mutual agreement. Any real or personal property used by either party in connection with this Agreement will be acquired, held, and disposed of by that party in its discretion, and the other party will have not joint or other interest therein.

Section 11. Multi-Year Funding

11.1 The County's obligations after December 31, 2015 are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws and the Snohomish County Charter.

11.2 The City's obligations after December 31, 2015 are contingent upon local legislative appropriation of necessary funds in accordance with applicable laws and the City of Everett Charter.

Section 12. 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.

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

IN WITNESS THEREOF, the undersigned parties have executive this Agreement on the day and year first above written.

SNOHOMISH COUNTY

By:_____
Dave Somers
Snohomish County Executive

ATTEST:

By:_____

Approved as to Form Only:

By:_____
Brian Dorsey
Deputy Prosecuting Attorney

CITY OF EVERETT

By:_____
Ray Stephanson
City of Everett Mayor

ATTEST:

By:_____

Approved as to Form Only:

By:_____
James D. Iles
City Attorney

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

EXHIBIT A
Description of Smith Island Project

I. Conceptual Design:

The concept for the Smith Island Project is to restore approximately 300-400 acres of estuarine/intertidal wetlands in the Snohomish River Estuary, WRIA 7, by removing large sections of the existing dike along Union Slough. The Smith Island Project Site is shown on the diagram map attached hereto as Schedule 1. The Smith Island Project will reconnect between 300 and 400-acres of land to tidal and riverine hydrology, thus restoring the estuarine tidal marsh habitat critical for Chinook salmon and other fish and wildlife. Final site design has not been completed at this time, but some of the key project restoration elements likely include:

- Constructing a new setback dike
- Removing substantial sections of the existing dike
- Reconnecting and enhancing the existing blind tidal channel network
- Increasing topographic complexity
- Filling existing linear ditch system
- Removing and/or relocating existing tide gates
- Constructing large woody debris complexes
- Suppressing and controlling invasive weeds
- Re-vegetating selected areas with native species

II. Project Background:

The need for and scope of the Smith Island Project was identified in the Snohomish Estuary Wetland Integration Plan (SEWIP; 1997). In 1999, the Smith Island Project Site was the top ranked site for restoration in the Priority Lands Acquisition Study. In 2001, the County acquired 100 acres at the Smith Island Project Site for the purpose of inclusion in the Smith Island Project. The purchase was funded with County Conservation Futures. When approving the purchase, the Snohomish County Council directed that these acres be made available for wetland mitigation purposes.

The County has since conducted additional property acquisitions, data collection and analyses, preliminary design, and stakeholder outreach and coordination. In 2005, the Snohomish River Basin Salmon Conservation Plan designated the Project as a high priority undertaking to recover ESA listed Chinook salmon and other salmonid species in the Snohomish River Basin. In 2008, the Project was highlighted as a "Near-term Action" in Puget Sound Partnership's 2020 Action Agenda for Puget Sound.

III. Current Status of Project:

A SEPA determination of significance for the Smith Island Project was issued by DPW on June 26, 2009. A SEPA draft environmental impact statement was issued in June 2011, and

a final environmental impact statement for the Smith Island Restoration Project was issued on December 12, 2013.

The diking system of improvements was formally altered under Ordinance No. 14-120 on March 18, 2015, to allow the construction of the new County setback dike and breaching of the existing dike east of the new setback dike.

In addition to finalizing design details and pursuing the necessary regulatory approvals and permits for the Smith Island Project, DPW is also seeking funding for implementation of the Smith Island Project. As of the date of this Agreement, the project has received multiple grants supporting acquisition, design, permitting activities. Recently, the County was awarded a $2.6-million ESRP grant and a $1.5-million SRFB grant to support construction. Both the ESRP grant and the SRFB grant are expressly for restoration purposes. The County is currently coordinating with the Corps and Ecology along with mitigation partners (such as BNSF) to allow the County to provide mitigation acreage at the Smith Island Project site in exchange for construction funding. The County is aware that funds obtained for restoration purposes may not be spent on mitigation activities. The County will develop and follow appropriate accounting practices and procedures to ensure that funds received for restoration purposes will not be used to pay for mitigation such as the Required Mitigation to be provided to BNSF.

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

SCHEDULE 1 to EXHIBIT A. Diagram Map of Smith Island Project Site

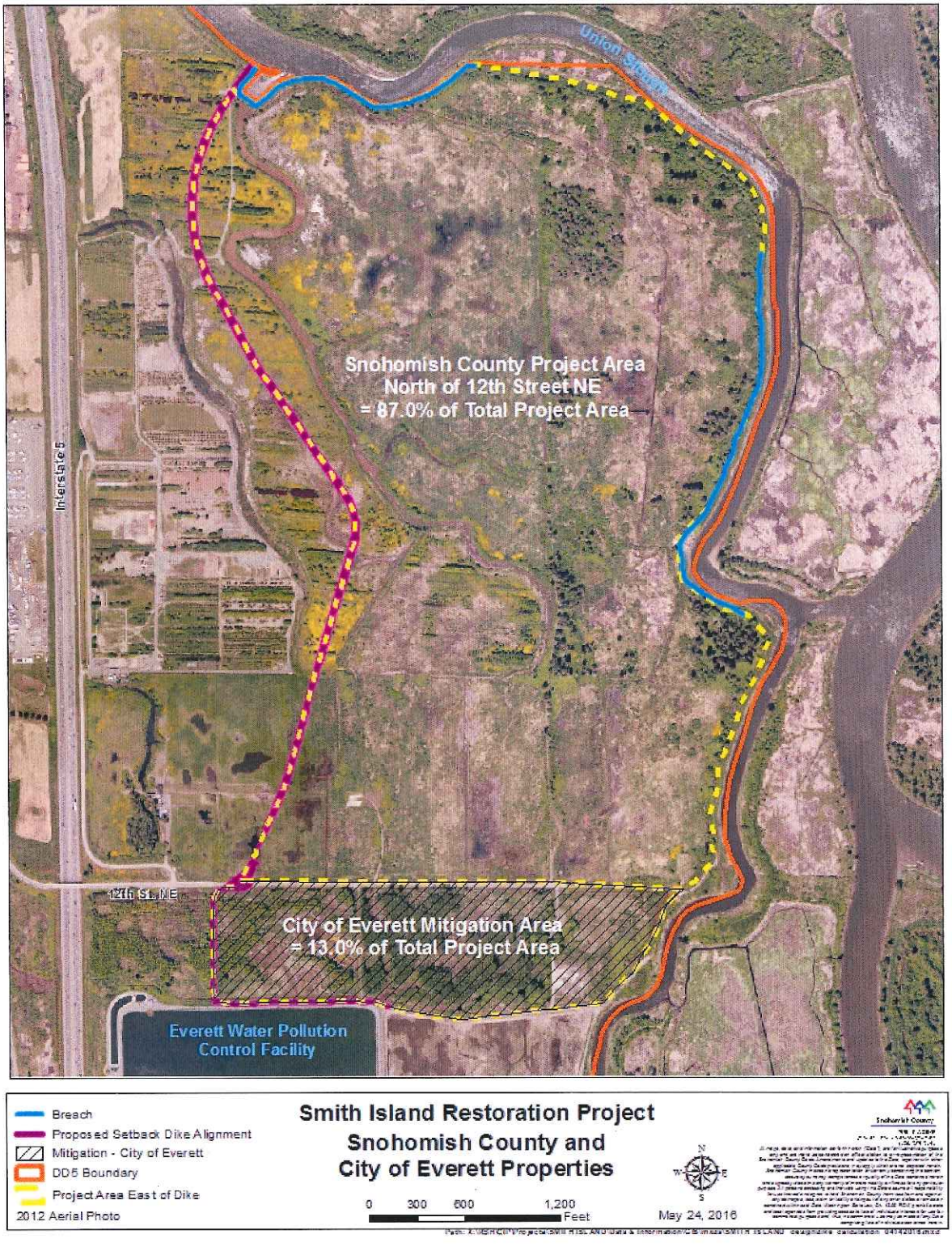


EXHIBIT B

Shared Work
Calculation and Payment of City Share

Section 1: Cost Share Provisions for Shared Work

1.0 City Maximum Shared Work Obligation. As set forth in the Agreement, the City Maximum Shared Work Obligation is the City's maximum obligation to reimburse or otherwise pay the County under this Agreement for Shared Work. City Maximum Shared Work Obligation will not exceed a total amount of $670,000, which includes the portion of the Dike Connection construction on City property, per Section 1.5.2(d) of this Exhibit

1.1 General Shared Cost Work Elements (General Shared Costs). Notwithstanding provisions for other cost elements in this Agreement, but always subject to the City Maximum Obligation, the City and County agree to cost share on the following General Shared Costs for the mutual implementation of the Project, which shall generally occur on the Smith Island-County area, unless otherwise specified in this Agreement. The table below in this Exhibit B (Exhibit B Table) gives cost share proportions between the County and the City for each major cost element in the Project. The total amount of shared costs in the Exhibit B Table is $3,995,900. The total amount of shared and Dike Connection cost in the Exhibit B Table is $4,125,900, rounded to $4,130,000. Subject to the City Maximum Obligation, the City agrees to pay the "City Share" in the Exhibit B Table, of the total allowable project costs, retroactive to January 1, 2006:

1.1.1 Preliminary SEPA Costs: The City agrees to pay a proportionate share of the costs for the Smith Island Project SEPA and Studies to Support SEPA, including preliminary work in support of SEPA, incurred by the County up to December 31, 2012, in an amount totaling $135,816.84 (as indicated in Exhibit B Table item 1.1.1 with the rounded figure of $135,000). This amount includes all residual amounts since the 2nd Quarter of 2012 that have not been billed or grant funded. If the County does not have $135,816.84 in residual amounts incurred in 2012, the County may bill the City for a part of the County's proportionate share of 2013 and 2014 incurred amounts to generate the total invoice amount of $135,816.84. The City's proportionate share of the Preliminary SEPA costs shall be paid for by the City upon receipt of the approvals under Section 2.11 of the Agreement. For purposes of invoicing such costs, the City's proportionate share of Preliminary SEPA costs set forth above shall be reflected on a separate invoice from that invoice for the City's proportionate share of Pre-Construction Phase Costs incurred by the County in 2013 and 2014 as provided in subparagraph 1.1.2, in accordance with that invoice attached as Exhibit D to the Agreement, such that the City shall be charged the $135,816.84 of said Preliminary SEPA Costs, and the Pre-Construction Phase Costs shall separately be apportioned between the City and the

County in accordance with the proportionate share percentage set forth in Section 1.3 of this Exhibit as provided in subparagraph 1.1.2 below.

1.1.2 Pre-construction costs after December 31, 2012 (Pre-Construction Phase Costs). The Proportionate share of the Pre-Construction Phase Costs shall be paid for by the City on a time and expense basis, as costs are incurred by the County. An additional 15% Administration fee shall apply to County labor. An estimate of the Pre-Construction Phase Costs is given in the Exhibit B Table and costs include but are not limited to the following:

(a) SEPA review – All work towards the final EIS, and technical work in response to an appeal. SEPA review costs will not include legal services in the event of an appeal, or defending the EIS.

(b) The following design and analysis:

(1) Modeling

(2) Puget Sound Energy pipeline (PSE) protection

1.1.3 The City's Proportionate share of the County's Construction Project Management Costs for Shared Work shall be paid for by the City on an actual incurred time and expense basis, as costs are incurred by the County. An estimate of the Construction Project Management costs is included in the Exhibit B Table and these costs include, but are not limited to the following:

(a) Project Administration

(b) Construction Management, including but not limited to:

(1) PSE protection

The estimated Construction Project Management Costs shall be based on 15% of the Engineer's estimated construction cost for PSE protection. An additional 15% Administration fee shall apply to County labor. The summary cost estimate of Construction Project Management Costs in the Exhibit B Table is based on 90% design.

1.1.4 Project Construction

The City's Proportionate share of total Construction Costs for Shared Work, including contingency, shall be paid for by the City on a payments to contractor basis, as costs are incurred by the County, and as provided in Section 1.4.5 of this Exhibit. A Construction Force Account fund in the amount of $100,000 is included in the Exhibit B Table. However, the parties further acknowledge that the actual bid amount plus 10% contingency may be different than the amount in Exhibit B. If the City's calculated proportionate share based on the bid award amount plus 10% contingency exceeds the total City share in the Exhibit B Table, the City's payment obligation shall not exceed the total City share in the Exhibit B Table without further amendment to this Agreement. The Construction Costs include but are not limited to the following:

(1) PSE protection

(2) Construction Force Account ($100,000)

1.1.5 Adaptive Management. It is anticipated that the Shared Work Construction Costs will include adaptive management, excluding downstream dike repair, but potentially including correction of project elements or impacts. Potential examples of such work, as given in the FEIS, could be maintenance dredging of Union Slough. In the event that adaptive management is required, which is done by the County or City outside of the Construction Costs in item 1.1.4 above, the adaptive management costs shall be subject to Proportionate Share apportionment, at 87.0% for the County and 13.0% for the City.

1.1.6 Unanticipated Costs. A reserve of 10% of total Exhibit B Table costs is established for Unanticipated Costs. Unanticipated Costs shall include items not previously listed in Section 1, which may appear within the duration of this Agreement, which are necessary to the successful completion of the Smith Island Project. Use of Unanticipated Cost funds on such items shall be by mutual written agreement of the Administrators to this Agreement.

1.2 Estimated Total of General Shared Costs. A preliminary estimate of the costs for the work items in Section 1.1 is given in the Exhibit B Table. The final costs will be established according to the methods given in Section 1.1. The total estimated cost in Exhibit B is $4,130,000. As provided in Section 1.0 above, the City Shared Work Maximum Obligation under this Agreement shall not exceed $670,000. In the event the total City share of costs computed per this Agreement exceeds the City Maximum Shared Work Obligation, the parties in good faith will consider amendment in accordance to Section 9.4 of the Agreement.

1.3 County and City Proportionate shares of General Shared Costs. The City (subject to the City Maximum Shared Work Obligation) and County agree to pay for their respective shares (Proportionate shares) of the total General Shared Costs in Section 1.1, determined as follows:

1.3.1 Each jurisdiction's Proportionate share is to be based on the jurisdiction's percentage of restoration area which the jurisdiction owns within the Smith Island project, as measured from the centerline of the new west and southwest dikes, and including all county and city land between these levees and Union Slough. These new dikes are to be constructed by Snohomish County and City of Everett. Schedule 1 to Exhibit A shows the Smith Island project and the county and city ownership areas.

1.3.2 Accordingly, using County GIS data (ProjectArea040315 feature class in GDB_SMITH_ISLAND.mdb), and based on information available as of 4/14/2016:

(1) The total restoration area for the Smith Island Project is approximately 381.59 acres.

(2) The City share of restoration area in the Smith Island project is approximately 49.43 acres.

(3) The County share of restoration area in the Smith Island project is approximately 332.17 acres.

(4) The City Proportionate share is therefore 49.43 divided by 381.59 = 13.0 percent (13.0%).

(5) The County Proportionate share is therefore 332.17 divided by 381.59 = 87.0 percent (87.0%).

1.4 Method of Payment for General Shared Costs.

1.4.1 The City shall pay the City Proportionate share of SEPA and Studies to Support SEPA Costs as described in Section 1.1.1 to the County upon execution of this Agreement.

1.4.2 The County shall initiate work on the items in Sections 1.1.2 through 1.1.5, inclusive, and incur associated costs.

1.4.3 The City will reimburse the County for its proportionate share percentages of the total General Shared Costs incurred by the County for the items in Sections 1.1.2 through 1.1.5, inclusive, on a time and expense basis.

1.4.4 Throughout the term of this Agreement, the City and County may develop further details of the shared cost items listed in Exhibit B to facilitate computation of cost shares.

1.4.5 Billing:

Upon the execution of this Agreement, the County may elect to bill the City for the City's Proportionate share of General Shared Costs on a quarterly basis during the pre-construction period. After construction begins, the County may elect to bill the City on a monthly basis. For each billing, the County shall provide to the City an itemized statement of all General Shared Costs incurred or otherwise billed to the County for the preceding period for which reimbursement is sought by the County hereunder (including attaching copies of all billing statements or invoices received by the County). The City shall remit payment to the County for its Proportionate share of the General Shared Costs as set forth in the itemized statement within Thirty (30) calendar days from the date of receipt of the statement from the County unless on or before such date the City shall submit in writing to the County an objection to any charge or cost shown thereon and/or request for additional supporting information establishing such charge or cost as a qualifying General Shared Cost. The City has no obligation to pay invoices unless the City has received the approvals under Section 2.11 of the Agreement. If the parties are unable to reconcile or otherwise resolve any such objection or request for additional information to the mutual satisfaction of the parties within

Thirty (30) days from the date of the County's receipt of such written objection or request, the parties agree to submit the matter to the dispute resolution process set forth in Section 8 of the Agreement.

1.4.6 Retroactive Invoicing and Payment

As of the Execution Date, the County has provided Services since the beginning of the year 2013 to the City for which it has not been compensated. The County may retroactively invoice the City for its proportionate share of any Services performed since the beginning of 2013 and before the Execution Date of this Agreement. Such invoice shall describe in reasonable detail the amount of time spent by the County on which Services since 2013 and before the Execution Date and shall include a 15% Administration fee on any County labor costs. Reimbursable cost items and the cost of any materials and/or equipment used by the County in performing said services shall also be itemized on the retroactive invoice. The City shall pay the retroactive invoice within thirty (30) days of receiving same, but the City has no obligation to make payment per Section 3.1.1.4 unless the City has received the conveyance per Section 2.11 of the Agreement. Such retroactive invoicing for services provided since 2013 shall be in addition to the City's obligation to reimburse for its proportionate share of Preliminary SEPA costs incurred by the County up through December 31, 2012, as set forth in subparagraph 1.1.1 above.

1.5 Dike Connection

1.5.1 It is anticipated that the City setback dike will be constructed before the County setback dike. The City and the County setback dikes are anticipated to end at the north right of way line of 12th Street Northeast.. The Dike Connection is defined as the joint connection between the City and the County setback dikes (Dike Connection), to provide a smooth, seamless transition between the two respective dikes.

1.5.2 Responsible party for Dike Connection design and construction.

(a) As set forth in the Agreement, the County shall design the Dike Connection in collaboration with the City, and cost for designing the Dike Connection shall be part of the County's setback dike design costs, and shall not be subject to reimbursement by the City. The County will provide the City with the Dike Connection design and specifications.

(b) The County will include the Dike Connection in the County's bid package as for the County's setback dike construction.

(c) (Omitted) .

(d) Costs incurred by the constructing party building the Dike Connection, for portions that are on the other party's property, shall be subject to total reimbursement of construction cost by the other party, on whose property the dike connection is being

constructed. For the purposes of this Agreement, the 12th Street NE Right of Way (ROW) shall be deemed City property.

(e) In the event the County constructs the Dike Connection on City property, as contemplated under sub-section 1.5.2(c) above, the maximum estimated construction cost of the Dike Connection to the City shall be agreed to as $130,000 for all work on City property for the work quantity assumptions listed in the Exhibit B Table. If the winning bid for the County's setback dike work for the Dike Connection on City property exceeds this amount, this maximum amount shall be subject to renegotiation by the parties.

(f) In the event the County constructs all or a portion of the Dike Connection on City property, as contemplated under sub-section 1.5.2(c) above, the City agrees to make available the City's previous compaction test results. The County has provided the City an opportunity to review and comment on the design of the Dike Connection.

1.5.4 Any County billing to the City for Dike Connection work on City property shall be conducted under the procedures of Section 1.4.5.

1.6 Smith Island Hydraulic Analysis (Tidal Channel and Breaches)

1.6.1 The City and County agreed in 2013 to conduct an hydraulic analysis of the Smith Island tidal channel, to be managed by the County. The scope and budget shall subject to written agreement between the parties. The cost for the analysis shall be subject to an equal (50/50) cost share between the City and the County.

1.6.2 County billings to the City shall be conducted under the procedures of Section 1.4.5 of this Exhibit.

Section 2: Exhibit B Table

General Shared Cost Work Items for City of Everett and Snohomish County for the Smith Island Project

Shared Cost Items			County Share		City Share		Total Cost ($)[1]
Item	ILA Section	Cost Element	Percent (%)	($)	Percent (%)	($)	
A. SEPA AND STUDIES TO SUPPORT SEPA							
	1.1.1	SEPA and studies to support SEPA	87.0%	$ 905,000	13.0%	$ 135,000	$ 1,040,000
B. PRE-CONSTRUCTION COSTS							
	1.1.2	General	87.0%	$ 383,000	13.0%	$ 57,000	$ 440,000
		(a) SEPA Review					280,000
		(b) Design and Analysis					150,000
	1.1.4	Force Account – Design for Force Account	87.0%	$ 17,000	13.0%	$ 3,000	$ 20,000
	1.6	Smith Island Hydraulic Analysis (Tidal Channel) [2]	50%	$ 25,000	50%	$ 25,000	50,000
C. Construction Project Management Costs							
	1.1.3	General	87.0%	$ 87,000	13.0%	$ 13,000	$ 100,000
D. Project Construction Costs							
	1.1.4	General	87.0%	$ 409,000	13.0%	$ 61,000	$ 470,000
		(1) PSE protection					
	1.1.4	Force Account	87.0%	$ 87,000	13.0%	$ 13,000	$ 100,000
E. SUBTOTAL A. THROUGH D.				$ 1,913,000		$ 307,000	$ 2,220,000

Shared Cost Items			County Share		City Share		Total Cost ($)[1]
Item	ILA Section	Cost Element	Percent (%)	($)	Percent (%)	($)	
F. Sales tax 8.6% County rate on D.1.1.4 totals[3]				$ 43,000		$ 6,000	$ 49,000
G. SUBTOTAL E AND F.				$ 1,956,000		$ 313,000	$ 2,269,000
H.	1.1.6	10% Unanticipated Costs on G		$ 195,600		$ 31,300	$ 226,900
I. SUBTOTAL G. AND H.				$ 2,151,600		$ 344,300	$ 2,495,900
J..	1.1.5	Adaptive Management[5]		$ 1,305,000		$ 195,000	$ 1,500,000
K. TOTAL BEFORE DIKE CONNECTION (SUBTOTAL I AND J).				**$ 3,456,600**		**$ 539,300**	**$ 3,995,900**
L.	1.5	Dike Connection [4]			100%	$ 130,000	$ 130,000
M. TOTAL COSTS (K AND L)				**$ 3,456,600**		**$ 669,300**	**$ 4,125,900**
N. TOTAL COSTS, ROUNDED)				**$ 3,460,000**		**$ 670,000**	**$ 4,130,000**

Notes:

(1) Row and final totals rounded to $10k (except F. Sales tax and subsequent row totals); subtotals rounded to $1k. County 15% Admin Fee on labor.

(2) Component cost associated with Section 1.6

(3) Sales tax for work on County land is County sales tax rate of 8.6%, on D.1.1.4 totals. Work is on County jurisdiction area.

(4) Component cost associated with Section 1.5. Includes 9.2% City sales tax, 15% contingency, County Construction Management, Street Permit. The work quantities assume based on written agreement between the City and the County, are as follows: City to construct up to the north boundary of the 12th Street NE ROW, leaving a small gap on the top of new City dike for the County to fill and connect City and County dikes. Gap estimated to require 581 tons of fill, 131 tons of riprap, 88 tons of quarry spalls, and 155 sy of geotextile. Facing also required after gap work, on City dike on waterside of connection, estimated to require 1,298 tons of riprap, 865 tons of quarry spalls, 1,527 sy of geotextile, and 509 cy of topsoil type C. Listed as individual item in Exhibit B, as this is work City will pay for County to do.

(5) Includes Dredging, excludes dike repair (County share = 87.0%, City share = 13.0%). No additional contingency.

EXHIBIT C

Breach and Related Work
Bidding and Reimbursement

A. Award of Construction Contract for Breach and Related Work.

1. Construction Contract. After completion of design and the receipt of all necessary permits by the City for City Breach and Related work no later than the first quarter of 2017, and amendment to this Agreement identifying the terms of such construction responsibilities or a separate Agreement per Section 2.10, the County will call for bids and execute a construction contract for Breach and Related Work (including the Breach and Related Work in the Smith Island-City area) in accordance with the County's usual procurement processes and the County's standard form construction contracts, except that:

(a) The Breach and Related Work will have two bid schedules, one for the Smith-Island-City area work and one for the Smith Island-County area work. The bid package will contain a provision that in substance states the following:

> Bid Schedule A is work on County property and will be paid for by County funds. Bid Schedule B is work on City of Everett property and will be paid for from City of Everett funds. Accordingly, it is important that your bid be balanced between the schedules: if a line item on Schedule A is similar to a line item on Schedule B, then your bid prices for those line items on each schedule must be similar. The purpose of this is to make sure that County funds are not subsidizing City work or vice versa. The County reserves the right to reject any bid that is not balanced.
>
> The low bidder is the bidder with the lowest total bid, which is the sum of Bid Schedule A and Bid Schedule B.

(b) The construction contract will contain a provision requiring the City be added as an additional insured on the contractor's required liability insurance policies.

(c) The construction contract will contain a clause reasonably acceptable to the City that allows the County to assign all contractor's and manufacturer's warranties from the County to the City.

2. Bidding Off-Ramps. Upon opening of the bids for construction of the Breach and Related Work project, the Parties will meet and confer. The County shall award to the lowest responsible and responsive bidder, except as follows:

(a) Over Budget. If the County determines that its portion of the Breach and Related Work under the low bid exceeds its available funds for the project, the County shall reject all bids. If the City determines that its portion of the Breach and Related Work under the low bid exceeds its available funds for the project, the County shall reject Bid

Schedule B for work on City property. The parties shall, prior to bidding, discuss the size of available budgets, which shall at least be equal to the engineer's estimates.

(b) Unbalanced Bid. If either party determines that low bid appears unbalanced as described in Section 1(a) above, then the County shall either reject the unbalanced bid or reject all bids.

If all bids are rejected under sections (a) or (b) above, then the County shall re-bid the Breach and Related Work, unless both City and County agree that such a rebid would be futile. If on such rebid all bids are again rejected under sections (a) or (b) above, then either the City or the County may elect, effective on written notice to other party delivered prior to any third call for Breach and Related Work bids, to delete Breach and Related Work construction from this Agreement, in which case the City and County will each independently construct their own Breach and Related Work.

B. (Reserved)

C. (Reserved)

D. Construction. The County will complete all Breach and Related Work in accordance with the plans and specifications and permits. The County will coordinate with the City so that the City takes a lead role in the oversight and inspection of Breach and Related Work in the Smith Island-City area. The City may attend construction meetings. The County without City approval may execute change orders to the Breach and Related Work that in total increase the cost to the City of the Breach and Related Work by up to 10% above the original Breach and Related Work Related contract amount. The County will not execute change orders above such 10% without the prior approval of the City, which will not be unreasonably withheld.

E. Completion of Breach and Related Work. Upon or near completion of the Breach and Related Work in the Smith Island-City area, the County will deliver to the City an as-built survey of the Breach and Related Work in the Smith Island-City area. After the City confirms that the as-built survey is consistent with the approved plans and specifications, the City will promptly notify the County that the Breach and Related Work in Smith Island-City area is ready for acceptance. Upon such notice, (1) the County will accept the Breach and Related Work from the contractor, (2) the Breach and Related Work in the Smith Island-City area is the property of the City, and (3) the City has responsibility for the maintenance and operation of Breach and Related Work in the Smith Island-City area. The City and County will cooperate to execute any documents (such as bills of sale) necessary to document the City's ownership interest in the Breach and Related Work in the Smith Island-City area and will cooperate to transfer to the City any contractor or manufacturer's warranties for the Breach and Related Work in the Smith Island-City area.

F. Cost Sharing.

1. City Pays for Breach and Related Work in the Smith Island-City Area. The City will pay all expenses related to the Breach and Related Work in the Smith Island-City area, including for example all surveying, design, permitting, and construction costs. This includes all costs arising from or relating to any claims asserted against the County by construction contractors to the extent relating to the Breach and Related Work in the Smith Island-City Area. In the event of such a claim, the Parties will meet and confer, and the County will not settle such a claim without the prior approval of the City, which will not be unreasonably withheld.

2. Billing Procedure. The County will invoice the City for the Breach and Related Work in the Smith Island-City area. The Parties anticipate that the County will invoice the City as the County makes payments to the Breach and Related Work contractors. An invoice will document in reasonable detail the amounts expended by the County related to the Breach and Related Work in the Smith Island-City area. Upon completion and acceptance of the Breach and Related Work in the Smith Island-City area and resolution of contractor claims (if any), the parties will true-up the payments, so that the City has paid 100% of the expenses related to the Breach and Related Work in the Smith Island-City area.

EXHIBIT D

Invoice for SEPA and Studies to Support SEPA, Exhibit B Item 1.1.1

CITY OF EVERETT
FINANCE DEPARTMENT
2930 WETMORE AVE. STE. 10-B
EVERETT, WA 98201

INVOICE NO:_____
INVOICE DATE:_____
DUE DATE: _____
CUSTOMER NO:_____

cc: JIM MILLER
CITY OF EVERETT PUBLIC WORKS
DEPARTMENT
3200 CEDAR STREET
EVERETT, WA 98201

INVOICE

PARTNERSHIP ILA ITEM 1.1.1 SEPA AND STUDIES TO SUPPORT SEPA	$ 135,816.84

TOTAL AMOUNT DUE: $ 135,816.84

Send check payable to:

Snohomish County
Attention: Finance M/S/ #610
3000 Rockefeller Ave.
Everett, WA 98201-4046

CUSTOMER NO: _____
INVOICE NO: _____

For billing questions call (425) 388-3940

AMOUNT DUE: $ 135,816.84

INVOICE INFORMATION:

PER AGREEMENT, CITY OF EVERETT SHARES 13.0% OF ITEM 1.1.1 COSTS (SEPA AND ANALYTICAL COSTS 2003 TO 2012)

ITEM 1.1.1: SEPA AND STUDIES TO SUPPORT SEPA

Year	Comment	Associated Cost
2006	CH2M Hill: Smith Island Restoration Project Preliminary Geotechnical Investigations and Collection of Existing Data	$ 31,812
2007	CH2M Hill: Channel Migration and Scour Evaluation. Everett Delta Natural Gas Pipeline/Smith island Restoration; Addendum: Preliminary Geotechnical Investigations and Collection of Existing Data Memorandum; Smith Island Restoration Project Dike Crossing at Williams Pipeline Preliminary Settlements Analysis	$ 16,277
2008	CH2M Hill: Revised Smith Island Restoration Project Dike Crossing at Williams Pipeline Preliminary Settlements Analysis	$ 4,418
2009	Landau: Cultural Resources Feasibility Study	$ 31,363
2009	County: Environmental Services	$ 153,387
2010	County: Environmental Services	$ 82,863
2011	County: Environmental Services	$ 215,937
2012	County: Environmental Services	$ 155,504
2012	County: Special study support (Tetra Tech studies below)	$ 93,848
2012	Tetra Tech: Union Slough, Geo/Hydrogeo, Salt water, Drainage studies	$ 259,335
TOTAL		**$ 1,044,745**

TOTAL ITEM 1.1.1 SEPA AND STUDIES TO SUPPORT SEPA COSTS: $ 1,044,745

CITY OF EVERETT 13.0% SHARE:
13.0% x $1,044,745 = $ 135,816.84.

EXHIBIT E

SEPA Lead Agency Agreement

PLANNING AND COMMUNITY DEVELOPMENT

Allan Giffen
Director

ORIG: EnviroServes
cc: SteveT
SteveD
Owen
Bobann
Doug

RECEIVED
MAR 21 2011
Public Works
Director's

March 17, 2011

Mr. Steve Thomsen, Director
Snohomish County Public Works Department
3000 Rockefeller Avenue
Everett, WA 98201

RE: Letter of Agreement for SEPA Lead Agency for Smith Island Restoration project

Dear Steve:

The City of Everett Public Works Department has agreed to allow City-owned property south of 12th Street NE located on Smith Island to be restored to an intertidal wetland along with the County-owned property north of 12th Street NE. It makes sense to the City to incorporate our site into the SEPA process being prepared for the County restoration project. Since the project is located within two jurisdictions, and each jurisdiction is a project sponsor, it appears that the WAC for determining SEPA lead agency status when each agency is a sponsor allows the determination to be made by agreement between the two jurisdictions. See WAC 197-11-926, below:

> **WAC 197-11-926 Lead agency for governmental proposals.** (1) When an agency initiates a proposal, it is the lead agency for that proposal. If two or more agencies share in the implementation of a proposal, the agencies shall by agreement determine which agency will be the lead agency. For the purposes of this section, a proposal by an agency does not include proposals to license private activity. (*emphasis added*)

This letter represents the City of Everett's agreement that Snohomish County Public Works Department should be the lead agency under SEPA for the Smith Island habitat restoration project which includes land owned by the City of Everett and within the City of Everett.

Please feel free to contact me if you wish to discuss this agreement.

Sincerely,

Allan Giffen
City of Everett SEPA Responsible Official

Cc: Heather Griffin, City of Everett Public Works

CITY OF EVERETT • 2930 Wetmore Avenue, Suite 8-A • Everett, WA 98201 • (425) 257-8731 • Fax (425) 257-8742

EXHIBIT F

District City Quit Claim – Auditor File No. 200303030331

2.00

No. 185318 3/3/2003 10:35 AM
Thank you for your payment.
PATTY

COPY

After Recording, Mail to:
Mr. Tom Ehrlichman
Attorney at Law
2827 Rockefeller Avenue
Everett, Washington 98201

200303030331 4 PGS
03-03-2003 10:41am $22.00
SNOHOMISH COUNTY, WASHINGTON

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)
(Please print or type information; all areas applicable to your document must be filled in)

Document Title(s) (or transactions contained therein):
QUITCLAIM DEED

Reference Numbers of Documents Assigned or Released:
Snohomish County Auditor's File No. 536725
Snohomish County Auditor's File No. 511128

Grantor(s) (Last name first, then first name and initials) :
1. DIKING DISTRICT NO. 5 OF SNOHOMISH COUNTY
2.

Grantee(s) (Last name first, then first name and initials) :
1. CITY OF EVERETT
2.

Legal Description (abbreviated: i.e. lot, block, plat or section township, range) :
Portions of Lots 5, 6 and 12, section 16, township 29 north, range 5 East, W.M.
Portions of Government Lots 6 and 7 of Section 15, Township 29 North, Range 5 East, W.M.
☒ Additional legal is on pages 1 and 2 of document.

Assessor's Property Tax Parcel/Account Number:
29051500200200
☒ Assessor Tax # not yet assigned

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

AFTER RECORDING MAIL TO:

Mr. Tom Ehrlichman
Attorney at Law
2827 Rockefeller Avenue
Everett, Washington 98201

QUIT CLAIM DEED

THE GRANTOR, Diking District No. Five of Snohomish County, a diking district organized pursuant to RCW Title 85, for and in consideration of Twenty-eight Thousand Three Hundred Dollars ($28,300.00), conveys and quit claims to the **GRANTEE, the City of Everett of the State of Washington**, all right, title and interest it has or may have in the following described real estate, and any dike, levee, fixture, or other property thereon situated in the County of Snohomish, state of Washington, together with all after acquired title of the grantor(s) therein, to the same extent and purpose as if the rights herein granted had been acquired under the Eminent Domain statute of the State of Washington, legally described as follows:

Parcel A

Those portions of Lots 5, 6 and 12, section 16, township 29 north, range 5 east, W.M., included within the limits of a strip of land 50 feet in width, having 35 feet of such width on the west side and 15 feet on the east side of the following described center line:

Beginning at a point on the south line of said section 16, which is S 89° 40' W 702.6 feet distant from the southeast corner of said section and running thence N 6° 45' W 131 feet, N 5° 32' W 395.4 feet, N 6° 33 ' E 290.8 feet, N 24° 28' E 158.4 feet, N 12° 35' E 261.7 feet, N 25° 48' E 180.6 feet, N 11° 17 ' E 171.4 feet, N 19° 15' E 286.9 feet, N 21° E 126.2 feet, N 34° 39' E 102.3 feet, N. 14° 09' E 140.4 feet, N 18° 23' E 501.6 feet, N 12° 33' E 124 feet and N 20° 35' E 169.2 feet to a point on the east line of said section 16 which is N 0° 13' 22" W 165.98 feet distant from the quarter section corner on said east line,

as described in an easement dated 3 January 1933, and recorded under Snohomish County Auditor's number 536725.

Parcel B:

Beginning at the Northwest corner of Government Lot 6 of Section 15, Township 29 North, Range 5 East, W.M.;

Thence along the North boundary of said lot North 88° 46' 52" East 908.3 feet to the true place of beginning;

Thence a strip of land 50 feet in width being 25 feet each side of the following described center line:

South 37° 02' West 117.6 feet;

Thence South 34° 56' West 126.5 feet;

Thence South 37° 36' West 126.5 feet;

Thence South 17° 02' West 154.0 feet;

Thence South 43° 58' West 92.2 feet;

Thence South 32° 53' West 157.7 feet;

Thence South 46° 39' West 103.4 feet;

Thence South 43° 43' West 78.7 feet;

Thence South 27° 23' West 136.7 feet;

Thence South 20° 05' West 150.7 feet;

Thence South 9° 11' West 212.2 feet;

Thence South 10° 05' East 181.7 feet;

Thence South 1 ° 17' West 174.5 feet;

Thence South 8° 17' East 105.4 feet;

Thence South 21° 55' East 111.8 feet;

Thence South 3° 47' East 222.5 feet;

Thence South 15° 06' West 120.3 feet;

Thence South 42° 08' West 152.1 feet;

Thence South 40° 23' West 241.9 feet;

Thence South 7° 19' West 112.4 feet more or less to an intersection with the West boundary of said Government Lot 6 [note possible scrivener's error: should be Government Lot 7], from which point the Northwest corner of said Government Lot 6 is North 0° 13' 22" West 2,571.3 feet distant,

as described in an easement dated December 21, 1931 in Volume 260 of Deeds, page 188, and recorded under Snohomish County Auditor's number File No. 511128, and as it may be corrected in the future to account for the possible scrivener's error shown in brackets above.

Parcel C:

That dike, levee, fixture or other property located along Union Slough only, from the northerly line of Section 15, Township 29 North, Range 5 East W.M. to the southerly line of Section 16 Township 29 North, Range 5 East W.M., as shown in details A, B, C and D on sheet two of two (2 of 2) in the Record of Survey for the Smith Island Dike, filed for

//

//

//

record on February 4, 2003 under Snohomish County Auditor's number File No. 200302045001.

Dated this 27 day of February, 2003:

DIKING DISTRICT No. 5

By _____
Commissioner

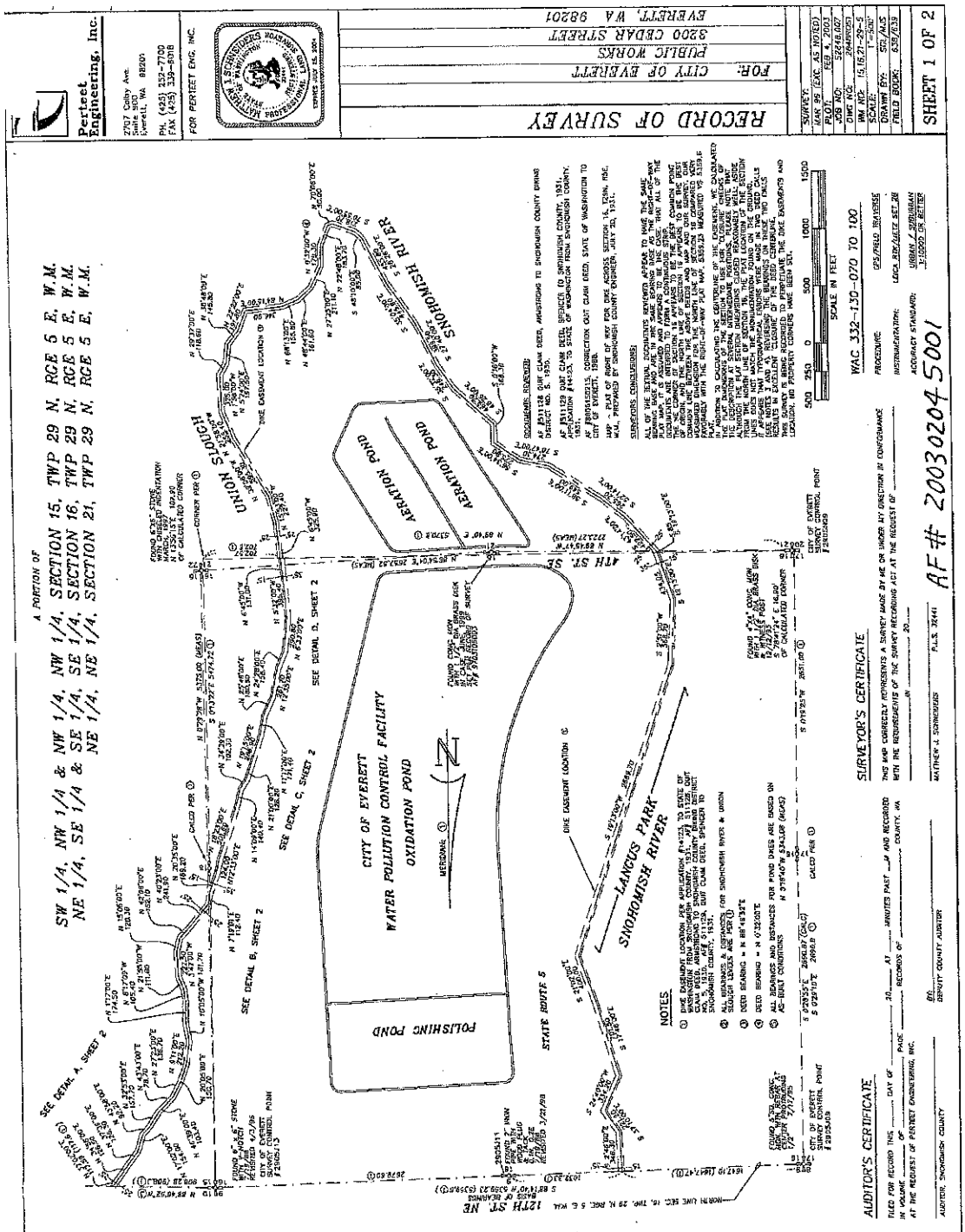
COUNTY OF SNOHOMISH)
ss.
STATE OF WASHINGTON)

BEFORE ME, the undersigned notary, personally appeared David R. Buse, known to me to be a Commissioner of Diking District no. 5, who being duly sworn, did depose and stated that Diking District no. 5 executed the foregoing assignment, and acknowledged the said instrument to be the free and voluntary act and deed of said district, for the uses and purposes therein mentioned, and on his oath stated the he is authorized to execute the said instrument.

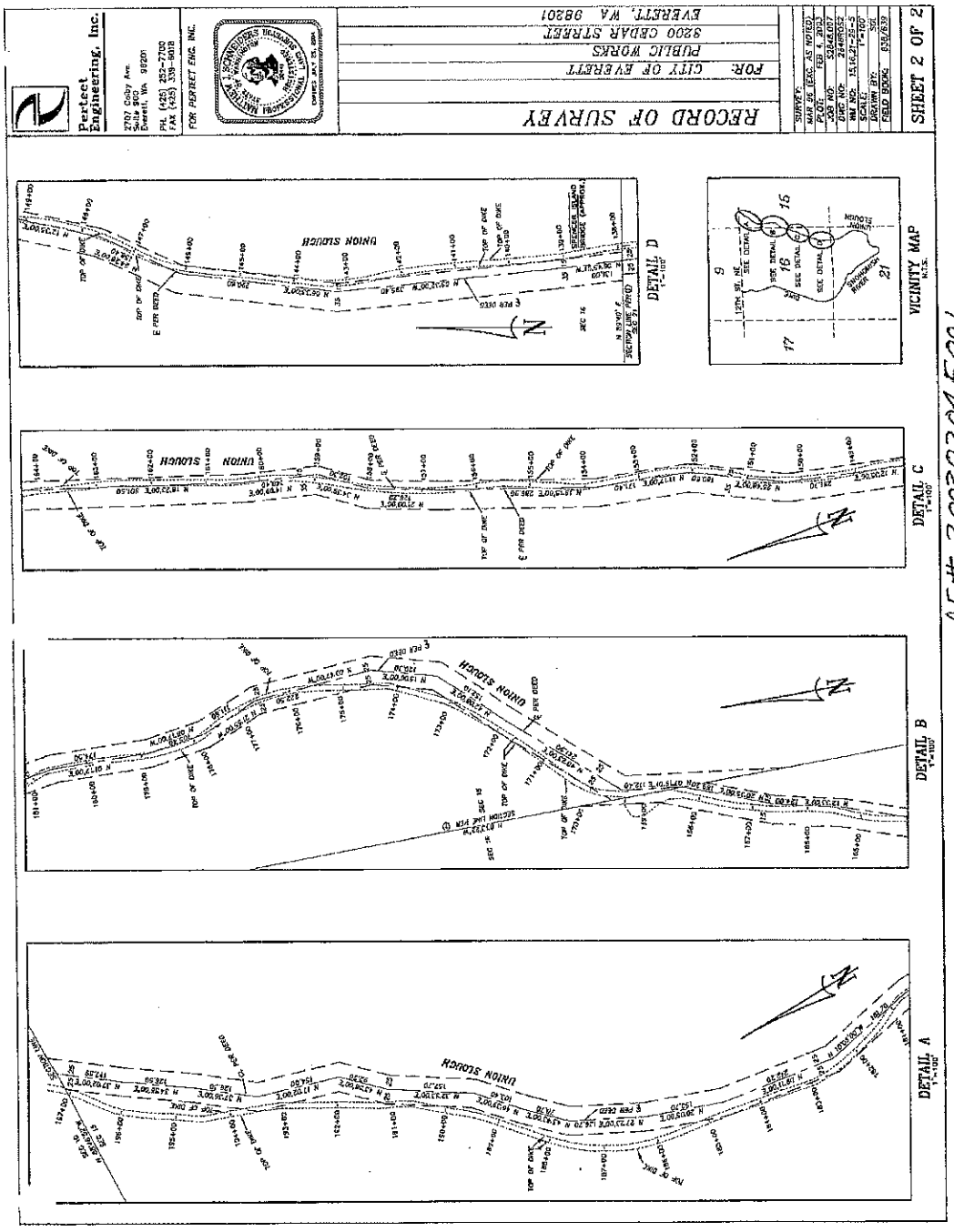
WITNESS my hand and official seal affixed hereto on this the 27 day of FEB, 2003.

LOREN W. MEADE NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 5-23-2004

_____
Notary Public in and for the
State of Washington
Residing at Marysville
My commission expires:
5/23/04



Perteet Engineering, Inc.
RECORD OF SURVEY
FOR: CITY OF EVERETT
PUBLIC WORKS
3200 CEDAR STREET
EVERETT, WA 98201
SHEET 1 OF 2
A PORTION OF
SW 1/4, NW 1/4 & NW 1/4, NW 1/4, SECTION 15, TWP 29 N, RGE 5 E, W.M.
NE 1/4, SE 1/4 & SE 1/4, SE 1/4, SECTION 16, TWP 29 N, RGE 5 E, W.M.
NE 1/4, NE 1/4, SECTION 21, TWP 29 N, RGE 5 E, W.M.
CITY OF EVERETT
WATER POLLUTION CONTROL FACILITY
OXIDATION POND
POLISHING POND
AERATION POND
AERATION POND
UNION SLOUGH
SNOHOMISH RIVER
LANGUS PARK
SNOHOMISH RIVER
STATE ROUTE 5
4TH ST. SE
12TH ST. NE
NOTES
SURVEYOR'S CERTIFICATE
AUDITOR'S CERTIFICATE
WAC 332-130-070 TO 100
AF# 200302045001


RECORD OF SURVEY
FOR: CITY OF EVERETT
PUBLIC WORKS
3200 CEDAR STREET
EVERETT, WA 98201
Perteet Engineering, Inc.
SHEET 2 OF 2
DETAIL D
DETAIL C
DETAIL B
DETAIL A
VICINITY MAP
UNION SLOUGH
AF# 200302045001