

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

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

### **RECITALS**

A. The District consists of approximately 6,281 acres of land, 6,110.57 of which are currently assessed for benefit. Another 31.54 acres are within the District levee at the site of the former Seattle-Snohomish Lumber Mill and may someday be annexed into the District for assessment. A portion of the present 6,281 acres is located in the unincorporated County, and a portion is located in the City. The boundaries of the District roughly coincide with the boundaries of the floodplain portion of the "Marshland Drainage Basin." The District is bordered on the north and east by the Snohomish River. The District is bordered on the south and west by the upland area of the Marshland Drainage Basin (the "Upland Area"), which consists of approximately 7,731 acres of land.

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

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

D. The District owns and operates certain drainage and flood control facilities that are used to improve agricultural production, as well as to control, prevent, abate and ameliorate damage to persons and property caused by flooding in the Marshland Drainage Basin. Those facilities include, but are not limited to, dikes, drainage ditches, a flood canal, eight (8) ponds collecting sediment from the uplands and a cement "Pump Plant" housing two (2) 100 hp and four (4) 250 hp pumps, their controls and associated equipment (collectively, the "Existing District Facilities").

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

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

F. On December 20, 2019, the County, the City and the District entered into a five-year Interlocal Agreement (“2019 Agreement”) regarding the increased Hillside Runoff in the Marshland Drainage Basin due to upland development.

G. The frequency, amount and extent of Hillside Runoff have increased since pre-development in 1947 due to development within the Upland Area. In particular, County models indicate there is a direct correlation between increased impervious surface due to development in the Upland Area and increased Hillside Runoff over pre-development amounts.

H. The Parties agreed in the adoption of the 2019 Agreement to compromise on a figure of a 14.5% increase over pre-development amounts of Hillside Runoff. Use of the 14.5% figure has been satisfactory to the Parties under the 2019 Agreement, and the Parties are agreeable to continue using this 14.5% figure for purposes of this 5-Year Agreement (the “Increased Hillside Runoff”). However, should conditions in the future be determined by the Parties to change, the Parties may revise this figure accordingly by amendment of this Agreement.

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

J. The PUD data available at the time of the 2013 Agreement indicated that the District’s kilowatt energy use increased 17% over the previous two (2) decades. Moreover, in 2019, when one or more of the District’s 250 hp pumps must be turned on there is a large surge of electricity needed which increases District electricity costs from \$.0698 per kilowatt hour to \$5.12 per kilowatt hour. Based on this information, the Parties have also agreed, when calculating the amount of the District’s Pump Plant-related costs that are attributable to the Increased Hillside Runoff, to apply to the 14.5% figure described in Recital H, a “peaking factor” multiplier of 1.6. Application of the peaking factor results in an adjusted Increased Hillside Runoff figure of twenty-three and two tenths percent (23.2%). The Parties agreed for the purposes of the 2019 Agreement that this adjusted figure of 23.2% was an appropriate percentage to use in calculating the amount of the District’s Pump Plant-related costs that are attributable to the Increased Hillside Runoff. Use of the adjusted figure of 23.2% has been satisfactory to the Parties under the 2019 Agreement, and the Parties are agreeable to continue using this 23.2% figure for purposes of this 5-Year Agreement in calculating the amount of the District’s Pump Plant-related costs that are attributable to the Increased Hillside Runoff, as more fully set forth in the body of this Agreement. However, should conditions in the future be

determined by the Parties to change, the Parties may revise this figure accordingly by amendment of this Agreement.

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

L. The District has established two separate capital improvement funds. One of these funds is intended to be used to fund capital repairs and improvements to the District's dikes. The other fund is intended to be used to fund capital repairs and improvements to the District's Pump Plant (the "Pump Plant Capital Improvement Fund"). Provisions were made in the 2019 Agreement, for the Parties to make certain payments to the District's Pump Plant Capital Improvement Fund. The County and the City each now desire to continue to provide annual monetary contributions to the District's Pump Plant Capital Improvement Fund, in amounts proportionate to the District's increased capital improvement costs attributable to the Increased Hillside Runoff caused by development in the County Upland Area and the City Upland Area, respectively.

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

## **AGREEMENT**

NOW, THEREFORE, in consideration of the respective agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to the authority provided by chapter 39.34 RCW, the Interlocal Cooperation Act, the County, the City and the District agree as follows:

### **1. TERM**

#### **1.1 Condition Precedent - RCW 39.34.040**

Pursuant to RCW 39.34.040, it is a condition precedent to the effectiveness of this Agreement that a fully executed copy of this Agreement be either (i) recorded with the County Auditor, or (ii) posted on the County's Interlocal Agreements website. Unless and until this condition is met, this Agreement shall have no force or effect.

## **1.2 Term**

The “Term” of this Agreement shall cover the following five (5) calendar years: 2025, 2026, 2027, 2028, and 2029. The Term shall commence on the Execution Date and expire when the True-Up required by Section 9 has been performed for calendar year 2029 (the “Expiration Date”). Notwithstanding anything to the contrary contained elsewhere in this Agreement, the County’s obligations after December 31, 2024, are contingent upon local legislative appropriation of the necessary funds for this specific purpose in accordance with the Snohomish County Charter, the Snohomish County Code and applicable law. If the County does not so appropriate the necessary funds for the County’s obligations under this Agreement, either the District or the City may terminate this Agreement effective on 30 days advance written notice to the other parties, but failure to provide such notice shall not be a “Default” under Section 18.

## **2. DEFINITION OF OPERATING COSTS**

### **2.1 Total Operating Costs**

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

### **2.2 Ditch, Pond and Canal Operating Costs**

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

### **2.3 Pump Plant O&M Operating Costs**

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

### **2.4 Pump Electricity Operating Costs**

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

### 3. DEFINITION OF ALLOWABLE CAPITAL EXPENDITURES

For purposes of this Agreement, the term “Capital Expenditures” shall mean those non-recurring costs incurred by the District to acquire new capital assets or make substantial or significant improvements to one or more of the Existing District Facilities. The District adopted Resolution No. 2012-1 on June 11, 2012, to establish a capital improvement fund. A copy of District Resolution No. 2012-1 is attached to this Agreement as Exhibit C. For purposes of this Agreement, the term “Allowable Capital Expenditures” shall mean (i) those Capital Expenditures described and authorized in District Resolution No. 2012-1, and (ii) any other reasonable Capital Expenditures made with respect to the District’s Pump Plant, provided that the District has given the County and the City advance written notice describing such Capital Expenditures.

### 4. ANNUAL INCREASED HILLSIDE RUNOFF OPERATING COST CONTRIBUTION PAYMENTS

#### 4.1 County Increased Hillside Runoff Operating Cost Contributions

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

#### 4.2 City Increased Hillside Runoff Operating Cost Contributions

Each calendar year during the Term of this Agreement, the City shall remit to the District the “City’s Increased Hillside Runoff Operating Cost Contribution Payment,” in an amount equal to the sum of the following: (i) the City’s proportionate share of the District’s anticipated Ditch, Pond and Canal Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.1 and 7.2 below; (ii) the City’s proportionate share of the District’s anticipated Pump Plant O&M Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.2 and 7.2 below; and (iii) the City’s proportionate share of the District’s anticipated Pump Electricity Operating Costs that are attributable to the Increased Hillside Runoff, calculated pursuant to Sections 5, 6.3 and 7.2 below. Payment shall be made on or before March 31<sup>st</sup> of the calendar year at issue, or within sixty (60) days after receiving an invoice for payment, whichever is later.

## **5. CALCULATING THE DISTRICT'S ANTICIPATED OPERATING COSTS**

### **5.1 Categories of Operating Costs**

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

### **5.2 Five Year Rolling Average Methodology**

The District's anticipated Operating Costs for a future calendar year shall be estimated based on a five (5) year rolling average of the District's actual, historic Operating Costs for the five (5) calendar years immediately preceding the calendar year for which anticipated Operating Costs are being calculated. By way of example, the anticipated Operating Costs for the calendar year 2025 would be calculated by averaging the actual, historic Operating Costs for calendar years 2024, 2023, 2022, 2021 and 2020. However, before averaging the five (5) actual, historic annual Operating Costs, the actual, historic Operating Costs for each year included in the five (5) year rolling average shall be adjusted to present value pursuant to the method described in Section 5.3 below.

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

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

### **5.4 Calculating Anticipated Operating Cost**

The present value adjustment process described in Section 5.3 above shall be applied to the actual, historic Operating Costs for each of the five (5) years being used in the rolling average calculation as shown in Exhibit G to this Agreement. After adjusting all five (5) of the actual, historic Operating Cost figures to present value, the data shall be averaged. The resulting amount shall equal the District's anticipated Operating Costs for the future calendar year at issue.

## **5.5 Change In Adjustment Factor**

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

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

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

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

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

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

### **6.3 Anticipated Pump Electricity Operating Costs Attributable to Increased Hillside Runoff**

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

### **6.4 Increased Hillside Runoff Operating Costs**

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

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

### **7.1 County's Proportionate Share**

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

### **7.2 City's Proportionate Share**

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



## **8. PUMP PLANT CAPITAL IMPROVEMENT FUND**

### **8.1 Establishment of Pump Plant Capital Improvement Fund**

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

### **8.2 Amount of Pump Plant Capital Improvement Fund Contribution**

Beginning in calendar year 2025, and except as otherwise provided in Section 8.6 of this Agreement, each year during the Term of this Agreement, the parties shall make contributions toward the Pump Plant Capital Improvement Fund that together total Forty-Four Thousand One Hundred Forty-Six Dollars (\$44,146) (the "Pump Plant Capital Improvement Fund Contribution"). This Section 8 specifies the amounts each of the parties must contribute towards the annual Pump Plant Capital Improvement Fund Contribution.

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

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

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

As stated in Recital I and Section 7.1 above, the County Upland Area contains approximately seventy percent (70%) of the total impervious surface in the Upland Area. Accordingly, the County's proportionate share of the Increased Hillside Runoff Pump Plant Capital Improvement Fund Contribution shall be equal to seventy percent (70%). Seventy percent (70%) of Ten Thousand Two Hundred Forty-Two Dollars (\$10,242) equals approximately Seven Thousand One Hundred Sixty-Nine Dollars (\$7,169). Accordingly, the

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

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

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

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

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

#### **8.7 Contingency**

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

## **8.8 Invoicing and Payment**

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

## **8.9 Additional Capital Expenditures by District**

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

## **9. TRUE-UP OF PUMP ELECTRICITY OPERATING COSTS**

As soon as reasonably possible after the close of each calendar year during the Term, but in no event later than 90 days after the close of such calendar year, the parties shall True-Up the amount of Increased Hillside Runoff Pump Electricity Operating Costs paid to the District for the calendar year at issue (the "True-Up"). The District shall provide the County and the City with its actual, documented Operating Cost data for the immediately preceding calendar year within 30 days after such data becomes available. The District's actual Operating Costs shall be divided into the three categories described in Section 2 above. The parties shall compare the amount of anticipated Pump Electricity Operating Costs calculated for the calendar year at issue to the actual Pump Electricity Operating Costs the District incurred for that calendar year. (Anticipated cost for the present year is based on 5-year rolling average cost for the previous year. True-upping takes the 5-year rolling average from the previous year and compares it to the actual cost for the single year just completed. For example, the anticipated cost for 2024 was based on the 5-year rolling average for 2023. When 2024 is completed, its actual cost will be compared with the anticipated cost from 2023's 5-year rolling average.) The parties shall then True-Up the amount of Increased Hillside Runoff Pump Electricity Operating Costs paid to the District by the County and the City for the calendar year at issue. If the actual Pump Electricity Operating Costs incurred by the District exceeded the anticipated Pump Electricity Operating Costs, the parties shall calculate the correct amount of the Increased Hillside Runoff Pump Electricity Operating Costs due to the District under Section 6.3 above and the amount of underpayment shall be divided between the County and the City in the proportions described in Section 7 above and

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

## **10. ACCOUNTING FOR GRANT FUNDS RECEIVED BY DISTRICT**

### **10.1 General Principles**

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

### **10.2 Grant Funds for Capital Expenditures**

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

### **10.3 Grant Funds for Operating Costs**

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

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

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

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

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

## **11. EXTRAORDINARY COSTS RELATED TO REMOVAL OF SEDIMENT POND SPOILS**

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

## **12. RECALCULATION IN EVENT OF ANNEXATION**

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

12.2 If the City is not the entity performing an annexation described in Section 12.1 above, such annexation will not change the amounts due to the District from the City under this Agreement. However, if the City is the entity performing an annexation described in Section 12.1 above, the amounts due to the District from the City shall be recalculated to reflect

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

### **13. COVENANTS BY DISTRICT**

#### **13.1 Covenant to County**

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

#### **13.2 Covenant to City**

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

### **14. INTERLOCAL COOPERATION ACT (Chapter 39.34 RCW)**

The purpose of this Agreement is for the County and the City to provide monetary contributions to the District to help offset the District's increased stormwater management costs that are attributable to the Increased Hillside Runoff caused by development in the Upland Area. Each of the parties to this Agreement shall designate an individual (an "Administrator"), who may be designated by title or position, to oversee and administer that party's participation in this Agreement. The parties' initial Administrators shall be the individuals specified in Section 19 below. Any party may change its Administrator at any time by delivering written notice of the party's new Administrator to the other parties. The parties agree that no separate legal or administrative entities are necessary to carry out this Agreement. Except as expressly provided to the contrary in this Agreement, any real or personal property used or acquired by any party in connection with the performance of this Agreement will remain the sole property of such party, and the other parties shall have no interest therein. As provided by RCW 39.34.040, this Agreement shall not take effect unless and until it has been either filed with the County Auditor or posted on the County's Interlocal Agreements website.

### **15. COVENANT TO COOPERATE**

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

## **16. COMPLIANCE WITH LAWS**

The County, the City and the District shall at all times exercise their rights and perform their respective obligations under this Agreement in full compliance with all applicable laws, ordinances, rules and regulations of any public authority having jurisdiction.

## **17. INDEMNIFICATION**

### **17.1 Indemnification by District – Claims Involving Flood Control Facilities**

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

### **17.2 Mutual Indemnification – Claims Involving Breach or Default**

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

### **17.3 Survival**

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

## **18. DEFAULT AND REMEDIES**

### **18.1 Default**

If any party to this Agreement fails to perform any act or obligation required to be performed by it hereunder, the party or parties to whom such performance was due shall deliver

written notice of such failure to the non-performing party. The non-performing party shall have thirty (30) days after its receipt of such notice in which to correct its failure to perform the act or obligation at issue, after which time it shall be in default ("Default") under this Agreement; provided, however, that if the non-performance is of a type that could not reasonably be cured within said thirty (30) day period, then the non-performing party shall not be in Default if it commences cure within said thirty (30) day period and thereafter diligently pursues cure to completion.

## 18.2 Remedies

In the event of a party's Default under this Agreement, then after giving notice and an opportunity to cure pursuant to Section 18.1 above, the party or parties to whom the performance was due shall have the right to exercise any or all rights and remedies available to it at law or in equity.

## 19. NOTICES

Each notice, demand, request, consent, approval, disapproval, designation or other communication that is permitted or required to be given by one party to another party under this Agreement shall be in writing and shall be given or made or communicated by (i) United States registered or certified mail, postage prepaid, return receipt requested, (ii) any nationally recognized overnight carrier or express mail service (such as FedEx or DHL) that provides receipts to indicate delivery, (iii) by personal delivery, (iv) by facsimile (with proof of successful transmission) or by email (with a request for and receipt of proof of successful transmission). All such communications shall be addressed to the appropriate Administrator of this Agreement as follows:

### To the County:

Snohomish County  
Department of Conservation and Natural  
Resources  
Surface Water Management Division  
3000 Rockefeller Avenue, M/S 303  
Everett, WA 98201-4046  
Attention: Gregg Farris, SWM Director

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

### To the City:

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

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



To the District:

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

Any party hereto may, by reasonable notice to the other parties, designate such other address, facsimile telephone number or email for the giving of notices as deemed necessary. All notices shall be deemed given on the day each such notice is personally delivered, transmitted by facsimile (with evidence of receipt), or delivered by overnight courier service, or on the third business day following the day such notice is mailed if mailed in accordance with this Section, or on the same day as the day such notice is emailed if emailed in accordance with this Section.

For email delivery, a receipt or proof of successful transmission shall be deemed acceptable.

## **20. MISCELLANEOUS**

### **20.1 Entire Agreement**

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes any and all prior oral or written agreements between the parties regarding the subject matter contained herein. This Agreement may not be modified or amended in any manner except by a written document signed by the party against whom such modification is sought to be enforced.

### **20.2 Governing Law and Venue**

This Agreement shall be governed by and enforced in accordance with the laws of the State of Washington. The venue of any action arising out of this Agreement shall be in the Superior Court of the State of Washington, in and for Snohomish County.

### **20.3 Interpretation**

This Agreement and each of the terms and provisions of it are deemed to have been explicitly negotiated by the parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against any of the parties hereto. The captions and headings in this Agreement are used only for convenience and are not intended to affect the interpretation of the provisions of this Agreement. This Agreement shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

#### **20.4 Severability**

If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be found invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected thereby, but shall instead continue in full force and effect, to the extent permitted by law.

#### **20.5 No Waiver**

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

#### **20.6 Assignment**

This Agreement shall not be assigned, either in whole or in part, by any party without the express written consent of each other party, which may be granted or withheld in each such party's sole discretion. Any attempt to assign this Agreement in violation of the preceding sentence shall be null and void and shall constitute a Default under this Agreement.

#### **20.7 Warranty of Authority**

Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign this Agreement.

#### **20.8 No Joint Venture**

Nothing contained in this Agreement shall be construed as creating any type or manner of partnership, joint venture or other joint enterprise between the parties.

#### **20.9 No Third Party Beneficiaries**

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

#### **20.10 Exhibits**

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

- EXHIBIT A - Map Showing Features of the Marshland Drainage Basin
- EXHIBIT B - Financial Data for the District
- EXHIBIT C - District Resolution No. 2012-1

- EXHIBIT D - CPI Data
- EXHIBIT E - Sample CPI Adjustment to Present Value
- EXHIBIT F - Percentage of Pump-Related Operating Costs Allocable to Hillside Runoff Based Upon Peaking Factor
- EXHIBIT G - Calculation Sheet for Anticipated Cost and True-Upping

#### **20.11 Execution in Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date set forth under their signature below, and effective as of the date of the last party to sign.

**THE COUNTY:**

Snohomish County, a political subdivision of the State of Washington

By \_\_\_\_\_  
County Executive Director Date

Approved as to Form:  
Kasting, Justin  
Deputy Prosecuting Attorney

Digitally signed by  
Kasting, Justin  
Date: 2024.09.26  
09:35:42 -07'00'

**THE CITY:**

The City of Everett, a Washington municipal corporation

By \_\_\_\_\_  
Date 10/31/24  
Title: Mayor

Approved as to Form:  
Office of the City Attorney  
APPROVED AS TO FORM  
David C. Hall, City Attorney  
City Attorney

**THE 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: Commissioner

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

Approved as to Form:  
Gay Brundtetter  
Attorney for the District

ATTEST:  
\_\_\_\_\_  
City Clerk



**EXHIBIT B**  
**Historic Financial Data for the District**

<b>District's Historic Operating Costs</b>			
<b>Year</b>	<b>Ditch, Pond &amp; Canal</b>	<b>PUD / Electrical</b>	<b>Pump O &amp; M</b>
2007	\$125,014	\$58,571	\$9,769
2008	\$54,768	\$68,231	\$11,294
2009	\$56,202	\$79,612	\$25,094
2010	\$96,470	\$68,331	\$38,596
2011	\$83,860	\$85,980	\$12,027
2012	\$57,059.46	\$85,400.66	\$13,044.53
2013	\$71,195.07	\$67,325.80	\$16,742.50
2014	\$98,438.79	\$80,232.43	\$11,886.44
2015	\$95,025.20	\$76,164.57	\$39,031.28
2016	\$97,657.00	\$93,451.45	\$10,545.92
2017	\$67,463.00	\$110,960.00	\$10,393.00
2018	\$125,690.00	\$98,022.00	\$13,137.00
2019	\$103,939	\$65,773	\$11,973
2020	\$100,428	\$109,046	\$26,874
2021	\$128,781	\$102,166	\$18,846
2022	\$94,642	\$98,925	\$28,537
2023	\$160,365	\$74,700	\$17,642



**EXHIBIT C**  
**District Resolution No. 2012-1**

**MARSHLAND FLOOD CONTROL DISTRICT**

Resolution No. 2012-1

---

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

---

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

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

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

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

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

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

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



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

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

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

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

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


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

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


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

RESOLVED this 11<sup>th</sup> day of June, 2012.

MARSHLAND FLOOD CONTROL DISTRICT By:

  
Don Bailey, Chairperson


  
Marv Thomas, Commissioner

  
Tim Stocker, Commissioner

Attest:

  
Paul Reasoner, Secretary/Manager

Approved As To Form:

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

**EXHIBIT D**  
**CPI Data**

**Consumer Price Index - All Urban Consumers**  
**Original Data Value**

**Series Id:** CUURA423SA0,CUUSA423SA0  
**Not Seasonally**  
**Adjusted**  
**Area:** Seattle-Tacoma-Bremerton, WA  
**Item:** All items, all Urban Consumers  
**Base Period:** 1982-84=100  
**Years:** 2001 to 2023

<b>Year</b>	<b>Annual CPI Figure</b>
2001	185.7
2002	189.3
2003	192.3
2004	194.7
2005	200.2
2006	207.6
2007	215.7
2008	224.719
2009	226.028
2010	226.693
2011	232.765
2012	238.663
2013	241.563
2014	246.018
2015	249.364
2016	254.886
2017	262.668
2018	271.089
2019	277.984
2020	282.693
2021	295.560
2022	322.167
2023	340.845

Source:

[https://www.bls.gov/regions/west/data/consumerpriceindex\\_seattle\\_table.pdf](https://www.bls.gov/regions/west/data/consumerpriceindex_seattle_table.pdf)-  
 (last visited 04/30/2019)

**EXHIBIT E**  
**Sample CPI Adjustment to Present Value**

The following example illustrates how the CPI data shall be used to calculate the present value of historic Ditch, Pond and Canal Operating Costs for a particular year ("Year X"). For purposes of this example the following values are used: (i) "Year X" equals 2022; (ii) the "Present" equals January 2023; and (iii) the historic Ditch, Pond and Canal Operating Cost for 2022 equal \$94,642.

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

- |   |                        |
|---|------------------------|
| (1) Take the CPI for the Present (the most recently published annual CPI is for 2023) | 340.845                |
| (2) Take the annual CPI for 2022  | 322.167                |
| (3) Divide the Present CPI by the 2022 CPI  | $340.845 \div 322.167$ |
| (4) The result is the CIP adjustment factor.  | 1.058                  |

**Step B: Apply the percentage change in the CPI to the historic Ditch, Pond and Canal Operating Cost for 2022, as follows:**

- |   |           |
|---|-----------|
| (1) Take the actual Ditch, Pond and Canal Operating Cost for 2022   | \$94,642  |
| (2) Take the CPI adjustment factor from Step A(4), expressed in percent.  | 105.8%    |
| (3) Multiply the actual Ditch, Pond and Canal Operating Cost for 2014 by the CPI adjustment factor to get the result equal to the Ditch, Pond and Canal Operating Cost for 2022, adjusted to Present value. | \$100,131 |

## EXHIBIT F

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

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

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

YEAR	CPI ¶5.3	PV Adjust Exh E	Ditch, Pond & Canal; ¶6.1	PV Adjust Exh E	Pump Plant O&M; ¶6.2	PV Adjust Exh E	PUD ¶6.3	PV Adjust Exh E
2020	282.693		100,428		26,874		109,046	
2021	295.560		128,781		18,846		102,166	
2022	322.167		94,642		28,537		98,925	
2023	340.845		160,365		17,642		74,700	
2024		1.000						
			<b>TOTALS</b>					
				÷ 5		÷ 5		÷ 5
		¶6.2	5 yr avg					
				x .7264		x .232		x .232
			Upland Share					
				x .70		x .70		x .70

County Share  
City Share (.30)

Payments Due March 31 (¶s 4.1 & 4.2), or 60 days after invoice (whichever is later)				County	City
		¶6.1		\$	\$
True Up for PUD due March 31; (¶19)		¶6.2		\$	\$
or 60 days after invoice (whichever is later)		¶6.3		\$	\$
2024 Cost	\$				
Prior Yr 5 Yr Avg (2023)	(101,861)	TOTAL		\$	\$
Deficit/Excess					
	X .232				
	X .70	True-Upping Deficit/Excess		\$	\$
County Share				\$ plus	\$ = \$
City Share (.30)					

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