AMENDMENT NO. 1 TO THE INTERLOCAL AGREEMENT
FOR THE SMITH ISLAND RESTORATION PROJECT BY
AND BETWEEN SNOHOMISH COUNTY AND THE CITY OF
EVERETT

This Amendment No. 1 To The Interlocal Agreement For The Smith Island Restoration
Project By And Between Snohomish County And The City Of Everett is made and entered
into by and between Snohomish County (hereinafter the “County”) and the City of Everett
(hereinafter the “City”), collectively the “Parties”.

WHEREAS, the County and the City previously entered into that “Interlocal Agreement
For The Smith Island Restoration Project By And Between Snohomish County And The City
Of Everett” dated September 2, 2016 (hereinafter “Agreement”), which Agreement coordinates
improvements for the Smith Island Restoration Project as between the County and the City as
more fully set forth therein; and

WHEREAS, the Agreement provides for the County to perform certain work within
the Smith Island-City area referred to as “Breach and Related Work” as more fully set forth in
Section 1.2 of the Agreement for which the City is responsible for funding as provided in
Section 3.1.3 of the Agreement in accordance with the terms set forth in Exhibit C to the
Agreement titled “Breach and Related Work Bidding and Reimbursement”; and

WHEREAS, Sections 1.2 and 2.10.2 of the Agreement provide that the Parties shall
execute an amendment to the Agreement setting forth such additional administrative terms
and conditions governing the construction work to be performed by the County within the
Smith-Island City area pertaining to Breach and Related Work not otherwise addressed in the
Agreement, and the Parties now wish to memorialize such amendment in accordance with
Section 2.10.2 of the Agreement to clarify the terms of each party’s responsibilities
concerning construction of the Breach and Related Work and the City reimbursing the County
in full for such work;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained
herein, it is agreed that the Agreement shall be amended as follows:

GENERAL TERMS AND CONDITIONS

Section 1: Delete Section 2.8.3 - Section 2.8.3 of the Agreement is hereby deleted in its entirety.
Section 2: Replace Exhibit C - In accordance with Sections 1.2 and 2.10.2 of the Agreement,
the Parties hereby replace and supersede Exhibit C to the Agreement with Exhibit C (Revised)
attached hereto. The purpose and intent of Exhibit C (Revised) is to clarify and otherwise set
forth those additional administrative terms and conditions upon which the County shall perform
the Breach and Related Work set forth in Section 1.2 of the Agreement within the Smith Island-City area including the City’s estimated cost for construction of the Breach and Related Work within the Smith Island-City Area. In accordance with Section 2.10.2 of the Agreement, nothing contained in Exhibit C (Revised) shall be construed to amend or supersede an express provision contained within the Agreement itself save and except for replacing and superseding Exhibit C attached thereto. In furtherance thereof, all reference to Exhibit C contained within the Agreement shall be deemed amended to hereinafter reference Exhibit C (Revised).

Section 3: Savings Clause – To the extent not otherwise amended as set forth above, all other terms and conditions of that “Interlocal Agreement For The Smith Island Restoration Project By And Between Snohomish County And The City Of Everett” dated September 2, 2016, shall hereby remain in full force and effect.

Section 4: Effective Date. This Amendment No. 1 shall become effective following the approval of the Amendment by the official action of the governing bodies of each of the Parties hereto and the signing of the Amendment by the duly authorized representative of each of the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. One, effective on the latest date shown below. The signatories below represent and warrant that they possess the authority to execute this Amendment No. 1 and bind their respective entities.

SNOHOMISH COUNTY

By: /s/ Dave Somers  
Snohomish County Executive  
3/24/17

CITY OF EVERETT

By: /s/ Ray Stephanson  
Ray Stephanson  
City of Everett Mayor

ATTEST:

By: /s/ Cora E. Palmer  
Deputy City Clerk

Approved as to Form Only:

By: /s/ Brian Dorsey  
Deputy Prosecuting Attorney

By: /s/ Anna Pankevich  
Deputy City Clerk

Approved as to Form Only:

By: /s/ James D. Iles  
City Attorney

[The remainder of this page is intentionally left blank.]
EXHIBIT C (Revised)

Smith Island-City Area Breach and Related Work

Parties’ Responsibilities, Bidding and Reimbursement

The purpose of this Exhibit is to set forth the additional terms and conditions governing that construction work to be performed by the County within the Smith Island-City area consisting of “Breach and Related Work” as more fully set forth in Sections 1.2 and 2.10.2 of the “Interlocal Agreement For The Smith Island Restoration Project By And Between Snohomish County And The City Of Everett” dated September 2, 2016 (“Agreement”). All reference in this Exhibit to “Breach and Related Work” to be performed by the County contained herein shall be in reference to that work performed by the County within the Smith Island City-area and shall not be construed as referencing or including any Breach or Related Work performed by the County within the Smith Island-City area unless otherwise specifically identified as such.

A. City Responsibilities

1. Plans, Specifications and Permits. No later than first quarter of 2017 the City shall provide the County 100% plans and all necessary City permits for the Breach and Related Work to be performed by the County within the Smith Island-City area.

2. Cooperation with the County’s Contractor(s). The City shall make all reasonable efforts to cooperate with the County’s Contractor(s) in facilitating the Breach and Related Work and make necessary personnel available so as to not delay the Contractor(s)’s construction schedule. The City shall be responsible for any costs to the County for delays to the Breach and Related Work to the extent delays are caused by the City.

3. Acceptance of Breach and Related Work. The City, within thirty (30) working days after notification by the County of the completion of the Breach and Related Work and receipt of the as-built plans, shall issue written notification to the County of any deficiencies or of acceptance of the work. If notification has not been received by the County within the thirty (30) day period, the Breach and Related Work shall be considered complete and accepted by the City as of the close of business on day thirty (30). Upon acceptance, the Breach and Related Work becomes City property and the City assumes all responsibility for its maintenance and operation.

4. City Provided Inspector. The City may furnish an inspector for the Breach and Related Work. All costs for such inspection will be borne solely by the City and shall be in addition to those estimated costs. All contact between said inspector and the County’s Contractor(s) shall be through the County’s on-site representative who shall be identified at the preconstruction conference.

5. Reimbursement of County Costs. The City shall be responsible for reimbursing the County for all actual costs incurred by the County that are associated with the Breach and Related Work in the Smith Island-City area subject to the provisions contained within this Exhibit.

AMENDMENT NO. ONE TO THE INTERLOCAL AGREEMENT FOR THE SMITH ISLAND RESTORATION PROJECT BY AND BETWEEN SNOHOMISH COUNTY AND THE CITY OF EVERETT
B. County Responsibilities

1. **Lead Agency.** The County shall serve as the lead agency for all aspects of project management including, but not limited to, scheduling, bidding, administration, and construction management for the Breach and Related Work. The County will complete all Breach and Related Work in accordance with the City’s plans, specifications and permits.

2. **Plans, Specifications and Permits.** The County shall utilize the City provided plans, specifications and permits for construction of the Breach and Related Work.

3. **Preconstruction Meeting.** After awarding the contract, the County will arrange a preconstruction conference with the successful contractor(s), the ("Contractor(s)"") and invite the City to attend and participate.

4. **Inspection of Breach and Related Work.** The County shall inspect the construction of the Breach and Related Work based upon the plans, specifications, and permits approved and provided by the City. The County will retain all inspection reports for work involving the Breach and Related Work.

5. **Deviation from Breach and Related Work Design.** The County shall be responsible for obtaining City approval for deviations from City approved Breach and Related Work plans, specifications and permits.

6. **Independent Contractor.** The County shall perform all work as an independent contractor and not as an agent, employee, or servant of the City. The County has the express and exclusive right to direct and control the activities of County staff, consultants, sub-consultants, contractors, and sub-contractors in accordance with the specifications set out in this Amendment No. 1.

7. **Sub-Contracting.** The County, in its sole discretion, may hire one or more consultants, and/or sub-consultants, contractors and/or sub-contractors to perform some or all of the services necessary for the Breach and Related Work.

8. **Notification of Project Completion.** 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 set of plans of the Breach and Related Work in the Smith Island-City area. After receiving notice from the City that the Breach and Related Work and the as-built set of plans is consistent with the approved plans and specifications and permits, the County will accept the Breach and Related Work from the contractor.

9. **Correction of Deficiencies Identified by City.** The County shall be responsible for correcting any deficiencies in the Breach and Related Work identified by the City that were the result of the County’s contractor not conforming to the City’s approved plans and specifications and permits; Provided, however, nothing contained herein shall be construed as obligating the County to correct or otherwise be responsible for any deficiency or defect in the Breach and Related Work to the extent resulting from any error or defect in the City’s approved plans.
10. **Project Records.** The County will retain the original polypropylene plan sheets and all other Breach and Related Work records.

11. **Construction Contract.** The County, in accordance with Section C below, will call for bids and execute a construction contract for Breach and Related Work in the Smith Island-City area and the Smith Island County area in accordance with the County’s usual procurement processes and the County’s standard form construction contracts.

C. **Bidding and Award of Construction Contract for Breach and Related Work.**

1. **Bid schedules.** The Breach and Related Work will be bid in a single schedule separated into two groups, 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 items in Group 1 is work on County property and will be paid for from County funds. Bid items in Group 2 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 Groups: if a line item on Group 1 is similar to a line item on Group 2, 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 Group 1 and Group 2.”

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 Parties determine that the Breach and Related Work under the low bid exceeds available funds for the project, the County shall reject all bids. 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 sub-section C.1 above, then the County shall either reject the unbalanced bid or reject all bids.

   (c) **Re-bid.** If all bids are rejected under sub-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 sub-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 the Agreement, in which case the City and County will each independently construct their own Breach and Related Work.
2. Additional Insured. The construction contract will contain a provision requiring the City be added as an additional insured on the contractor’s required liability insurance policies.

3. Assignment of Warranties. The construction contract will contain a clause that allows the County to assign all contractor’s and manufacturer’s warranties from the County to the City.

D. Estimate, Segregation, and Payment of Construction Costs

1. Estimated Cost of Construction. The estimated cost of construction associated with the Breach and Related Work within the Smith Island-City Area is as shown in the attached Schedule of Estimated Project Costs; PROVIDED, the estimated costs will be adjusted to conform to the successful bidder’s proposal. Costs for additional Services to the extent associated with changes to the Breach and Related Work requested by the City or to the extent incurred as a result of either deficiencies in the City’s plans or unforeseen site conditions are in addition to those estimated costs as shown in the attached Schedule of Estimated Project Costs and shall be paid by the City.

2. Invoicing and Payment. The County shall invoice the City monthly, or on any other schedule that is mutually convenient and agreed to by the parties. 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. Invoices shall be based on the County Contractor(s)’s payments, equipment, materials, and labor expended on the Breach and Related Work, plus County expenditures in support of the Breach and Related Work. 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.

3. Payment of Invoices. Invoices shall be paid by the City within thirty (30) days of receipt by the City without offset or deduction for any reason. Notice of any potential dispute regarding such payment request shall be made in writing within the same time period and delivered by the City to the County. Payment by the City shall not constitute agreement as to the appropriateness of any item or acceptance of the work so represented. At the time of final audit, all required adjustments related to any potential dispute for which notice has been timely given and resolution mutually agreed to by the Parties shall be made and reflected in a final payment. If the Parties are unable to mutually agree upon resolution of a potential dispute relating to any invoice submitted by the County to the City as set forth above prior to completion of the Breach and Related Work, the Parties shall submit the matter to the dispute resolution process set forth in Section 8 of the Agreement;

4. City Reimbursement of Costs for Services Performed by County Staff, Consultants, Sub-Consultants, Contractors, or Sub-Contractors.

(a) County Staff. The City shall reimburse the County for the costs of the Services provided by County staff on a time and materials basis plus an administrative overhead fee pursuant to sub-section (c) below. The County agrees that only those costs directly attributed to the Breach and Related Work and allowed under accepted accounting...
procedures will be charged to the City. By way of example, those costs directly attributed
may include, but are not limited to, the following types of cost components:

i. Salaries, wages, benefits of all County employees engaged
therein;

ii. Travel expenses, including mileage of County employees;

iii. Materials, when provided by the County;

iv. County-owned machinery and equipment, for which the
County equipment rental rate shall be included in computing the cost of the machinery and
equipment;

v. Other costs and incidental expenses; including depreciation
on County machinery and equipment;

vi. The full cost to the County of rental machinery and
equipment, together with any operator furnished therewith;

vii. The cost of equipment, supplies, and related expenses when
purchased by the County; and

viii. The cost of permits required from other agencies, except the
City.

(b) Consultants, Sub-Consultants, Contractors or Sub-
Contractors. The City shall reimburse the County for One hundred percent (100%) of the
final cost of all Services provided by Consultants or Sub-consultants performing work for
and/or in lieu of County staff. The County agrees that only those costs directly attributed to
the Breach and Related Work and allowed under accepted accounting procedures will be
charged to the City.

(c) Administrative Costs for Services Performed by County
Staff. For the purpose of fixing the compensation to be paid by the City to the County for the
County performing Breach and Related Work services, it is agreed that there shall be
included in each billing, to cover administrative costs, an amount not to exceed the County
administrative rate. This rate is currently set at 15% of the total labor cost, including benefits,
to the County for only those County employees performing such services for the City under
this Agreement. The administrative rate is not included in charges for materials, equipment,
or payments to contractors or subcontractors. This rate may be reasonably adjusted annually
to reflect changes in actual administrative costs without the need for a formal amendment of
this Agreement.

5. Extra Work. There may be unforeseen conditions requiring immediate
resolution during the construction phase of the Breach and Related Work such as construction
disputes and claims, changed conditions and changes in the construction work.
Reimbursement for increased construction engineering and/or construction contract amounts
for the Breach and Related Work shall be limited to costs covered by a modification, change
order or extra work order approved as described below in Sections 6 and 7.

6. Changes from the Approved Plans. Should it be determined that any
change from the contract plans and specifications for the Breach and Related Work is
required, the County, through the Director of Engineering Services, shall have authority to
make such changes up to the amount of the “Contingency” shown in the attached Schedule of
Estimated City Project Costs for Breach and Related Work Within the Smith Island-City
Area. PROVIDED, that any change in the Breach and Related Work, that would result in an
increased cost to the City in excess of $15,000 per incident, or that would result in a total of
cumulative incidents that is greater than the “Contingency” amount in the attached Schedule
of Estimated Project Costs, will require a Binding Letter of Agreement, signed by the Parties’
Public Works Directors or their designees, describing the changed scope of work and the
estimated change in the Breach and Related Work cost.

7. Contractor Claim. In the event of a claim by the Contractor(s) relating
to Breach and Related Work performed within the Smith Island-City area, the City shall be
responsible for indemnifying, defending and holding harmless the County from and against all
claims, causes of action or damages to the extent arising out of any defect, error or deficiency
in the City’s approved plans including, but not limited to, any claims for costs associated with
change orders, delays or additional work to the extent necessitated by any defect, error or
deficiency in the City’s approved plans or to the extent resulting from any unforeseen
conditions existing upon the Smith Island-City area.

E. Audit and Final Invoice by County and Review and Acceptance by City of
   Project Completion

1. Audit and Final Billing. Upon completion and acceptance of the
Breach and Related Work and resolution of contractor claims (if any), the County shall
conduct a final audit in accordance with accepted industry standards. At the time of the final
audit, all adjustments required shall be made and shall be reflected in a final billing to the
City. The County, upon completion of the audit, shall provide the City with a copy of the
audit and a final invoice.

2. Review and Acceptance. The City shall have thirty (30) days from
receipt of the audit and final invoice to review and notify the County if it accepts or has
comments on the audit and final invoice.

3. Deemed Acceptance. Within thirty (30) days of receipt of the audit and
final invoice, the City shall notify the County in writing of any objections to the audit and/or
final invoice. If no objections are timely delivered, the City shall make final payment to the
County and such final payment shall constitute an acceptance by the City of the County’s
costs and accounting. If the City gives timely notice of an objection to the audit and final
invoice, and the parties are unable to mutually agree upon resolution of such objection within
thirty (30) days of the County’s receipt of such notice, the Parties agree to submit the matter
to the dispute resolution process set forth in Section 8 of the Agreement.
Schedule of Estimated City Project Costs for Breach and Related Work Within the
Smith Island-City Area

All project costs listed below are estimated and will be adjusted to conform to the successful bidder’s
proposal and all County expenditures invoiced to the City will be actual expenditures.

<table>
<thead>
<tr>
<th>Line #</th>
<th>Description of Bid Item</th>
<th>Approx. Quantity</th>
<th>Unit</th>
<th>Unit Cost</th>
<th>Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilization*</td>
<td>0.26</td>
<td>L.S.</td>
<td>$266,100</td>
<td>$69,186</td>
</tr>
<tr>
<td>2</td>
<td>Archaeological and Historical Salvage</td>
<td>5000</td>
<td>EST.</td>
<td>$1</td>
<td>$5,000</td>
</tr>
<tr>
<td>3</td>
<td>Removal Of Structures and Obstructions*</td>
<td>0.89</td>
<td>L.S.</td>
<td>$92,000</td>
<td>$81,880</td>
</tr>
<tr>
<td>4</td>
<td>Clearing and Grubbing-City</td>
<td>3.6</td>
<td>ACRE</td>
<td>$4,000</td>
<td>$14,400</td>
</tr>
<tr>
<td>5</td>
<td>Removal Of Man-Made Debris</td>
<td>10000</td>
<td>EST.</td>
<td>$1</td>
<td>$10,000</td>
</tr>
<tr>
<td>6</td>
<td>Removal Of Knotweed</td>
<td>263</td>
<td>SY</td>
<td>$8</td>
<td>$2,104</td>
</tr>
<tr>
<td>7</td>
<td>Roadway Excavation Incl. Haul-City</td>
<td>3625</td>
<td>CY</td>
<td>$10</td>
<td>$36,250</td>
</tr>
<tr>
<td>8</td>
<td>Dike Breach and Grading Incl. Haul-City</td>
<td>2925</td>
<td>CY</td>
<td>$26</td>
<td>$76,050</td>
</tr>
<tr>
<td>9</td>
<td>Channel Excavation Incl. Haul-City</td>
<td>14650</td>
<td>CY</td>
<td>$20</td>
<td>$293,000</td>
</tr>
<tr>
<td>10</td>
<td>Environmental Compliance Lead*</td>
<td>0.26</td>
<td>LS</td>
<td>$27,500</td>
<td>$7,150</td>
</tr>
<tr>
<td>11</td>
<td>Erosion/Water Pollution Control</td>
<td>15000</td>
<td>EST.</td>
<td>$1</td>
<td>$15,000</td>
</tr>
<tr>
<td>12</td>
<td>Floating Silt Curtain-City</td>
<td>1</td>
<td>LS</td>
<td>$14,550</td>
<td>$14,550</td>
</tr>
<tr>
<td>13</td>
<td>Cofferdam-City</td>
<td>1</td>
<td>LS</td>
<td>$6,500</td>
<td>$6,500</td>
</tr>
<tr>
<td>14</td>
<td>Type B Progress Schedule*</td>
<td>0.26</td>
<td>L.S.</td>
<td>$10,000</td>
<td>$2,600</td>
</tr>
<tr>
<td>15</td>
<td>SPCC Plan*</td>
<td>0.26</td>
<td>L.S.</td>
<td>$4,000</td>
<td>$1,040</td>
</tr>
<tr>
<td>16</td>
<td>Contractor Surveying*</td>
<td>0.26</td>
<td>L.S.</td>
<td>$65,000</td>
<td>$16,900</td>
</tr>
<tr>
<td>17</td>
<td>Health and Safety Plan*</td>
<td>0.26</td>
<td>L.S.</td>
<td>$5,000</td>
<td>$1,300</td>
</tr>
<tr>
<td>18</td>
<td>Temporary Access and Staging-City</td>
<td>1</td>
<td>LS</td>
<td>$10,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>19</td>
<td>Six Foot Chain Link Fence With 3-Strand Barbed Wire Top-City</td>
<td>1950</td>
<td>LF</td>
<td>$30</td>
<td>$58,500</td>
</tr>
<tr>
<td>20</td>
<td>Double 20 Foot Chain Link Gate With 3-Strand Barbed Wire Top-City</td>
<td>3</td>
<td>EACH</td>
<td>$5,000</td>
<td>$15,000</td>
</tr>
<tr>
<td>21</td>
<td>End, Gate, Corner, and Pull Post for Chain Link Fence-City</td>
<td>12</td>
<td>EACH</td>
<td>$250</td>
<td>$3,000</td>
</tr>
<tr>
<td>22</td>
<td>Field Office Building</td>
<td>0.26</td>
<td>L.S.</td>
<td>$8,000</td>
<td>$2,080</td>
</tr>
</tbody>
</table>

|   | Subtotal of Bid Items (Line 1 – Line 24) | $741,490 |
|   | Sales Tax (9.2% of Line A) | $68,217 |
|   | Subtotal of Bid Items and Sales Tax (Line A + Line B) | $809,707 |
|   | Contingency (20% of Line C) | $161,941 |
|   | Subtotal of Bid Items, Sales Tax, and Contingency (Line C + Line D) | $971,648 |
|   | Construction Inspection & Contract Administration (18% of Line E) | $174,897 |
|   | County Staff Administrative Cost Overhead (15% of Line F) | $26,235 |
|   | Total Estimated Cost Of Breach and Related Work (Lines E – G) | $1,172,780 |

* Noted lump sum items with a quantity other than 1.0 represent the agreed split of costs for items shared between the City and County.
PROJECT TITLE:

Amendment No. 1 to the Smith Island Restoration Project Interlocal Agreement

COUNCIL BILL #

Public Works

Originating Department

Erik Emerson

Contact Person

(425) 257-8995

Phone Number

February 15, 2017

FOR AGENDA OF

Initialed by:

Department Head

CAA

Council President

1

Location

Preceding Action

Attachments

Department(s) Approval

Smith Island/Union Slough at 12th Street NE

June 15, 2016 Interlocal Agreement for the Smith Island Restoration Project

Amendment No. 1

Legal

Amount Budgeted

$2,100,000

Expenditure Required

$1,172,780

Account Number(s): 401

Budget Remaining

$243,320

Additional Required

-0-

DETAILED SUMMARY STATEMENT:

Snohomish County has been planning a large-scale wetland restoration project on Smith Island for over 15 years. The City owns land adjacent to this proposed project that would also be restored in order to gain wetland mitigation credits for future project mitigation needs.

County and City staff have determined it is most efficient for both parties to use their respective land to jointly construct one estuary restoration project. The Smith Island Restoration Project Interlocal Agreement established cost sharing for planning, design, permitting and some preliminary construction of the shared project. Addendum No. 1 to the interlocal agreement authorizes Snohomish County to construct the joint project. The City will reimburse the County for costs associated with the City’s portion of the work at an estimated $1,172,780.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign Amendment No. 1 to the Smith Island Restoration Project Interlocal Agreement with Snohomish County with an estimated cost to the City of $1,172,780.