

ORIGINAL

INTERLOCAL AGREEMENT BETWEEN THE CITY OF EVERSON, THE CITY OF NOOKSACK, AND THE CITY OF SUMAS FOR FLOOD ANALYSIS, MITIGATION, AND PROTECTION

This Interlocal Agreement (the “Agreement”) is entered into this 13th day of March 2023, by and between the City of Everson (hereinafter “Everson”), the City of Nooksack (hereinafter “Nooksack”), and the City of Sumas (hereinafter “Sumas”), Washington municipal corporations and code cities organized under Title 35A RCW. They may be collectively referred to herein as the “Cities” or “Parties” and individually as “City” or “Party.”

WHEREAS, the Cities are governmental entities located in Whatcom County, Washington; and

WHEREAS, RCW 39.34 permits governmental entities to enter into interlocal agreements with one another for joint or cooperative action; and

WHEREAS, in November of 2021, flooding from the Nooksack River caused substantial damage in all of the Cities; and

WHEREAS, the Cities have shared concerns about recent area flooding and flood damage and a common interest in flood-related issues, including those related to determining causes, analysis, planning, prevention, protection, mitigation, response and awareness; and

WHEREAS, Whatcom County’s management of the Nooksack River, and its flood control efforts, impact the Cities; and

WHEREAS, the Cities will benefit by developing their own independent information regarding flood-related issues; and

WHEREAS, flood-related issues have broad implications on the functions and facilities of the Cities; and

WHEREAS, the Cities desire to coordinate efforts where feasible to address flood-related issues; and

WHEREAS, it is in the public interest for the Cities to work in a cooperative manner; and

WHEREAS, it is anticipated that efforts to address flood-related issues will include obtaining professional and related services for purposes of representation, investigation, studies, analysis, planning, mitigation, prevention, protection, response and awareness; and

WHEREAS, this Agreement is intended to allow the Cities to coordinate efforts, including the sharing of costs, to address flood-related issues, including investigation, studies, analysis, planning, mitigation, prevention, protection, response and awareness; and

WHEREAS, the foregoing recitals are a material part of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereby agree as follows:

1.0 PURPOSE.

The purpose of this Agreement is to provide a mechanism and procedures whereby the Parties can combine, share, and coordinate efforts ("Mutual Efforts") to address issues resulting from flooding of the Nooksack River ("flood-related issues"), including representation, investigation, studies, analysis, planning, mitigation, prevention, protection, response and awareness, including by obtaining services from engineers, analysts, consultants, contractors and other service and material providers.

2.0 DECISIONS.

All decisions regarding Mutual Efforts under Section 3.0 of this Agreement shall be by consensus of the Parties, subject to the financial, technical, and legal limitations of the Parties. In the event that the Parties are unable to agree upon a means of undertaking any proposed action pursuant to this Agreement, then any one of the Parties shall have the unilateral right to reject such means, without contributing additional time or other resources to the further negotiation thereof.

3.0 GENERAL SCOPE OF SERVICES.

3.1. Mutual Efforts. From time to time during the term of this Agreement, the Parties may agree to undertake Mutual Efforts to address flood-related issues.

3.2. Task Orders. As the need arises the parties may agree to undertake Mutual Efforts, the scope of such Mutual Efforts will be delineated in a sequentially numbered task order in a form similar to Task Order # 1, attached hereto as Exhibit A, which form is approved with this Agreement. Such Task Order(s) will identify the specific service(s) and/or activities to be provided, and estimates of the time, and the estimated total cost to complete, as provided in Section 4.

3.3. Equal Benefit. This Agreement, and the Mutual Efforts undertaken pursuant to it, are intended for the shared, mutual and equal benefit of the Parties. The Parties may designate in a Task Order that a specific Party, or other individual, serve as a primary contact or similar role with respect to the specific Mutual Efforts being undertaken. However, each Party shall have equal access and input with respect to all Mutual Efforts, and any and all information and work product resulting therefrom.

4.0 COSTS FOR SERVICES.

4.1 Services. Unless otherwise agreed to by the Parties, the costs for services and/or activities shall be allocated between the parties as set forth in the Task Order. If the Task Order does not specify how costs are to be allocated, then the costs shall be allocated equally between the Parties.

4.2 Invoices. The Party receiving the billing or invoices for the services and/or activities provided pursuant to a Task Order will submit regular invoices to the other parties identifying the

specific task order(s) under which the services and/or activities were provided. Specific procedures for invoicing will be determined by agreement of the Parties.

5.0 TERM.

This Agreement shall commence as of the date of this Agreement and shall continue until December 31, 2028, unless any Party terminates this agreement by providing written notice to the other Parties not less than thirty 30 days prior to the date such Party desires the termination of this Agreement to become effective. Any Party may require that the terms and conditions of this Agreement be re-negotiated by providing written notice to the other Party, not less than thirty (30) days prior to the date such Party desires the modification to this Agreement to become effective. No modification shall be effective unless in compliance with Section 8, below. A notice of re-negotiation shall not be a notice of termination; however, nothing prevents a Party from delivering both a notice of re-negotiation and a notice of termination.

If this Agreement is terminated, in accordance with the provisions of this Section 5, then the Parties agree to negotiate in good faith to unwind the obligations entered into under this Agreement. If the Parties cannot agree to a resolution of the obligations entered into within ninety (90) days of the termination date of this Agreement, then the Parties agree to submit to binding arbitration, as set forth in Section 9.7 below.

6.0 CONTACT PERSONS.

The following persons, referred to as Contact Person(s), are responsible for the administration of this Agreement for each Party and have the authority to execute Task Orders on behalf of their Party under this Agreement:

For City of Everson:	Mayor
For City of Nooksack:	Mayor
For City of Sumas:	Mayor

or such other persons as may be specified from time to time in writing by either Party and provided to the other Party.

7.0 RELATIONSHIPS OF THE PARTIES AND INDEMNIFICATION.

The Parties agree that they are each independent public entities operating pursuant to the terms and conditions of this Agreement. No agent, employee, or representative of a Party to this Agreement shall be deemed to be an agent, employee, or representative of any other Party for any purpose. Each Party shall be responsible for paying the wages, benefits, retirement and other similar costs for its own employees. To the extent permitted by law, each Party remains solely and entirely responsible for the acts of its respective staff.

7.1 Indemnification. Each Party, as an indemnitor, agrees to protect, defend, hold harmless, and indemnify each other Party from and against all third-party claims, suits, and actions arising from the intentional or negligent acts or omissions of such indemnitor, its agents, or employees in the performance of this Agreement.

7.2 Waiver of Title 51. For purposes of the indemnity provided pursuant to this Agreement, each Party hereto specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title 51 RCW, and all other applicable Industrial Insurance/Worker's Compensation Acts or their equivalent. Further, the indemnification obligations under this Agreement shall not be limited in any way by any limitations on the amount or type of damages, compensation, or benefits payable to or for any third party under Workers' Compensation Acts, Disability Benefits Acts, or other Employee Benefit Acts; provided, this waiver of immunity under this Article extends only to claims against one Party by another Party hereto, and does not include, or extend to, any claims by any Party's employees directly against that Party.

By initialing below, each Party certifies that the waiver of immunity contained in this Article was mutually negotiated.

City of Everson: _____

City of Nooksack: _____

City of Sumas: _____

8.0 EXTENT OF AGREEMENT AND MODIFICATIONS.

This Agreement, together with the Exhibits and Addenda as may be added upon approval of the Parties, contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no understandings, oral or otherwise, modifying or adding to this Agreement. No amendments, changes, or modification of this Agreement shall be valid or binding upon any Party unless such amendment, change, or modification be in writing and executed by the Parties.

9.0 MISCELLANEOUS PROVISIONS.

9.1 No Waiver. The failure of any Party to insist upon or enforce strict performance by any other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

9.2 Applicable Law. This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Washington, except to the extent such laws may be preempted by the laws of the United States of America.

9.3 Governing Law and Venue. The Parties agree that any dispute shall be governed by the laws of the State of Washington, and any proceeding in law or in equity shall be brought in Whatcom County, State of Washington, or such other place as the Parties may agree to in writing.

9.4 Standards. The Parties and the Parties' employees and agents will adhere to applicable professional and ethical standards and will perform all work in a manner consistent with generally accepted skill and care for the type of work undertaken.

9.5 **Neutral Authorship.** Each of the provisions of this Agreement has been reviewed and negotiated and represents the combined work product of the Parties. No presumption or other rules of construction, which would interpret the provisions of this Agreement in favor of or against the Party preparing the same, shall be applicable in connection with the construction or interpretation of any of the provisions of this Agreement.

9.6 **Entire Agreement.** This Agreement sets forth the entire Agreement and supersedes any and all prior Agreements of the Parties with respect to the subject matters hereof.

9.7 **Arbitration.** The Parties mutually covenant to work cooperatively to timely resolve any dispute that may arise between the Parties concerning this Agreement. However, if the Parties cannot mutually settle a dispute within thirty (30) days, the dispute or claim shall be submitted to binding arbitration, unless the Parties agree to first mediate the dispute. The Parties agree that the arbitration shall be governed by the rules and procedures outlined in RCW 7.04 et. seq. and the Whatcom County Mandatory Arbitration Rules, and that the Parties will jointly stipulate to an arbitrator. In the event that the Parties are unable to agree to an arbitrator, the Parties agree that the Presiding Judge of Whatcom County Superior Court may appoint the arbitrator.

9.8 **Notices.** All notices, demands, requests, consents, and approvals which may, or are required to be given to any Party or any other Party hereunder, shall be in writing and shall be deemed have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage paid to:

City of Everson: Office of Mayor
 P.O. Box 315
 111 W Main Street
 Everson, WA 98247

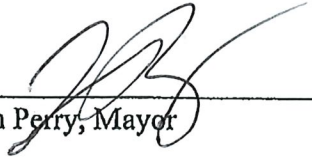
City of Nooksack: Office of Mayor
 103 W. Madison St.
 Nooksack, WA. 98276

City of Sumas Office of Mayor
 PO BOX 9
 433 Cherry Street
 Sumas, WA 98295

9.9 **Publication:** Prior to its entry into force, this Agreement shall either be recorded with the Whatcom County Auditor or, alternatively, listed by subject on each Party's web site or other electronically retrievable public source.

In Witness Whereof, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives all as of the day and year first above written.

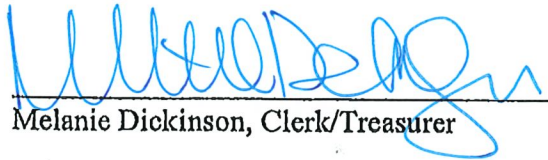
CITY OF EVERRRSON



John Perry, Mayor

3/28/2023
Date

ATTEST:



Melanie Dickinson, Clerk/Treasurer

3/28/2023
Date

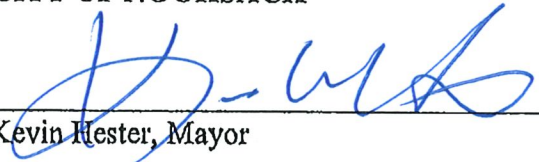
APPROVED AS TO FORM:



Jon Sitkin, City Attorney

3/27/23

CITY OF NOOKSACK



Kevin Hester, Mayor

3-30-23
Date

ATTEST:



Virginia Arnason, Clerk/Treasurer

3/30/23
Date

APPROVED AS TO FORM:



City Attorney
ROBERT CARMICHAEL

Exhibit "A"

TASK ORDER NO. 1

This Task Order has been prepared pursuant to Section 3.1 Mutual Efforts of the Interlocal Agreement between the City of Everson, City of Nooksack and City of Sumas and as such is considered to be attached thereto and a part thereof such Agreement.

The Parties have agreed to combine, share, and coordinate efforts ("Mutual Efforts") to address issues resulting from flooding of the Nooksack River ("flood-related issues"), including representation, investigation, studies, analysis, planning, mitigation, prevention, protection, response and awareness, including by obtaining services from engineers, analysts, consultants, contractors and other service and material providers by executing a Task Order.

A. Purpose of authorized Mutual Efforts:

To have representation at the Whatcom County Floodplain Integrated Planning (FLIP) process.

B. Mutual Efforts authorized pursuant to this Task Order:

Mutual Efforts authorized pursuant to this Task Order: To retain Reichhardt & Ebe Engineering (R&E) to represent the three City's within the FLIP.

C. Time for performance of Mutual Efforts:

The Mutual Efforts authorized herein shall be performed pursuant to the following schedule:

Commencement: March 1, 2022

Completion: June 30, 2025

Other: _____

D. Task Order Cost - Estimate and Maximum Cost:

Estimated Cost for completion of the Mutual Efforts authorized by this Task Order: _____
\$12,000 split between Nooksack/Everson/Sumas (20% local match)

The maximum not to exceed cost under this Task Order will be: \$12,000

E. Other:

This Task Order authorizes the undertaking of the Mutual Efforts described herein pursuant to that Interlocal Agreement between the City of Everson, City of Nooksack and City of Sumas and each Party approves this Task Order as signed by its authorized representative.

CITY OF EVERSON

By: [Signature]

Date: 3/17/23

CITY OF NOOKSACK

By: [Signature]

Date: 03/30/23

CITY OF SUMAS

By: [Signature] Mayor

Date: 3/13/23

Exhibit "A"

TASK ORDER NO. 2

This Task Order has been prepared pursuant to Section 3.1 Mutual Efforts of the Interlocal Agreement between the City of Everson, City of Nooksack and City of Sumas and as such is considered to be attached thereto and a part thereof such Agreement.

The Parties have agreed to combine, share, and coordinate efforts ("Mutual Efforts") to address issues resulting from flooding of the Nooksack River ("flood-related issues"), including representation, investigation, studies, analysis, planning, mitigation, prevention, protection, response and awareness, including by obtaining services from engineers, analysts, consultants, contractors and other service and material providers by executing a Task Order.

A. Purpose of authorized Mutual Efforts:

To develop flood engineering and flood modeling information critical to understanding the November 2021 flood event and to developing strategies to increase future community resiliency.

B. Mutual Efforts authorized pursuant to this Task Order:

Mutual Efforts authorized pursuant to this Task Order:

To retain WEST Consultants to provide professional engineering and floodplain modeling services related to understanding the November 2021 flood and developing strategies for increasing community resiliency.

C. Time for performance of Mutual Efforts:

The Mutual Efforts authorized herein shall be performed pursuant to the following schedule:

Commencement: January 1, 2023

Completion: December 31, 2024

D. Task Order Cost - Estimate and Maximum Cost:

Estimated Cost for completion of the Mutual Efforts authorized by this Task Order:


\$45,000

The maximum not to exceed cost under this Task Order will be: \$15,000 per city

E. Other:


This Task Order authorizes the undertaking of the Mutual Efforts described herein pursuant to that Interlocal Agreement between the City of Everson, City of Nooksack and City of Sumas and each Party approves this Task Order as signed by its authorized representative.

CITY OF EVERSON


By:

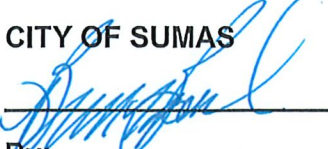
3/17/23
Date

CITY OF NOOKSACK


By:

03/30/23
Date

CITY OF SUMAS

 Mayor
By:

3/13/2023
Date