

INTERLOCAL AGREEMENT

BETWEEN CITY OF BURLINGTON AND DIKE AND DRAINAGE DISTRICT NO. 12 - SHARING OF EQUIPMENT, TRACTORS, MOWERS AND OTHER EQUIPMENT AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is entered into between the CITY Of BURLINGTON, a Washington municipal corporation ("City"), and SKAGIT COUNTY DIKE, DRAINAGE AND IRRIGATION IMPROVEMENT DISTRICT NO. 12, a Washington special purpose district, ("District") (collectively, "the Partners").

RECITALS

Whereas, the Partners are public agencies as defined by Ch. 39.34 of the Revised Code of Washington, and may enter into Interlocal agreements on the basis of mutual advantage to provide services and facilities in the manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs of local communities; and

Whereas the District has earthmoving and heavy hauling equipment, including trucking, and employees and drivers who are CDL certified for both driving and heavy equipment, and to haul debris, dirt, contaminated soil and related road and highway waste; and

Whereas the City has earthmoving and heavy hauling equipment including trucking, and employees and drivers who are CDL certified to operate said equipment; and

Whereas, each Partner has unique project requirements at any given time that are not efficiently satisfied by heavy equipment within their respective inventory, but the other Partner does, or pieces of heavy equipment may be temporarily inoperable; and

Whereas this Interlocal Agreement between the Partners will mutually benefit each Partner, by pursuing joint efforts to obtain maximum benefit for each Partner by trading, exchanging and sharing equipment, including tractors, mowers, heavy equipment and trailers, along with personnel, for joint operations and sharing or resources in the jurisdictions of the Partners; and

Whereas the Partners herein agree to mutually share, trade, and exchange equipment, tractors, mowers, and other equipment.

NOW THEREFORE, in consideration of the terms and provisions contained herein, the, the Partners hereto enter into this Interlocal Agreement as follows:

AGREEMENT

1. **Partnership Purpose.** A Partnership is hereby formed between the City of Burlington and Skagit County Dike, Drainage and Irrigation Improvement District #12, hereinafter designated "Partners", for the purpose of using, sharing and trading equipment, including tractors, mowers, graders, backhoes, and hauling dump trucks and trailers, and related equipment. The Partners shall determine the type of equipment used, and the individuals and drivers to provide the pick-up and hauling of the equipment and/or materials.

2. **Term of Agreement.** This Agreement shall be for five (5) years, and shall commence on June 1, 2020 and shall be in full force and effect until June 1, 2025 at which time said Agreement shall terminate unless earlier terminated under the terms and conditions herein.

3. **Administration of Agreement.** The City of Burlington representatives, and DD12 Commissioners will provide technical oversight, management, cooperation, and administration of equipment, usage of equipment, and manpower respecting each Partner's jurisdiction and responsibilities.

4. **Joint Cooperation and Approval.** All activities, consultants, decisions, budgeting, use of resources and any/all other decisions important to either Partner, will be agreed upon by both Partners prior to proceeding and initiating such activities or decisions.

5. **Payment and Funding.** The City and District agree that financial contribution to this endeavor may be initiated and required, at the agreement of each Partner. The Partners agree that operation of equipment, along with manpower, shall be reviewed and compensation shall be determined on a case-by-case basis. Exchange of equipment may occur without monetary compensation and may include in-kind and joint use of said equipment, and machinery as determined by agreement of the Partners.

6. **Amendments.** This Agreement is intended to be amended from time to time to address project funding and construction arrangements, subject to the mutual agreement of the Partners.

7. **Indemnification and Hold Harmless.** Each Partner hereto shall be liable for its own negligent acts, or omissions committed by its elected officials, officers, employees, agents, representatives, attorneys, contractors, subcontractors, and

assigns. Each Partner further agrees to indemnify, defend, and hold harmless the other Partners for any and all liability, claims, losses, demands, actions or causes of action arising from its act or omission in connection with this Agreement. This indemnification and hold harmless shall extend to any acts, or omissions committed by elected officials, officers, employees, agents, representatives, contractors, subcontractors, and assigns. By virtue of this provision, the Partners shall not be deemed to have waived their immunity pursuant to Title 51 RCW, and nothing contained in this Agreement shall be construed so as to operate as a waiver.

8. Termination by Notice. Any participating Partner may terminate its participation in this Agreement by providing thirty (30) calendar days prior written notice to the other Partner, provided that termination shall not affect or impair any joint purchases of the Partners that are agreed to on or before the termination. The terminating Partner shall pay the full share of costs or participation in funding accruing up to and including the final date of termination.

9. Assignment. The Partners shall not assign this Agreement or any interest, obligation or duty therein without the express written consent of the other Partner.

10. Insurance. Each Partner shall maintain, at all times during the term of this Agreement, at its cost and expense, general liability insurance coverage with limits of not less than Two Million Dollars (\$2,000,000.00), per each occurrence, and Two Million (\$2,000,000) in the aggregate or a like amount of coverage available through any insurance pool. The policy or coverage of each Partner shall further name the other Partner as additional named insureds on each said policy or coverage through any insurance pool.

11. Attorney's Fees. If either Partner shall be required to bring any action to enforce any provision of this Agreement, or shall be required to defend any action brought by the other Partner with respect to this Agreement, and in the further event that one Partner shall substantially prevail in such action, the losing Partner shall, in addition to all other payments required therein, pay the prevailing Partners reasonable costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorney's fees in the trial court and in any appellate courts.

12. Notices. All notices and payments hereunder may be delivered or mailed. If mailed, they shall be sent to the following respective addresses or to such other respective addresses as either Partner hereto may hereafter from time to time designate in writing:

To Dike District 12
1317 N Anacortes Street
Burlington WA 98233
Attn: John A. Shultz

To City of Burlington
833 S Spruce Street Burlington
WA 98233
Attn: Leif Johnson

All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the second business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing.

13. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a final decision of any court having jurisdiction on the matter, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect, unless such court determines that such invalidity or unenforceability materially interferes with or defeats the purposes hereof, at which time either Partner shall have the right to terminate the Agreement.

14. Entire Agreement. This Agreement constitutes the entire Agreement between the Partners. There are no terms, obligations, covenants or conditions other than those contained herein. No modifications or amendments of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both Partners. All items incorporated herein by reference, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the Partners hereto.

15. Jurisdiction and Venue. This Agreement shall be deemed to be made and construed in accordance with the laws of the State of Washington jurisdiction and venue for any action arising out of this Agreement shall be in Skagit County, Washington.

ADOPTED by the City Council of the City of Burlington at a regular meeting held on the _____ day of _____, 2020.

ADOPTED by the Board of Commissioners of Skagit County Dike, Drainage and Irrigation Improvement District No. 12, at a regular meeting held on the _____ day of _____, 2020.

IN WITNESS WHEREOF the Partners hereto have executed this Agreement as of the day and year first above written.

DIKE DISTRICT #12

CITY OF BURLINGTON

John Burt, Dike District #12 Secretary

Steve Sexton, Mayor

Attest:

Dan Lefeber, Operations Manager

Joseph Stewart, Finance Director

Approved as to form and legality:

John A. Shultz
Dike District #12 Attorney

Leif Johnson
City Attorney