

**INTERLOCAL AGREEMENT**  
**Between**  
**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**  
**And**  
**THE CITY OF LYNDEN**  
**For**  
**Lynden Levee Channel Realignment Project (No. 718005) and USACE Lynden Levee Rehabilitation Project (No. NSK-03-18)**

This Interlocal Agreement (ILA) is made and entered into by and between the City of Lynden (hereinafter referred to as “City”), and the Whatcom County Flood Control Zone District (hereinafter referred to as the “FCZD”), this \_\_\_\_ day of \_\_\_\_\_, 2021 (individually referred to as “Parties” and together referred to as “Party”).

**WHEREAS**, a parcel of property located within the corporate limits of the City, is owned by the City of Lynden and is approximately 18 acres in size (Parcel Number 4003203371080000), described more fully and accurately in Exhibit A attached hereto (“Property”); and

**WHEREAS**, a modified natural stream channel (hereinafter referred to as the “Channel”) runs through the Property and is a tributary to the Nooksack River; and

**WHEREAS**, the Channel provides storm water drainage for the City and provides drainage to adjacent farm ground including drainage of floodwaters; and

**WHEREAS**, the primary use of the Property is the operation and maintenance of the City’s Wastewater Treatment Plant (hereinafter referred to as “WWTP”); and

**WHEREAS**, the levee lying along the southern property line of the Property (“Lynden Levee”) provides flood protection to the City and is active in the United States Army Corps of Engineers (USACE) PL84-99 Program for repairs if damaged by a flood event; and

**WHEREAS**, the FCZD is proposing the Lynden Levee Channel Realignment Project (No. 718005) to: (1) realign and regrade the Channel, (2) combine it with an existing small drainage ditch, (3) enhance an existing berm adjacent to the settling pond (pond), (4) regrade a segment of the Lynden Levee to pre-damage conditions, and (5) regrade and place riprap protection on the levee back slope to protect the pond and new culvert; and

**WHEREAS**, the Lynden Levee Channel Realignment Project (No. 718005) (hereinafter referred to as the “Project”) is described more fully and accurately in Exhibit B attached hereto; and

**WHEREAS**, the Project is being implemented in conjunction with the USACE Lynden Levee Rehabilitation Project (No. NSK-03-18) which includes repairing a segment of the Lynden Levee, replacing/combining two existing culverts with one new culvert with a flood gate; and

**NOW, THEREFORE**, it is agreed by the parties hereto as follows:

### **PURPOSE OF THE AGREEMENT**

The purpose of this ILA is to define the obligations and responsibilities of the Parties involved in:

- Implementing, operating, maintaining, repairing, inspecting, restoring, and providing funding for the FCZD Lynden Levee Channel Realignment Project (FCZD Channel Realignment Project), No. 718005. The Channel Realignment Project includes realignment of a tributary channel and a ditch.
- Operating, maintaining, and repairing the Lynden Levee, culvert, and flood gate associated with the USACE Lynden Levee Rehabilitation Project (USACE Levee Rehabilitation Project), No. NSK-03-018.

### **DEFINITIONS**

Operations and Maintenance:

- Maintenance of natural channel and buffer functions including wood habitat features.
- Removal of accumulated sediment, wood, manmade debris, and/or trash in the culvert and/or channel if it is disrupting drainage or the functioning of the culvert or flood gate.
- Operation and maintenance of the flood gate.
- Maintenance of Lynden Levee vegetation including mowing crest and back slope and preventing invasive plant species from establishing and spreading.

All Operations and Maintenance shall be in accordance with the Operations and Maintenance (O&M) Plan and in compliance with all Local, State, and Federal permits and regulatory requirements.

Repair:

- Reestablishment of original Lynden Levee crest elevations if compromised by scour from flood overtopping.
- Filling of scour holes and reestablishment of riparian vegetation on the realigned tributary channel/ditch banks as necessary to maintain natural channel function and protect adjacent property and infrastructure.
- Filling of scour holes and reestablishment of riprap on the levee as necessary to protect the culvert and/or levee.
- Filling of scour holes and reestablishment of the scour apron upstream and/or downstream of the culvert as necessary to protect the culvert and levee.
- Filling of scour holes and reestablishment of streambed sediment upstream of the scour apron as necessary to protect the culvert and levee and provide intended habitat function.

All repairs shall be in compliance with all Local, State, and Federal permits and regulatory requirements.

Inspections:

- Site inspections of the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project, including the Lynden Levee, culvert, flood gate, realigned channel, and realigned ditch following all significant flood events to identify maintenance and/or repair needs.
- Periodic inspections of the culvert, including photos and videos, as required by the USACE.

Mitigation and Restoration Measures:

- Stream and buffer restoration, maintenance, and monitoring provisions as outlined in the document titled, “Lynden Levee Channel Realignment Project Wetland and Stream Mitigation and Restoration Plan,” dated November 23, 2020.

**OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES**

A. Whatcom County Flood Control Zone District (“FCZD”) shall:

1. Construct the FCZD Channel Realignment Project in conjunction with the USACE Levee Rehabilitation Project and associated culvert replacement work;
2. Implement the mitigation and restoration measures associated with the FCZD Channel Realignment Project which includes site preparation, site planting, and regular maintenance and monitoring of the mitigation through 2027;
3. Lead the effort to develop an Operations and Maintenance (O&M) Plan for the flood gate in collaboration with WDFW, NOAA, the Nooksack Tribe, and the City;
4. Ensure proper operations and maintenance of the flood gate in collaboration with the City and in accordance with the O&M Plan.
5. Inspect the FCZD Channel Realignment Project and the USACE Levee Rehabilitation Project including the Lynden Levee, realigned channel, realigned ditch, culvert, and flood gate with the City following all significant flood events, to identify maintenance and/or repair needs;
6. Perform all maintenance activities for both projects that require heavy equipment.
7. Have the option, if the City abandons its obligations, to undertake maintenance and inspection responsibilities for the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project, as defined below, and charge the City for the cost of these services.
8. Perform repairs to the FCZD Channel Realignment Project and USACE Levee Rehabilitation Project including the realigned channel, realigned ditch, Lynden Levee, culvert, and/or flood gate as necessary to maintain proper functioning and prevent damage to adjacent property and/or infrastructure.

9. Continue to manage and implement levee vegetation maintenance (mowing crest and back slope and preventing invasive plant species from establishing and spreading) and inspection responsibilities as required by the USACE along the Lynden Levee.
10. Reimburse the City for its costs of performing any of the foregoing FCZD responsibilities if the FCZD abandons its obligations for those services.
11. Hold and save the City free from damages or claims arising from FCZD's acts or omissions in the Project, except for damages in actions brought by third parties due to negligence of the City or its contractors. In case of such exception, the FCZD shall immediately, upon receipt of notice, notify the City of the existence of any such suit, or of its intent to avail itself of the defense that the City or its contractors were negligent.

B. City of Lynden ("City") shall:

1. Make a one-time cash payment to the FCZD in the amount of \$20,000 as a local contribution toward the construction costs associated with the Project.
2. Prohibit public access to the Project area during construction and limit public access until such time the FCZD determines the Project vegetation is sufficiently established.
3. Grant a Perpetual Flood Works Easement to the FCZD for the purpose of construction, inspection, monitoring, and, if necessary, for operating, maintaining, and/or repairing the Project. The easement shall cover the Project and mitigation area described more fully and accurately in Exhibit A attached hereto. The easement shall attach to the land and run with the land upon sale or other transfer.
4. Maintain natural channel and buffer functions including wood habitat features as intended by the Project design and to operate under Nationwide Permit (NWP) 27.
5. Perform minor maintenance that can be completed by hand labor such as removing accumulated wood debris, sediment, and/or trash that impedes functionality of the culvert, gate, and/or realigned channel and ditch in compliance with all Local, State and Federal permits and regulatory requirements.
6. Inspect the FCZD Channel Realignment Project and the USACE Levee Rehabilitation Project with the FCZD following all significant flood events to identify maintenance and/or repair needs. If significant maintenance and/or repair is required, the FCZD will partner with the City to address the needs.
7. Perform periodic inspections of the culvert, including photos and videos as required by the USACE currently defined as every 5 years. Phone photos and videos are acceptable.
8. Work with the FCZD to develop an Operations and Maintenance (O&M) Plan for the flood gate in collaboration with WDFW, NOAA, and Nooksack Tribe.
9. Ensure proper operations and maintenance of the flood gate in collaboration with the FCZD and in accordance with the O&M Plan.

10 Reimburse the FCZD for its costs of ongoing maintenance and inspection of the Project, culvert, and flood gate if the City abandons its obligations for those services.

11. Hold and save the FCZD free from damages or claims arising from the design, construction, and maintenance of the Project, except for damages in actions brought by third parties due to negligence of the FCZD or its contractors. In case of such exception, the City shall immediately, upon receipt of notice, notify the FCZD of the existence of any such suit, or of its intent to avail itself of the defense that the FCZD or its contractors were negligent.

**PAYMENT**

The City shall provide \$20,000 cash payment to the Flood Control Zone District within sixty days of receiving notice of Project completion from the FCZD.

**AGREEMENT ALTERATIONS AND AMENDMENTS**

This ILA may be amended by mutual agreement of the Parties hereto. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

**ASSIGNMENT**

The obligations to be performed by the Parties under this ILA are not assignable or delegable by either Party in whole or in part, without the prior written consent of the other Party.

**WAIVER**

A failure by either Party to exercise its rights under this ILA shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this ILA unless stated to be such in a writing signed by an authorized representative of the Party.

**SEVERABILITY**

If any provision of this ILA or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this ILA which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this ILA, and to this end the provisions of this ILA are declared to be severable.

**INTEGRATION OF AGREEMENT**

This ILA contains all the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, regarding the subject matter of this ILA shall be deemed to exist or to bind either Party.

**TERM OF AGREEMENT**

This ILA shall begin on upon date of execution, and shall remain in effect until terminated or amended as provided herein.

**RECORDATION**

Upon execution of this ILA, the FCZD shall file a copy of it with the office of the County Auditor pursuant to the requirements of RCW 39.34.

**CONTRACT MANAGEMENT**

The Contract Administrator for each of the Parties shall be responsible for and shall be the contact person for all communications regarding the performance of this ILA.

The Contract Administrator for the City is:

Steve Banham, P.E.  
City of Lynden - Public Works Director  
300 4<sup>th</sup> Street  
Lynden, WA 98264  
Phone: (360) 255-5512  
Email: [banhams@lyndenwa.org](mailto:banhams@lyndenwa.org)

The Contract Administrator for the FCZD is:

Paula J. Harris, P.E.  
Whatcom County Public Works  
322 N. Commercial, Suite 120  
Bellingham, WA 98225-4042  
Phone: 360.778-6285  
Email: [pharris@co.whatcom.wa.us](mailto:pharris@co.whatcom.wa.us)

IN WITNESS WHEREOF, the parties have executed this Agreement.

**CITY OF LYNDEN**

**By:** \_\_\_\_\_  
Scott Korthuis, City of Lynden Mayor

**Date:** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Office of the City Attorney Date

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**

**By:** \_\_\_\_\_  
Satpal Singh Sidhu  
Whatcom County Executive

**Date:** \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Christopher Quinn, Whatcom County Date  
Senior Civil Deputy Prosecuting Attorney

**WHATCOM COUNTY  
PUBLIC WORKS DEPARTMENT**

**Jon Hutchings**  
Director



**James P. Karcher, P. E.**  
County Engineer  
322 N. Commercial Street, Ste 301  
Bellingham, WA 98225-4042  
Phone: (360) 778-6210  
Fax: (360) 778-6211

**EXHIBIT "A"**

A PERMANENT EASEMENT LYING OVER, UNDER AND ACROSS A PORTION OF THE FOLLOWING DESCRIBED PARCEL:

(PER WHATCOM LAND TITLE COMPANY, SUBDIVISION GUARANTEE NO. W-175196)

A TRACT OF LAND IN THE SOUTH ONE-HALF OF THE SOUTH ONE-HALF OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHERLY CORPORATION LINE OF THE TOWN OF LYNDEN, 80 FEET SOUTHERLY (AT RIGHT ANGLE TO FRONT STREET), AND 22 FEET EASTERLY (PARALLEL TO FRONT STREET) FROM THE SOUTHEAST CORNER OF LOT 4, BLOCK 2, SUPPLEMENTAL AND CORRECTED PLAT OF LYNDEN, WHATCOM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 48, RECORDS OF WHATCOM COUNTY, WASHINGTON; THENCE 32° EAST ALONG THE EASTERLY LINE OF A TRACT OF LAND OWNED BY P. AWYNS AS DESCRIBED IN AUDITOR'S FILE NO. 837243 (MAP 20.1), A DISTANCE OF 609 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 20 TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE EAST ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER AND THE NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER, 1260 FEET, MORE OR LESS, TO THE SOUTHEAST CORNER OF THE TRACT OF LAND CONVEYED TO NEAL MEEBOER AND MARIE MEEBOER, HUSBAND AND WIFE, BY DEED RECORDED UNDER AUDITOR'S FILE NO. 296254; THENCE SOUTH PARALLEL TO THE EAST LINE OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20, TO THE NORTH BANK OF THE NOOKSACK RIVER; THENCE IN A NORTHWESTERLY DIRECTION ALONG THE NORTH BANK OF THE NOOKSACK RIVER TO THE SOUTHEAST CORNER OF THE ZWYNS TRACT AS DESCRIBED IN AUDITOR'S FILE NO. 837243 (MAP 20.1); THENCE IN A NORTHERLY DIRECTION ALONG THE EASTERLY LINE OF SAID ZWYNS TRACT TO THE POINT OF BEGINNING;

ALONG WITH ANY PORTION OF THAT CERTAIN TRACT OF LAND WITHIN THE SOUTHEAST QUARTER OF SECTION 20, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., DESCRIBED ON STATUTORY WARRANTY DEED RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. 940322218 WHICH MAY LIE WESTERLY OF THE FOLLOWING DESCRIBED LINE:



EXHIBIT "A" CONTINUED

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 20; THENCE NORTH 02°00'25" EAST, A DISTANCE OF 1323.49 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 20; THENCE NORTH 86°41'30" WEST, A DISTANCE OF 2000.06 FEET TO A POINT MARKED WITH A 5/8 INCH REBAR WITH A 1 INCH PLASTIC CAP STAMPED "NWS & GPS, 21423 & 32430", SAID POINT BEING THE TRUE POINT OF BEGINNING OF THIS LINE DESCRIPTION; THENCE SOUTH 02°12'22" WEST, A DISTANCE OF 584.94 FEET TO A 5/8 INCH REBAR WITH A 1 INCH PLASTIC CAP STAMPED "NWS & GPS, 21423 & 32430); THENCE CONTINUING SOUTH 02°12'22" WEST TO THE NORTH BANK OF THE NOOKSACK RIVER AND THE TERMINUS OF THIS LINE DESCRIPTION.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

PERMANENT EASEMENT DESCRIPTION

COMMENCING AT A BRASS DISK MARKING THE INTERSECTION OF THE CENTERLINE OF 7<sup>TH</sup> STREET WITH THE CENTERLINE OF SOUTH 6<sup>TH</sup> STREET; THENCE ALONG SAID SOUTH 6<sup>TH</sup> STREET CENTERLINE SOUTH 23°26'12" EAST 173.35 FEET TO A BRASS DISK MONUMENT MARKING THE CENTERLINE OF SAID SOUTH 6<sup>TH</sup> STREET; THENCE CONTINUING ALONG SAID SOUTH 6<sup>TH</sup> STREET CENTERLINE SOUTH 23°26'12" EAST 246.19 FEET TO THE NORTH LINE OF THE ABOVE DESCRIBED PARCEL; THENCE ALONG SAID NORTH LINE NORTH 86°40'47" WEST 18.48 FEET TO THE **POINT OF BEGINNING**; THENCE DEPARTING SAID NORTH LINE SOUTH 26°03'10" EAST 36.87 FEET; THENCE SOUTH 58°08'41" WEST 169.21 FEET; THENCE SOUTH 43°39'17" WEST 106.55 FEET; THENCE SOUTH 82°59'15" WEST 133.56 FEET; THENCE SOUTH 85°56'06" WEST 87.06 FEET TO THE WEST LINE OF THE ABOVE DESCRIBED PARCEL; THENCE ALONG SAID WEST LINE NORTH 31°07'14" WEST 298.25 FEET TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE ALONG THE NORTH LINE OF SAID PARCEL SOUTH 86°40'47" EAST 575.60 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 93,406 SQUARE FEET, MORE OR LESS.

SITUATE IN WHATCOM COUNTY, WASHINGTON

Jesse Allen  
2021.04.19 07:55:53  
-07'00'





# EXHIBIT

SITUATE IN A PORTION OF SECTION 20, TOWNSHIP 40 NORTH,  
RANGE 3 EAST, W.M., WHATCOM COUNTY, WASHINGTON

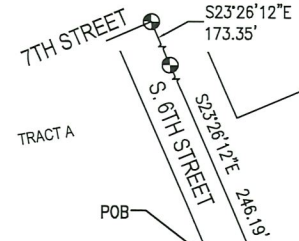
RIVER POINT CONDOMINIUM  
AF# 2020503776

RIVER POINT  
CONDOMINIUM  
400320 201166 0000

CITY OF LYNDEN  
400320 215165 0000

JUDSON VILLAGE  
AF# 2090201173

LYNDEN REGIONAL  
PARK & RECREATION  
DISTRICT  
400320 242150 0000



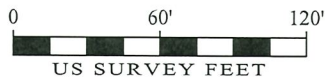
5TH ADDITION CONDOMINIUM  
AF# 2040603592

5TH ADDITION  
CONDOMINIUM  
400320 192143 0000

PERMANENT EASEMENT AREA  
93,406 SF

Jesse Allen  
2021.04.19 07:56:16 -07'00'

CITY OF LYNDEN  
400320 337108 0000



DEPARTMENT OF PUBLIC WORKS 322 N. COMMERCIAL  
ST., SUITE 301 BELLINGHAM, WA 98225  
(360) 778-6210

CRP: FC1805  
DRAWN BY: J. ALLEN  
CHECK BY: C. SWAN  
DRAWING: FC1805 Esmt.dwg

CITY OF LYNDEN - 400320 337108 0000  
**PERMANENT EASEMENT**  
 DATE: 4/19/21 SHEET: 1 OF 1

