

**INTERLOCAL AGREEMENT BETWEEN CONSOLIDATED DIKING IMPROVEMENT
DISTRICT #22 AND
PUBLIC UTILITY DISTRICT No. 1 OF SKAGIT COUNTY**

THIS AGREEMENT is made and entered into this 25th day of July 2023, by and between Consolidated Diking Improvement District #22 of Skagit County, herein referred to as "CDID #22," and Public Utility District No. 1 of Skagit County herein referred to as "Skagit PUD"

RECITALS

A. WHEREAS, legal and uninterrupted water withdrawals in the Skagit River watershed are a scarce and valuable resource; and

B. WHEREAS, Skagit PUD recognizes the impact and value of robust agricultural productivity on the overall health of the community; and

C. WHEREAS, CDID #22 is a special purpose district formed for the purposes of drainage and irrigation improvement and have interruptible water rights from the Skagit River; and

D. WHEREAS, Skagit PUD has transferred a portion of its available uninterrupted water rights to CDID #22 in the past during three state-declared droughts after determining that the water is not required for Skagit PUD operations during the transfer period; and

E. WHEREAS, CDID #22 is currently relying on the availability of a similar transfer of Skagit PUD water rights if a drought is declared in 2023 and has requested temporary and short-term use of a portion of Skagit PUD's water rights; and

F. WHEREAS, Skagit PUD has determined that a portion of its uninterrupted water rights are available for temporary and short-term use if a drought is declared in Skagit County; and

G. WHEREAS, Skagit PUD recognizes that new water rates reflecting the value of the water rights may significantly impact the current operational expenses of CDID #22, and it would be an appropriate consideration of those impacts to establish reasonable and defensible rates for the use of the water rights; and

H. WHEREAS, CDID #22 and Skagit PUD are each independently authorized by law to conduct such activity; and,

I. WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service, activity, or undertaking that each public agency is authorized to perform, provided that such contract shall be authorized by the governing body of each party to the contract; and,

J. WHEREAS, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities, including an agency of state government, on the basis of mutual advantage. In addition, under the authority of the Interlocal Cooperation Act, specifically RCW 39.34.030, public agencies, such as the parties, may enter into Interlocal Agreements such as this one; and,

K. WHEREAS, it is necessary for CDID #22 and Skagit PUD to enter into an agreement setting forth the terms, conditions, and requirements for completing the temporary water rights transfer.

AGREEMENT

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

STATEMENT OF WORK

1. The parties agree the sequential steps of the temporary drought change authorization is as follows:

- i. Temporary Drought Change Authorization. Skagit PUD will prepare an “Application for Change/Transfer of a Water Right” for submittal to Washington State Department of Ecology (Ecology). The application will request authorization for CDID #22 to divert surface water in 2023 during state-declared drought conditions from the Skagit River at their previously established diversion points (shown on the attached figures) in the following amounts.

- (1) Maximum instantaneous rate of 3,276 gallons per minute

- (2) Maximum total withdrawal of 384 acre-feet

CDID #22 shall comply with all conditions of the application and Ecology authorization documents.

The following conditions are anticipated to be included in the authorization. Additional conditions may be required by Ecology:

- (1) “To be protective of the environment and fishery resources, water use under this Authorization shall only occur for a maximum of 3 hours prior to each high tide event and a maximum of 3 hours following each high tide event. This equates to approximately 12 hours per day based on two high tide cycles per calendar day.”

- (2) “An approved measuring device must be installed and maintained on the source identified by this Authorization in accordance with the rule “Requirements for Measuring and Reporting Water Use”, Chapter 173-173 WAC. The existing meter installed on this source may be used.”

- (3) “Detailed written records shall be kept to ensure compliance with the conditions of this Authorization. At a minimum, records shall include the dates, times of high tides, diversion start times, diversion end times, peak instantaneous pumping rates, totalizer meter readings, and name(s) of record keeper(s). CDID #22 shall provide emailed provisional daily water use records to the PUD and Ecology following each day of the authorized use period, regardless of the amount of diversion. Final and complete records shall be submitted to Ecology by January 31 of the following year, as part of the reporting required by CDID #22 for its existing interruptible water right permit.”

- ii. Duration

Surface water withdrawals by CDID #22 may occur following the execution of this Agreement and authorization by Ecology. Surface water withdrawals will terminate on or before September 30, 2023.

iii. Payment by CDID #22 to Skagit PUD

CDID #22 agrees to compensate Skagit PUD for the temporary use of PUD water rights at the following rates:

2023 rates:

Annual administrative fee (regardless of withdrawal quantity): \$1,500

Consumption rate: \$12.89 per acre-foot of withdrawals

INDEPENDENT CAPACITY

2. The officials, employees and agents of each party who are engaged in the performance of this Agreement shall continue to be officials, employees or agents of that party and shall not be considered for any purpose to be officials, employees or agents of the other party.

LEGAL RELATIONS

3. Neither party shall be liable for damage or claims which arise from or relate to the performance or non-performance of this Agreement by the other party. Each party shall be responsible only for the negligent acts and omissions of its own officers, employees, and agents, and no party shall be considered the agent of the other.

INDEMNIFICATION

4. CDID #22 agrees to defend, indemnify, and hold the District harmless from any and all claims, demands, losses, and liabilities to or by third parties arising from, resulting from, or connected with work performed or to be performed under this Contract by the Consultant, its agents, employees, and subconsultants, even though such claims may prove to be false, groundless or fraudulent, to the fullest extent permitted by law.

ASSIGNMENT

5. Neither party shall assign or convey its interests or obligations under this Agreement without the written consent of the other. There are no third-party beneficiaries of this agreement.

DISPUTES

6. It is expected that any conflicts arising out of the implementation of this Agreement will be resolved at the staff level. In the event that issues cannot be resolved by staff in a timely fashion, the parties agree to elevate the dispute through equivalent management levels of each party, and if necessary to Skagit PUD General Manager and the CDID #22 Commissioners.

In the event that a dispute cannot be resolved in the manner described above, resolution of the dispute shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, contract terms and applicable statutes and rules and make a determination of the dispute. The determination of the Dispute Board shall be final and binding on the parties hereto.

AMENDMENT

- 7. This Agreement shall be amended only by written mutual agreement of the parties. Amendments to this Agreement may be initiated by any of the parties and will become final after written agreement by all parties and appropriate signatories is executed.

TERMINATION

- 8. This Agreement is effective from the date of signature by all parties and remains in effect until modified by written mutual agreement, termination as provided below, or completion of the temporary drought change authorization including satisfaction of all terms and conditions by CDID #22. Either party may terminate this Agreement upon thirty (30) days written notification to the other party.
- 9. Skagit PUD may terminate this Agreement immediately for any reason and at any time.

CONTACTS

- 10. The contacts for each party shall be responsible for and shall be the contact person for all notices and communications regarding the performance of this Agreement.

Public Utility District No. 1
Bill Trueman
Engineering Supervisor
Public Utility District No. 1 of Skagit County
1415 Freeway Drive
Mount Vernon, WA 98273
(360) 848-2151
trueman@skagitpud.org

Consolidated Diking Improvement District #22
Name: John Wold
Consolidated Diking Improvement District #22 of Skagit County

GOVERNANCE

- 11. This Agreement is entered into and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable state and federal constitution statutes and rules;
- Statement of work; and
- Any other provisions of the Agreement, including materials incorporated by reference.

WAIVER

- 12. The failure to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

SEVERABILITY

13. If any provision of this Agreement, or any provision of any document incorporated by reference, shall be held by a court of competent jurisdiction to be invalid, the remainder of this Agreement, and such, will remain in full force and effect.

ALL WRITINGS CONTAINED HEREIN


14. This Agreement, including its exhibits, constitutes the entire agreement between the parties regarding the project and supersedes all prior agreements and understandings between the Parties relating to the subject matter of the Agreement. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

ADDITIONAL PROVISIONS

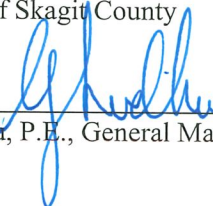
15. This Agreement does not create any separate legal entity, create any joint organization, establish any common budget, nor authorize the joint acquisition of any personal or real property.
16. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but any number of which, taken together, will be deemed to constitute one and the same instrument.
17. This agreement, and all of the terms contained herein, are non-precedent setting and shall have no bearing or influence on any discussions or negotiations for the future temporary transfer of water rights.

DATED this 25th day of July, 2023.

Consolidated Diking Improvement District #22 of Skagit County

By: 
Commissioner Position # 4

PUD No. 1 of Skagit County


George Sidhu, P.E., General Manager