

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No. \_\_\_\_\_

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	River & Flood Division - 9075/Flood Control Maint (907545)
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	Lummi Nation

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes  No  Original Contract #: \_\_\_\_\_

Yes  No  If Amendment or Renewal, (per WCC 3.08.100 (a))

Does contract require Council Approval? Yes  No  If No, include WCC: \_\_\_\_\_

Already approved? Council Approved Date: \_\_\_\_\_ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement? Yes  No  If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded? Yes  No  If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process? Yes  No  If yes, RFP and Bid number(s): \_\_\_\_\_ Contract Cost Center: 719002

Is this agreement excluded from E-Verify? No  Yes  If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

<input type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input checked="" type="checkbox"/> Interlocal Agreement (between Governments).	

<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ <u>N/A</u></p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ <u>N/A</u></p>	<p>Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b>, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b></p> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>2. Contract is for design, construction, r-o-w acquisition, prof. services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>3. Bid or award is for supplies.</li> <li>4. Equipment is included in Exhibit "B" of the Budget Ordinance.</li> <li>5. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</li> </ol>
<p>Summary of Scope:</p>	

The purpose of the Interlocal Agreement (ILA) is to establish and define the obligations and responsibilities of the FCZD and Lummi Nation related to repair of the Lummi (Red) River Levee. The ILA secures a cost share of 15% of the required construction funding from Lummi Nation. The remaining 85% of the construction funding will be provided by FCZD.

Term of Contract:	Expiration Date: Upon Project Completion
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Contract Routing:	1. Prepared by: <u>Deb Johnson</u>	Date: <u>06/25/19</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>06/25/19</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>06/25/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

**INTERLOCAL AGREEMENT**  
**Between**  
**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**  
**And**  
**LUMMI NATION**  
**For**  
**Repair of the Lummi (Red) River Levee**

This Interlocal Agreement (ILA) is made and entered into by and between The Lummi Nation (hereinafter referred to as the "Nation"), and the Whatcom County Flood Control Zone District (hereinafter referred to as the "District"), this \_\_\_\_ day of June, 2019.

**WHEREAS**, the Lummi (Red) River Levee (levee) is 2.7 miles long and is located on the east bank of the Lummi River between Haxton Way and the seawall that surrounds the Lummi Nation's aquaculture pond; and

**WHEREAS**, the levee is an integral part of the flood control system that protects Whatcom County and Nation infrastructure both on and off the reservation including Haxton Way, Hillaire Road, Kwina Road, Lummi Shore Drive, Marine Drive, Ferndale Road, and Slater Road; and

**WHEREAS**, in a periodic inspection, the US Army Corps of Engineers (USACE) identified deficiencies at two nearby locations along the levee face, where the riprap is missing and erosion is starting to cause sloughing of the levee prism; and

**WHEREAS**, repair of this section of levee is needed (total of 325 lineal feet) to maintain the integrity of the flood control system and to address the deficiencies identified by the USACE; and

**WHEREAS**, the repair sites are located on lands owned by Lummi Nation; and

**WHEREAS**, levee repair is in the interest of both parties; and

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

**PARTIES**

This Interlocal Agreement ("ILA") is made by and between the Whatcom County Flood Control Zone District ("District") and Lummi Nation ("Nation") under authority of the Interlocal Cooperation Act, Chapter 39.34 RCW.

**PURPOSE OF THE AGREEMENT**

- (i) To establish and define the obligations and responsibilities of the District and the Nation related to the repair of 325 lineal feet of the Lummi River Levee.



## **PROPERTY**

The parcel identified is located at:

Lummi Nation Trust Land, Whatcom County, WA – T38N, R1E, Sec 10, SE1/4

Parcel Number: 3801105170820000

Latitude and Longitude: 48.7948 N lat. / -122.6622 W long

See Exhibit A for Vicinity Map.

## **DEFINITIONS**

Lummi (Red) River Levee:

- East bank levee of the Lummi (Red) River from Haxton Way south (downstream) to the seawall that surrounds the Lummi Nation's aquaculture pond.

Levee Repair:

- Placement of riprap along the two eroding segments devoid of riprap (total length of 225 feet)
- Enhancement of the existing riprap between the two eroding segments as needed and tie into the newly placed riprap (total length of 65 feet)
- Resurfacing of the road on the levee in the vicinity of the levee repair (total length of 325 feet)
- See attached engineering design drawings (Exhibit A)

## **TERM OF AGREEMENT**

This ILA shall begin on July 10, 2019, and shall remain in effect until the project is completed or the ILA is amended as provided herein.

## **OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES:**

A. Whatcom County Flood Control Zone District ("District"):

1. Shall develop engineering design drawings and technical specifications (Divisions 2 through 9) for the levee repair project;
2. Shall work with the Nation to develop Division 1 contract specifications and special provisions with inclusion of TERO requirements;
3. Shall prepare a U.S. Army Corps of Engineers (USACE) permit application and supporting documents;
4. Shall review all project bids for compliance with the project solicitation (request for bids) documents;
5. Shall only consider approving final project bids that do not exceed the project budget;

6. Shall provide construction support, periodic construction inspections, joint final project inspection with the Nation, and final project approval upon project completion. Construction inspections by the District shall occur, generally, every other day and as needed throughout construction;
7. Shall review and approve all change order requests made by the construction contractor prior to the Nation approving the change order requests;
8. Shall review and approve the construction contractor invoices provided by the Nation for construction expenses incurred; and
9. Shall reimburse the Nation for 85% of the construction cost for the levee repair project, which shall include a 5% TERO fee, as approved by the District. The District shall provide payment to the Nation within thirty (30) days of receiving the Nation's reimbursement request(s).

B. Lummi Nation ("Nation"):

1. Shall submit application and obtain a U.S. Army Corps of Engineers (USACE) permit;
2. Shall obtain a Lummi land use permit;
3. Shall put the levee repair project out to bid for construction with a state prevailing wage requirement;
4. Shall obtain review of construction bids and approval of final bid award from the District;
5. Shall enter into a contract with the successful bidder to implement the levee repair project;
6. Shall obtain approval from the District prior to approving all change order requests by the construction contractor;
7. Shall manage construction of the levee repair project;
8. Shall notify the District at least one (1) day in advance of key decision points during construction where the District shall be present for an inspection and/or consultation.
9. Shall conduct a joint final construction inspection with the District;
10. Shall provide 15% of the construction funding for the levee repair project; and
11. Shall request reimbursement from the District for 85% of the construction cost for the levee repair project, which shall include a 5% TERO fee. Copies of the construction contractor invoices shall be provided to document the expenses incurred by the Nation for reimbursement.

**AGREEMENT ALTERATIONS AND AMENDMENTS**

This Agreement may be amended by mutual agreement of all 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.

## **DISPUTES**

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the following manner. The parties to this Agreement shall each appoint a member to the dispute board. The dispute board shall evaluate 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.

## **ASSIGNMENT**

The obligations to be performed by the parties under this Agreement are not assignable or delegable by any party in whole or in part, without the prior written consent of both of the other parties.

## **WAIVER**

A failure by any of the parties to exercise its rights under this agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

## **SEVERABILITY**

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement 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 Agreement, and to this end the provisions of this Agreement are declared to be severable.

## **INTEGRATION OF AGREEMENT**

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

## **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 Agreement.

The Contract Administrator for Lummi Nation is:

Tim J. Ellis  
Public Works Director  
Planning and Public Works Department  
Lummi Nation  
2665 Kwina Road  
Bellingham, WA 98226  
Phone: 360-312-2334  
Fax: 360-380-6990  
Email: [time@lummi-nsn.gov](mailto:time@lummi-nsn.gov)



The Contract Administrator for the District is:

Paula J. Harris  
River and Flood Division Manager  
Whatcom County Public Works  
322 N. Commercial  
Bellingham, WA 98225  
Phone: 360.778-6285  
Fax: 360.778-6231  
Email: [pharris@co.whatcom.wa.us](mailto:pharris@co.whatcom.wa.us)

IN WITNESS WHEREOF, the parties have executed this Agreement.

**LUMMI NATION**

By: 

Title: Public Works Director

Date: 6/26/19

Approved as to Form for Nation:

  
Staff Attorney  
Lummi Nation

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT**

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

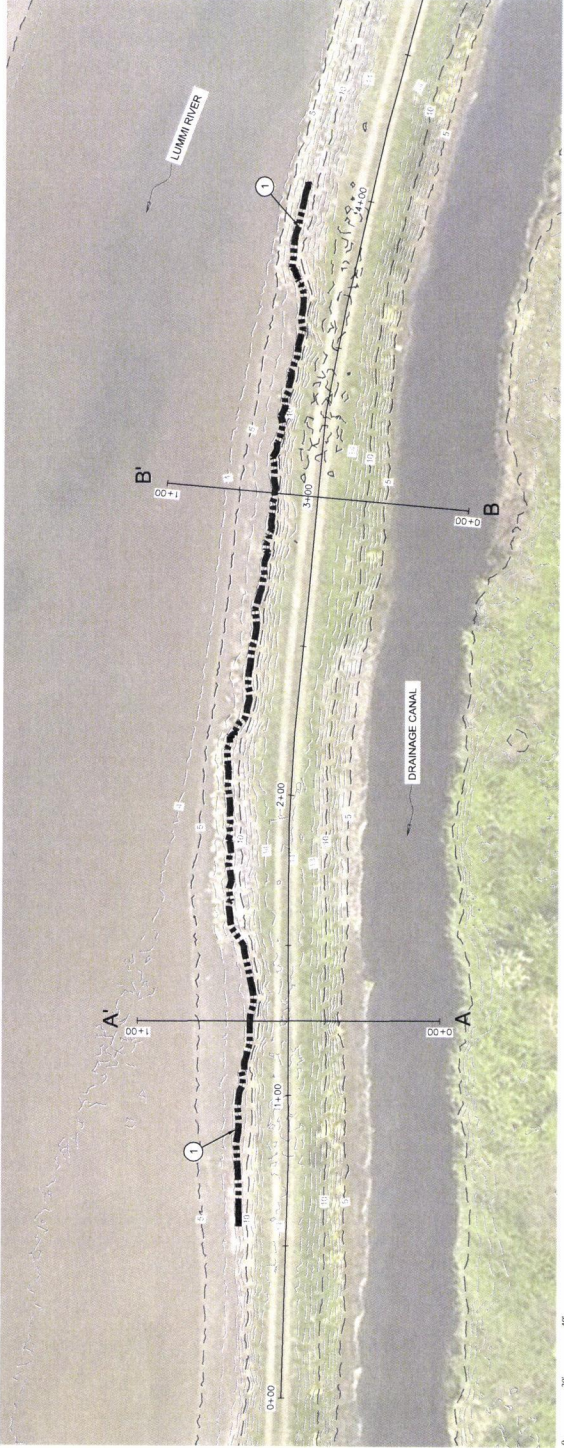
Approved as to Form for District:

  
Senior Deputy Prosecuting Attorney – Civil Division for  
Whatcom County

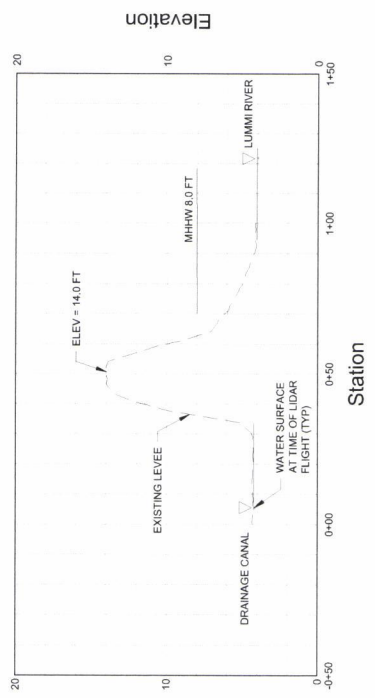
Exhibit A  
Engineering Design Drawings



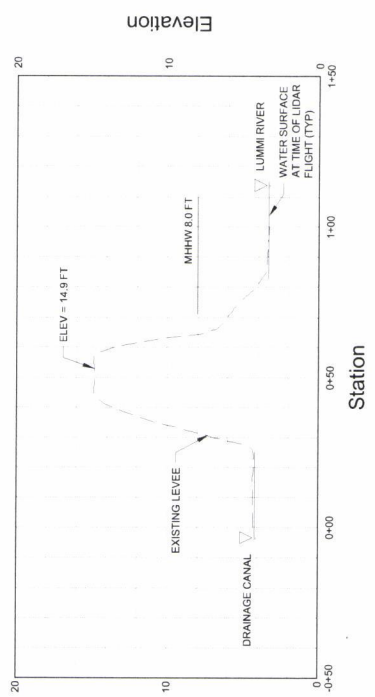




PLAN



SECTION A-A'



SECTION B-B'

GENERAL NOTES:

- 1. EXISTING CONDITIONS TOPOGRAPHY ARE BASED ON 2013 LIDAR.

KEY NOTES:

- 1. MEAN HIGHER HIGH WATER (MHHW) LINE BASED ON GOOSEBERRY POINT TIDE STATION DATUM.

4	DATE	BY	ISSUED	PLAN SET / REVISION
3	DATE	BY	ISSUED	PLAN SET / REVISION
2	DATE	BY	ISSUED	PLAN SET / REVISION
1	DATE	BY	ISSUED	PLAN SET / REVISION

PROJECT NO.	778002	DESIGN	BF/DJL	CHECK	CG
DATE	JUNE 2019	DESIGNER	BF/DJL	CHECKER	CG
DATE	7/20/20	DESIGNER	BF/DJL	CHECKER	CG
DATE	7/20/20	DESIGNER	BF/DJL	CHECKER	CG

PUBLIC WORKS DIRECTOR	JON HUTCHINGS
COUNTY FLOOD CONTROL DISTRICT	PAULA HARRIS, P.E.
PROJECT ENGINEER	DEB JOHNSON, P.E.

PROJECT	WHATCOM COUNTY FLOOD CONTROL DISTRICT
TITLE	LUMMI RIVER LEVEE REPAIR
SHEET	02
OF	03

PRELIMINARY - NOT FOR CONSTRUCTION

LUMMI RIVER LEVEE REPAIR  
EXISTING CONDITIONS





