

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202311052

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	River & Flood / 907550 (Flood Hazard Reduction)
Contract or Grant Administrator:	Paula Harris, River & Flood Division Manager
Contractor's / Agency Name:	City of Everson

Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No
 Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____

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): DR-44810-WA 4481-01-R CFDA#: _____

Is this contract grant funded? Yes No If yes, Whatcom County grant contract number(s): To be assigned (HMGP: DR-44810-WA 4481-01-R)

Is this contract the result of a RFP or Bid process? Contract _____
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: 722002

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

If YES, indicate exclusion(s) below:

- Professional services agreement for certified/licensed professional. Goods and services provided due to an emergency
- Contract work is for less than \$100,000. Contract for Commercial off the shelf items (COTS).
- Contract work is for less than 120 days. Work related subcontract less than \$25,000.
- Interlocal Agreement (between Governments). Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
\$ NA

This Amendment Amount:
\$ _____

Total Amended Amount:
\$ NA

Summary of Scope:

Council approval required for; all property leases, contracts or bid awards **exceeding \$40,000**, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, **except when**:

1. Exercising an option contained in a contract previously approved by the council.
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.
3. Bid or award is for supplies.
4. Equipment is included in Exhibit "B" of the Budget Ordinance.
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.

This Interlocal Agreement establishes the responsibilities for the FCZD and the City of Everson related to implementation of the Hazard Mitigation Grant Agreement to purchase 12 flood-damaged properties, four of which are in the City of Everson.

Term of Contract: _____ Expiration Date: NA

Contract Routing:	1. Prepared by: <u>Paula Harris</u>	Date: <u>11/3/2023</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>11/3/2023</u>
	3. AS Finance reviewed: <u>Amy Martin</u>	Date: <u>11/17/2023</u>
	4. IT reviewed (if IT related): <u>DS</u>	Date: _____
	5. Contractor signed: <u>BSR</u>	Date: _____
	6. Executive contract review: <u>DocuSigned by: Satpal Sidhu</u>	Date: <u>12/19/2023</u>
	7. Council approved, if necessary: <u>AB 2023-805</u>	Date: <u>12/5/2023</u>
	8. Executive signed: <u>Satpal Sidhu</u>	Date: <u>12/26/2023</u>
	9. Original to Council: _____	Date: _____

WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT

Elizabeth Kosa
DIRECTOR



RIVER AND FLOOD
322 N. Commercial Street, Suite 120
Bellingham, WA 98225-4042
Phone: (360) 778-6230
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Satpal Singh Sidhu, Whatcom County Executive, for the
Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Elizabeth Kosa, Public Works Director

FROM: Paula J. Harris, P.E., River and Flood Manager *PH*
Gary Stoyka, Natural Resources Program Manager *GS*

DATE: November 3, 2023

RE: Interlocal Agreement with City of Everson for Acquisition of Floodplain Properties
for Hazard Mitigation

Enclosed is an Interlocal (ILA) agreement between the Whatcom County Flood Control Zone District (FCZD) and the City of Everson (City) for your review and signature.

▪ **Background and Purpose**

In response to the November 2021 flooding, the FCZD applied for Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funding to acquire twelve (12) properties that were substantially damaged during the flood. Four (4) of these properties are located within the City. The HMGP grant requires a 5% local match which is being paid for with Housing and Urban Development (HUD) funding through a Community Development Block Grant – Disaster Recovery (CDBG-DR). This ILA establishes the responsibilities for the FCZD and the City related to implementation of the HMGP grant agreement for acquisition of the four properties within the City. The HMGP grant was submitted to the Board of Supervisors at the November 21, 2023 Board meeting.

Once the four properties are acquired and demolition of structures is complete, the FCZD will transfer the titles of the properties to the City, subject to the grant requirements. Deed restrictions recorded on the title will ensure the properties are maintained in open space for perpetuity. The City will be responsible for maintaining and monitoring the properties to ensure they are compliant with the deed restrictions and for ongoing reporting to the grant agency to ensure that the requirements are being met.

▪ **Funding Amount and Source**

The FCZD will administer the HMGP grant and coordinate for the CDBG-DR reimbursement to implement the project scope. The project expenses will be fully reimbursed between the two grants so no additional funding is associated with the agreement.

Please contact Paula Harris at extension 6285 if you have any questions or concerns regarding the terms of this agreement.

Encl.

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF EVERSON AND THE
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT RELATING TO
ACQUISITION OF FLOODPLAIN PROPERTIES FOR HAZARD MITIGATION**

This Agreement is made and entered into by and between the City of Everson, a Washington City (hereinafter referred to as the “City”) and the Whatcom County Flood Control Zone District, a Washington quasi-municipal corporation (hereinafter referred to as the “District”).

WHEREAS, the City of Everson is a City within the Whatcom County Flood Control Zone District and encompasses properties within the floodplain; and

WHEREAS, the November 2021 floods caused significant damages within the City of Everson, impacting hundreds of homes, businesses and public infrastructure within the City of Everson; and

WHEREAS, many of the homes that were substantially damaged are located in the current and/or future floodway designated in the Everson overflow area; and

WHEREAS, reconstruction of substantially damaged residences in floodways within the State of Washington are prohibited except in some limited circumstances; and

WHEREAS, the depths and velocities of floodwaters in the area mapped as future floodway that were experienced during the November 2021 were extremely hazardous, causing first responders to risk their own lives to save others; and

WHEREAS, the District and the City wish to partner on a mitigation project that targets high-risk properties that will be subject to ongoing risk and future flood damages to reduce the risk to life and property within the City and preserve a corridor that is designated for flooding; and

WHEREAS, the District has applied for and received an award for Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) funding (application DR-4481-01-R (DR-4481); assistance listing number 97.039 (HMGP)) to acquire twelve properties and remove the residential and related structures on them; and

WHEREAS, four of the twelve properties planned for inclusion in the DR-4481 HMGP grant are within the City of Everson; and

WHEREAS, the HMGP grant provides reimbursement for 95% of eligible costs, with 90% coming from FEMA and 5% from the Washington State Emergency Management Division (WAEMD); and

WHEREAS, the Washington State Department of Commerce has prepared a Public Action Plan (PAP) for Housing and Urban Development (HUD) funding through the Community

Development Block Grant – Disaster Recovery (CBDG-DR) program that includes funding for the 5% local match for these acquisitions that will not be reimbursed by FEMA or WAEMD.

WHEREAS, one of the four City properties planned for inclusion in the HMGP grant may be purchased with funding that will be reimbursed by the CDBG-DR program and used towards the 5% local match for acquisition of the twelve properties included in the DR-4481 HMGP grant.

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

1. **PURPOSE.** The purpose of this Agreement is to set the terms whereby the District and the City will, in partnership, acquire properties within the City of Everson and remove structures to accommodate future flooding.

2. PARTY RESPONSIBILITIES

A. CITY RESPONSIBILITIES

1. The City shall coordinate with the District and provide timely reviews of project correspondence, documents and agreements to ensure efficient implementation of all phases of the grants.
2. The City shall review and issue permits under the criteria and approval process provided by the City code to enable demolition of structures and restoration of properties within the City's jurisdiction.
3. The City shall assume ownership of the properties under property transfer agreements approved by the City without cost to the City for such transfer, subject to the deed restrictions and/or covenants required by the funding agencies, once demolition is complete and the properties have been restored to open space.
4. The City shall maintain the properties acquired under this agreement in accordance with the deed restrictions and/or covenants recorded on the titles and the requirements of the grants providing funding, including "Land Use and Oversight" requirements of properties acquired for open space projects as described in 40 CFR 80.19.
5. The City shall conduct monitoring and reporting as required by the grant program, including inspections and reporting to the State and/or FEMA as described in 44 CFR 80.19 (d) and notifications from the funding agencies. The City shall inform the District when reports have been submitted.
6. The City shall inform the District prior to pursuing a transfer of interest for any of the participating properties to another entity. The City will coordinate with the District to request written approval to transfer the property in accordance with 44 CFR 80.19(b).

B. FLOOD CONTROL ZONE DISTRICT RESPONSIBILITIES

1. The District shall implement the scope of work contained in HMGP application DR-4481-01-R through a HMGP grant agreement between WAEMD and Whatcom County.
2. The District shall coordinate with the Washington Department of Commerce and Whatcom County to manage the CBDG-DR funding.

3. The District will perform the pre-acquisition actions needed to comply with both sets of grant requirements, including getting appraisals, performing hazardous materials assessments, clearing titles, calculating duplication of benefits (DOB), negotiating purchase prices with property owners, and preparing purchase and sale agreements and other grant-required documentation.
4. The District will coordinate with the title company to arrange closings for properties and provide necessary funds and documentation including required deed restriction language and/or covenants.
5. The District will prepare and award bid packages for demolition of structures and site restoration on the acquired properties, execute contracts and oversee demolition in accordance with grant requirements.
6. After demolition and site restoration activities are complete, the District will request approval from WAEMD and FEMA to transfer the titles of the properties located with the City of Everson to the City of Everson, subject to the deed restrictions and/or covenants required by the grant programs providing funding.
7. Following approval from WAEMD and FEMA to transfer the properties to the City of Everson, the District will complete the transfers of the titles of the properties to the City of Everson.
8. The District will provide project management and grant compliance oversight, request reimbursement for costs incurred in implementing the project scope from both the HMGP and CBDG-DR grants and perform grant closeout activities as required by each funding source.

3. FUNDING AND PAYMENT

The District will administer the FEMA HMGP award 4481-01-R and the CDBG-DR award to acquire and conduct structure demolition and site restoration on four privately owned properties within the Everson City limits. The District will work directly with vendors to complete the project and pay all costs related to property acquisition, structure demolition, site restoration and other project costs as planned or eligible for reimbursement by the grants. The City shall not be responsible for any such costs, except for those incurred while implementing the City Responsibilities (Section 2.A).

Following completion of the project, the City will maintain the properties to the standards outlined for open spaces in 44 CFR Part 80. Costs associated with maintaining the properties are not eligible for reimbursement from the HMGP or CDBG-DR programs and will be the sole responsibility of the City.

4. TERM OF AGREEMENT

The period of performance for this Agreement shall be consistent with the performance period of the HMGP Grant 4481-01-R, which is currently October 11, 2023 through May 2, 2026.

5. 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.

6. DISPUTES

In the event that a dispute arises under this Agreement, a dispute board shall resolve the dispute in the manner set forth in this section. 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. In the performance of this Agreement, it is mutually understood and agreed upon by the parties hereto that this Agreement shall be governed by the laws and regulations of the State of Washington and the federal government, both as to interpretation and performance.

7. 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.

8. 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.

9. TERMINATION

This Agreement may be terminated without cause by any Party effective upon sixty (60) days written notice, mailed postage pre-paid by certified mail, return receipt requested, to all remaining Parties last known address for the purposes of giving notice under this section. If this Agreement is so terminated, the Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

10. 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.

11. 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.

12. CONTRACT MANAGEMENT

No new separate legal or administrative entity is created to administer the provisions of this Agreement. No agent, employee, servant, or representative of any party shall be deemed to be an employee, agent, servant, or representative or any other party for any purpose. Each party will be solely responsible for its acts and for the acts of its agents, employees, and servants during the term of this Agreement. 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 the City is:

John Perry, Mayor
City of Everson
PO Box 315
Everson, WA 98247
(360) 966-3411
mayor@ci.everson.wa.us

The Contract Administrator for the District is:

Paula Harris, River and Flood Manager
Whatcom County Public Works Department
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 778-6285
pharris@co.whatcom.wa.us

13. COUNTERPARTS

This Agreement may be executed in multiple counterparts and each shall be deemed an original, but all of which together constitute a single instrument.

14. EFFECTIVE DATE

This Agreement shall be in full force and effect upon full execution by the Parties and filing with the Whatcom County Auditor or posting on each Party's website, whichever method of filing is chosen.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF EVERSON

**WHATCOM COUNTY FLOOD
CONTROL ZONE DISTRICT**

By: John Perry

By: Satpal Singh Sidhu

Title: Mayor

Title: County Executive

Signature: 

Signature: 

Date: 12/13/2023

Date: 12/26/2023

Approved as to form:

DocuSigned by:  12/19/2023

Christopher Quinn, Senior Civil Deputy
Prosecutor