

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202502024

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood (9075)/Flood Hazard Reduction (907550)
Contract or Grant Administrator:	Julie Anderson, River & Flood Manager
Contractor's / Agency Name:	Diking District No. 3 / John and Rich Appel

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): _____ 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? Contract
Yes ☐ No ☒ If yes, RFP and Bid number(s): _____ Cost Center: 19082038

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"/> Goods and services provided due to an emergency |
| <input type="checkbox"/> Contract work is for less than \$100,000. | <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). |
| <input type="checkbox"/> Contract work is for less than 120 days. | <input type="checkbox"/> Work related subcontract less than \$25,000. |
| <input checked="" type="checkbox"/> Interlocal Agreement (between Governments). | <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. |

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

\$ 350,927

This Amendment Amount:

\$ _____

Total Amended Amount:

\$ _____

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.

Summary of Scope:

Flood Works Agreement between the Whatcom County Flood Control District (FCZD), Diking District No. 3 (DD#3), and John and Rich Appel (landowners) for the Neveel Levee Cougar Creek Fish Passage Project. Agreement includes a cost-share contribution from the landowners, an in-kind contribution from the Diking District, and identifies ongoing repair maintenance obligations.

Term of Contract: n/a

Expiration Date: Ongoing covering maintenance and operation of the project

Contract Routing:	1. Prepared by: <u>Christina Schoenfelder</u>	Date: <u>1-8-25</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>1/24/2-25</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>01/22/2025</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Executive contract review: <u>Jugen</u>	Date: <u>2-26-25</u>
	7. Council approved, if necessary: <u>AB2025-151</u>	Date: <u>2/11/2025</u>
	8. Executive signed: <u>S. J. D.</u>	Date: <u>2-4-25</u>
	9. Original to Council: _____	Date: _____

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**ELIZABETH KOSA
DIRECTOR**



RIVER AND FLOOD
322 N. Commercial Street, 2nd Floor
Bellingham, WA 98225-4042
Phone: (360) 778-6230
Fax: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

TO: The Honorable Members of the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Elizabeth Kosa, Public Works Director *EK*

FROM: Paula Harris, Flood Control Engineer *PH*
Gary Stoyka, Natural Resources Manager *GS*

RE: Flood Works Agreement with Diking District #3 and landowners for Neveel Levee and Cougar Creek Fish Passage Project (No. 720010)

DATE: January 29, 2025

Enclosed are two (2) originals of a Flood Works Agreement between the Whatcom County Flood Control District (FCZD), Diking District No. 3 (DD#3), and John and Rich Appel (landowners) for your review and signature.

Requested Action

Public Works respectfully requests that the County Executive and the County Council, acting as the FCZD Board of Supervisors, enter into the above referenced Flood Works Agreement for the Neveel Levee Cougar Creek Fish Passage Project.

Background and Purpose

A Floodplain Integrated Planning (FLIP) Reach 2 (Lynden to Ferndale) design charrette held in February 2020 identified Cougar Creek as a focus area for early action project development.

The proposed project includes replacement of an outdated fish blocking floodgate with a single self-regulating structure to improve fish passage, correction of levee deficiencies, and placement of instream wood structures to improve habitat. This project was also coordinated with landowners to improve agricultural drainage while better protecting water quality in Cougar Creek. The design was funded by a combination of grants from The Nature Conservancy and the Department of Ecology Floodplains by Design program, and the Flood fund.

Construction of the project is scheduled for the summer of 2025.

Funding Amount and Source

Funding for project construction is from the Flood fund and includes cost-shares from the landowners through a payment assignment of a Natural Resources Conservation Service (NRCS) grant and DD#3. The total project construction cost is estimated at \$2,250,000. The attached Flood Works Agreement provides for an in-kind project contribution from DD#3 valued at \$25,000 and \$350,927 from the landowners. The remainder of the project costs will be reimbursed at 80% by funding for early action projects included in our 2021-23 and 2023-25 Floodplains by Design grants, with 20%, or approximately \$379,800, from the Flood fund. The Agreement also identifies obligations for future project repairs and maintenance.

Whatcom County Public Works
River and Flood Division
322 N. Commercial Street, 2nd Floor
Bellingham, WA 98225

FLOOD CONTROL WORKS AGREEMENT

Whatcom County Project Name Neevel Levee Cougar Creek Fish Passage Project No. 720010

This agreement is entered into this 4th day of March, 2025, between the Whatcom County Flood Control District (FCZD) a quasi-municipal corporation of the State of Washington; Property Owners John and Rich Appel (Property Owners), and Diking District #3 (DD#3), a duly organized district, with the Property Owners and Diking District #3 defined collectively as the Local Sponsors of certain property located on the hereinafter described body of water, for the purpose of providing flood control/river improvement work on Cougar Creek, a tributary to the Nooksack River, in Whatcom County, Washington, more specifically denoted by Whatcom County **TAX PARCEL NUMBERS** 390203060075, 390210132459, 390209508445 situated in Whatcom County.

The FCZD, and the Local Sponsors agree as follows:

DEFINITIONS

- D.1. The term "Project" shall mean construction, operation and/or maintenance of flood protection and habitat enhancement work in accordance with applicable codes, standards, and permits. The project is located on Cougar Creek, a tributary to the Nooksack River (also known as Wiser Lake Creek).

The Project generally consists of: repair and replacement of an existing culvert and flap gate with a new 6' x 6' concrete box culvert with a side swing self-regulating tide gate and a muted tidal regulator (MTR), realignment of levee over the culvert, realignment of the creek through the culvert, and installation of large woody structures and other habitat enhancement work downstream of the culvert. Work also includes planting the area between the levee and the Nooksack River with native trees and shrubs.

- D.2. The term "Total Project Cost" shall mean all the costs incurred by Whatcom County and the FCZD directly related to the execution of the project. Such costs shall include, but are not limited to: design, permitting, construction costs, supervision and inspection costs, accounting and administrative cost, cost of contract dispute settlements or awards, but shall not include any costs of operation and maintenance, or the costs of acquiring lands, easements, right-of-way, or relocations.

OBLIGATIONS OF WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT AND THE LOCAL SPONSORS

- O.1. The FCZD shall expeditiously complete the Project, pursuant to laws, regulations, policies, and permits. The Local Sponsors shall be afforded the opportunity to review and comment on the plans and specifications. The FCZD will, in good faith, consider the comments of the Local Sponsors but modifications and performance of all work on the project shall be exclusively within the control of the FCZD.

- O.2. The Local Sponsors shall provide all lands, easements and right-of-way determined by the FCZD to be necessary for execution, operation and maintenance of the Project. If a Flood Easement is not recorded on the property, the Local Sponsors shall execute a Flood Control Works Easement.
- O.3. Diking District #3 (DD#3) shall provide an in-kind contribution toward the construction of the project. The in-kind contribution will consist of DD#3 removing and transporting excess fill generated from the project and incorporating the fill into the backslopes of existing PL-84 99 levees within DD#3. The excess fill is estimated at 5,000 cubic yards which equates to approximately \$25,000 in savings to the Total Project Cost.
- O.4. The FCZD will obtain all required permits on behalf of DD#3 for levee backsloping work. Diking District #3 shall conduct the work in accordance with all permit conditions. Additionally, Diking District shall complete the work by October 1, 2025 to avoid leaving fill within the floodplain and impacting its flood carrying capacity. Additionally, the DD#3 shall not raise the elevation of the levee crest at any point.
- O.5. The Property Owners have received a National Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQUIP) grant for the Project. The Property Owners shall, upon execution of this agreement, request an Assignment of Payment of \$350,927.00 from the NRCS to the FCZD. The assignment of payment must be approved by the NRCS.
- O.6. The Property Owners have received an NRCS EQUIP grant to complete a separate project which includes abandoning an existing drainage pipe through the levee and rerouting it to a location upstream of the levee into Cougar Creek. The Property Owners will complete this work prior to, or concurrently with, the FCZD Cougar Creek culvert replacement project construction.
- O.7. If, after Project completion and final review by NRCS of the practices actually constructed, the final EQUIP payment is increased, any additional funds provided through the NRCS's EQUIP payment associated with the Project beyond the amount of \$350,927.00, shall be included in the assignment of payment to the FCZD.
- O.8. The Local Sponsors shall hold and save Whatcom County and 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 Whatcom County or its contractors. In case of such exception, Local Sponsors shall immediately, upon receipt of notice, notify the County of the existence of any such suit, or of its intent to avail itself of the defense that the County or its contractors were negligent.

METHOD OF PAYMENT

- P.1. The Local Sponsors shall provide, before and/or during the period of project activity, cash payments until paid in full, required to satisfy the above Obligations of this agreement. The Total Project Cost is currently estimated to be \$2,250,000.00. The Property Owner's share currently estimated at \$350,927.00 is to be made through an assignment of payment that shall be executed between John and Rich Appel as the participants (ASSIGNOR) in EQUIP and FCZD (ASSIGNEE). The assignment of payment shall include all EQUIP practice payments associated with the Project. DD#3's share of the Total Project Cost shall be an in-kind contribution as described in Section O.

The estimates set forth in this paragraph are based on Whatcom County's best judgement. Project cost estimates are subject to adjustment based on costs actually incurred and are not to be construed as the total financial obligation of the FCZD, or the Local Sponsors. In the event the total project costs are expected to vary from the estimate, Whatcom County will notify the FCZD and the Local Sponsors as the actual costs become known but before incurred.

- P.2. Upon completion of the construction phase of the Project, the FCZD shall compute the Total Project Costs and tender to the Local Sponsors a final accounting of the costs and the balance owing of the Local Sponsors' share.

OPERATION AND MAINTENANCE

- OM.1. After the Project is completed, the Local Sponsors will be provided with written notice of completion. Following completion, the Local Sponsors shall be obligated to maintain the completed Project, at no cost to the FCZD in accordance with Local, State and Federal regulations and permit conditions.
- OM.2. The MTR structure and associated float will be set to close the gate at a water surface elevation of 28 feet (NAVD88) above sea level. After the first full year of operation, this pre-determined elevation will be reevaluated. Any changes to the pre-determined float elevation, unless Property Owners can demonstrate imminent damages, will require a signed memo outlining the proposed change. Required signatories will be any affected landowner, Whatcom County River and Flood, and the Washington Department of Fish and Wildlife.
- OM.3. The Local Sponsors hereby give the FCZD, or its agents, the right to enter, at reasonable times and in a reasonable manner, upon land which the Local Sponsors own or control for access to the Project for purpose of inspection and if necessary for the purpose of completing, operating, and/or maintaining the project. This right of entry shall be permanent and shall attach to the land and will run with the land upon sale or other transfer. The Local Sponsors upon reasonable notice to the FCZD may alter the exact route of access so long as the alteration does not impair their ability to get needed equipment to the site.
- OM.4. If such an inspection shows that the Local Sponsors are failing to maintain the Project in accordance with the assurances aforementioned and have persisted in such failure after a reasonable notice in writing, the FCZD may not participate to its normal extent in repairing structural damage to an inadequately maintained project.
- OM.5. Further, in the event, the FCZD elects to undertake maintenance and operation responsibilities abandoned by the Local Sponsors, the Local Sponsors agree to reimburse the FCZD for the cost of maintenance and operation of the Project.

NOTICES

- N.1. All notices, requests, demands and other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if addressed to the following:
If to the Local Sponsors:

Property Owners	John Appel
Address:	6397 Aldrich Rd.
City, State, Zip:	Bellingham, WA 98226

Property Owners	Rich Appel
Address:	6605 Northwest Dr
City, State, Zip:	Ferndale, WA 98248

Diking District #3 Ty Neevel, Commissioner
Address: 6871 Northwest Dr
City, State, Zip: Ferndale, WA 98248

If to the Flood Control Zone District:

Whatcom County Public Works
River and Flood Division
322 N. Commercial Street, 2nd Floor
Bellingham, WA 98225

In Witness Whereof, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Whatcom County Executive acting on behalf of the FCZD Board of Supervisors.

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

Acknowledged and Accepted By:

Paula J. Harris
Paula Harris

Flood Control Engineer

By: Satpal Sidhu 3.4.25

Satpal Sidhu

County Executive, acting on behalf of the Whatcom County Flood Control Zone District Board of Supervisors

On this 4th day of March, 2025, before me, personally appeared Satpal Sidhu, to me personally known to be the Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing thereof and sealing thereof



Jake Logan
NOTARY PUBLIC, in and for the State of Washington,
residing _____ at _____

My Commission Expires 9.10.28

Approved as to Form:

1st Christopher Quinn by H. Gallan 2-20-25
Christopher Quinn Chief Civil Deputy
Prosecuting Attorney

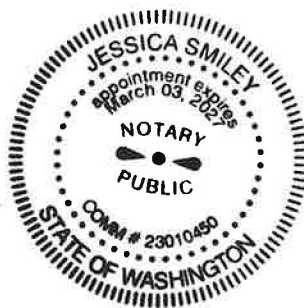
LOCAL SPONSORS


Property Owners

By: 
John Appel

By: 
Rich Appel

On this 14th day of February, 2025, before me personally appeared John Appel and Rich Appel to me personally known to be the person(s) individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing thereof.




NOTARY PUBLIC, in and for the State of Washington,
residing at Bellingham, WA
My Commission Expires March 3, 2027


Diking District #3

By: 
John Appel, Commissioner

By: 
Ty Neevel, Commissioner

On this 20 day of February, 2025, before me personally appeared John Appel and Ty Neevel to me personally known to be the person(s) individually or jointly described in and who executed the above instrument and who acknowledged to me the act of signing thereof.




NOTARY PUBLIC, in and for the State of Washington,
residing at Bellingham, WA
My Commission Expires 5-18-27