

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.
202211023

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	River & Flood/Flood Hazard Reduction(907550)
Contract or Grant Administrator:	Paula Harris, River & Flood Manager
Contractor's / Agency Name:	Acme Water District No. 18
Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes <input type="radio"/> No <input checked="" type="radio"/>	
Yes <input checked="" type="radio"/> No <input type="radio"/> If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____	
Does contract require Council Approval? Yes <input checked="" type="radio"/> No <input type="radio"/> 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 <input type="radio"/> No <input checked="" type="radio"/> If yes, grantor agency contract number(s): _____ CFDA#: _____	
Is this contract grant funded?	
Yes <input checked="" type="radio"/> No <input type="radio"/> If yes, Whatcom County grant contract number(s): <u>202205009</u>	
Is this contract the result of a RFP or Bid process?	
Yes <input type="radio"/> No <input checked="" type="radio"/> If yes, RFP and Bid number(s): = _____ Contract Cost Center: <u>712004</u>	
Is this agreement excluded from E-Verify? No <input type="radio"/> Yes <input checked="" type="radio"/> 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): \$ <u>33,000.00</u>	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: <ol style="list-style-type: none"> 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 Amendment Amount: \$ <u>n/a</u>	
Total Amended Amount: \$ <u>33,000.00</u>	
Summary of Scope:	
This interlocal agreement with the Acme Water District will provide for a cost-share to fund the work associated with water main modifications required for the construction of the Jones Creek Debris Flow Risk Reduction Project.	
Term of Contract: project completion	Expiration Date: n/a

Contract Routing:	1. Prepared by: C. Schoenfelder	Date: 11/2/22
	2. Attorney signoff: Christopher Quinn	Date: 11/07/2022
	3. AS Finance reviewed: M Caldwell	Date: 11/7/22
	4. IT reviewed (if IT related):	Date:
	5. Contractor signed: _____ ✓	Date: <u>11-9-22</u>
	6. Submitted to Exec.: _____ ✓	Date: <u>12-8-22</u>
	7. Council approved (if necessary): _____ ✓ <u>AB2022-686</u>	Date: <u>12-6-22</u>
	8. Executive signed: _____ ✓	Date: <u>12-12-22</u>
	9. Original to Council: _____ ✓	Date: <u>12-16-22</u>

INTERLOCAL AGREEMENT
Between
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
And
ACME WATER DISTRICT NO. 18
For
Inclusion of Acme Water District's utility improvements into the Jones Creek Debris Flow Risk Reduction Project No. 712004

This Interlocal Agreement (ILA) is made and entered into by and between the Acme Water District No. 18 (hereinafter referred to as "Water District"), and the Whatcom County Flood Control Zone District (hereinafter referred to as the "FCZD"), this 9th day of November, 2022 (individually referred to as "Party" and together referred to as "Parties").

WHEREAS, the FCZD has been awarded a WA Department of Ecology Floodplains by Design (FbD) grant for the construction of the Jones Creek Debris Flow Risk Reduction Project No. 712004 (hereinafter referred to as the "Project"); and

WHEREAS, the grant provides for up to 80% funding with a required 20% local cost-share; and

WHEREAS, the grant includes funding for relocation of utilities as necessary to accommodate the Project; and

WHEREAS, the Water District operates an 6-inch asbestos concrete pipe (ACP) watermain within County right of way that is the responsibility of the Water District to relocate and/or modify pursuant to the franchise agreement on file with Whatcom County; and

WHEREAS, a portion of the ACP watermain within the Project footprint could be damaged due to the increased earthen loads of the earthen berm built as a part of Project; and

WHEREAS, the Project will result in an increased distance between hydrants due to the re-alignment of Turkington Rd for the Project; and

WHEREAS, the Water District wishes to replace the ACP watermain impacted by the Project with ductile iron so that it can withstand the new loads, and install a new hydrant to maintain adequate distances between hydrants; and

WHEREAS, RCW 39.34 allows municipalities to enter into interlocal agreements to set forth the conditions of providing services to one another; 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 funding the Water District utility improvements associated with the Project.

OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

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

1. Administer the FbD grant.
2. Coordinate with the Water District to incorporate the necessary utility improvements into the Project design and construction contract documents.
3. Provide engineering plans, specifications and cost estimates for the utility improvements to the Water District for review.
4. Require the construction contractor awarded the contract to name the Water District as an additional insured prior to the contractor commencing work on the project. The contractor shall provide at least \$1,000,000.00 in general liability coverage and shall also include automobile insurance coverage.
5. Include a separate pay schedule in the construction contract for all work associated with Water District utility improvements.
6. Permit, oversee, manage, and construct the Project and associated Water District utility improvements using FbD grant and FCZD funding.
7. Invoice the Water District for 20% of all construction costs associated with Water District utility improvements after construction closeout documentation has been completed.
8. Provide necessary FCZD Board of Supervisors’ approval for this ILA and provide general administrative activities as detailed above to fulfill the FCZD’s contractual obligations.

B. The Acme Water District No. 18 (“Water District”) shall:

1. Provide review comments to the Whatcom County project manager no later than 2 weeks from receipt of the design and construction documents supplied by the County.
2. Attend pre-construction meeting, preliminary site walkthrough, final site walkthrough, and any other required construction meetings. Attendance shall be by the Water District operator and any other Water District personnel or representatives as needed.
3. Notify and coordinate with water customers regarding service disruptions. Water District shall provide a minimum of two business days’ notice to water customers of planned service disruptions.

4. Upon request, review and comment on construction submittals associated with the utility improvements including but not limited to: materials, staging, schedules, temporary services plans, and contractor work plan.
5. Coordinate with Whatcom County staff during construction as necessary, and provide periodic inspection by the Water District Operator of the utility improvement work during construction.
6. Reimburse the FCZD 20% of all construction costs associated with Water District utility improvements.

PAYMENT

The Water District is responsible for the 20% local share of the construction contract costs associated with the utility improvement work. The Water District shall reimburse the FCZD for all items invoiced by the FCZD after construction close out as noted in item A.7 above, or on an alternate timeframe as mutually agreed to in writing by the parties.

The estimated dollar amount the Water District will be responsible for is approximately \$33,000 based on the final engineer's estimate for the project. The final contribution amount will be based on the real costs associated with the work as described herein.

IMPROVED UTILITIES

The Water District's improved utilities, which are used exclusively by the Water District, shall be the property of the Water District. Except as otherwise specified herein, the Water District shall pay for operation, maintenance and repairs of said utilities, including those improvements constructed pursuant to this ILA.

TERM OF AGREEMENT

The period of performance for this ILA shall be binding upon the parties hereto, their successors and assigns, and shall begin on the date of execution and shall cease upon completion of the Project construction contract and completion of all Project closeout paperwork, including the final resolution of any potential construction claims associated with the Water District's utility improvement work.

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.

DISPUTES

- a) **Arbitration.** The Parties shall work cooperatively to timely resolve any issues that may arise between the Parties concerning this ILA. However, any dispute or claim shall be submitted to mandatory, conclusive and binding arbitration under the rules and procedures of Whatcom County Mandatory Arbitration Rules ("WCMAR"). The Parties shall jointly stipulate to an arbitrator, or one will be selected in accordance with WCMAR. The arbitrator's award shall not be limited by otherwise applicable MAR rules. The prevailing Party shall be entitled to reasonable attorney's fees and costs. The arbitrator's decision may only be appealed pursuant to Ch. 7.04A RCW.

- b) **Governing Law and Venue.** The Parties agree that any dispute shall be governed by the laws of the State of Washington and shall be heard in Whatcom County.

INDEMNIFICATION

To the extent permitted by law, each Party agrees to protect, defend, appear, save harmless and indemnify the other Parties from and against all claims, suits and actions arising from the intentional or negligent acts or omissions of that Party, its agents or employees in the performance of this ILA. However, neither Party shall assume any liability for the direct payment of any salary, wages, or other compensation to any other of the Party's personnel performing services hereunder or for any other liability not expressly assumed herein.

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.

RECORDATION

Upon execution of this ILA, the FCZD shall file a copy of it with the office of the County Auditor or, alternatively, listed by subject on a public agency's website or other electronically retrievable public source pursuant to the requirements of RCW 39.34.

CONTRACT MANAGEMENT

No new separate legal or administrative entity is created to administer the provisions of this ILA. 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 ILA. 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 Water District is:

Jim Sutterfield
Acme Water District – Commissioner Position #3
PO Box 13
Acme, WA 98220
Phone: 360.303.3192
Email: acmewaterdistrict@gmail.com

The Contract Administrator for the FCZD is:

Paula J. Harris, P.E.
Whatcom County Public Works
322 N. Commercial, Suite 201
Bellingham, WA 98225-4042
Phone: (360)778-6285
Email: pharris@co.whatcom.wa.us

IN WITNESS WHEREOF, the parties have executed this Agreement.

ACME WATER DISTRICT NO. 18

By: 
Jim Sutterfield, Commissioner Position #3

Date: 11-9-2022


By: 
Brad Falcetti, Commissioner Position #1

Date: 11-9-2022

By: 
Tom Garland, Commissioner Position #2

Date: 11/9/2022

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: 
Satpal Singh Sidhu
Whatcom County Executive

Date: 12/12/22

Approved as to form:

15/ Christopher Quinn 11/17/22
Christopher Quinn, Whatcom County Senior Civil Deputy Prosecuting Attorney
Date
By BT

**WHATCOM COUNTY
PUBLIC WORKS DEPARTMENT**

**ELIZABETH KOSA
INTERIM DIRECTOR**



RIVER AND FLOOD
322 N. Commercial Street, Suite 201
Bellingham, WA 98225-4042
Phone: (360) 778-6230
Fax: (360) 778-6231
www.whatcomcounty.us

MEMORANDUM

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

THROUGH: Elizabeth Kosa, Interim Public Works Director

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

RE: Interlocal Agreement – Acme Water District No. 18
Inclusion of Water District's Utility Improvements
Jones Creek Debris Flow Risk Reduction Project (No. 712004)

DATE: November 17, 2022

RECEIVED

DEC 8 - 2022

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

Enclosed are two (2) originals of an interlocal agreement (ILA) for your review and signature.

Requested Action

Public Works respectfully requests that the Flood Control Zone District (FCZD) Board of Supervisors authorize the County Executive to enter into an Interlocal Agreement with Acme Water District No. 18 (Water District) for inclusion of the Water District's utility improvements into the Jones Creek Debris Flow Risk Reduction Project (Project).

Background and Purpose

The FCZD commissioned a Jones Creek debris flow study that mapped hazard zones and evaluated several mitigation measures to alleviate the risk. The recommended mitigation measure is a deflection berm that will be set back from Jones Creek and cross Turkington Road. The FCZD has secured funding for construction of the project, including required utility modifications, through the 2021/23 Department of Ecology Floodplains by Design (FbD) grant which provides for up to 80% reimbursement.

Improvements to the Water District's watermain are necessary due to the increased loads placed on the waterline by the new earthen berm. This interlocal agreement will allow for the construction of the watermain improvements to be included in the Project construction package, and will establish the local cost-share for those improvements to be paid by the Water District.

Funding and Source

The construction cost of the watermain portion of the Project is estimated at \$165,000.00. The required 20% FbD grant local match is \$33,000.00, to be paid by the Water District. The Water District commissioners approved this cost-share at their October 12, 2022 meeting. The proposed 2023 FCZD Budget includes \$5,430,000 for this Project as a part the capital budget appropriation (Exhibit B to the proposed 2023 FCZD budget resolution).

Please contact Christina Schoenfelder at extension 6274, if you have any questions regarding the terms of this agreement.