

WHATCOM COUNTY CONTRACT INFORMATION SHEET

Whatcom County Contract No. _____

Originating Department: _____	
Division/Program: <i>(i.e. Dept. Division and Program)</i> _____	
Contract or Grant Administrator: _____	
Contractor's / Agency Name: _____	
<p>Is this a New Contract? If not, is this an Amendment or Renewal to an Existing Contract? Yes No</p> <p>Yes No If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: _____</p> <p>Does contract require Council Approval? Yes No If No, include WCC: _____</p> <p>Already approved? Council Approved Date: _____ (Exclusions see: Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)</p> <p>Is this a grant agreement?</p> <p>Yes No If yes, grantor agency contract number(s): _____ CFDA#: _____</p> <p>Is this contract grant funded?</p> <p>Yes No If yes, Whatcom County grant contract number(s): _____</p> <p>Is this contract the result of a RFP or Bid process? Contract</p> <p>Yes No If yes, RFP and Bid number(s): _____ Cost Center: _____</p> <p>Is this agreement excluded from E-Verify? No Yes If no, include Attachment D Contractor Declaration form.</p> <p>If YES, indicate exclusion(s) below:</p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Professional services agreement for certified/licensed professional. <input type="checkbox"/> Contract work is for less than \$100,000. <input type="checkbox"/> Contract work is for less than 120 days. <input type="checkbox"/> Interlocal Agreement (between Governments). </div> <div> <input type="checkbox"/> Goods and services provided due to an emergency <input type="checkbox"/> Contract for Commercial off the shelf items (COTS). <input type="checkbox"/> Work related subcontract less than \$25,000. <input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA. </div> </div>	
<p>Contract Amount:(sum of original contract amount and any prior amendments): \$ _____</p> <p>This Amendment Amount: \$ _____</p> <p>Total Amended Amount: \$ _____</p>	<p>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:</p> <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.
Summary of Scope: _____	
Term of Contract: _____	Expiration Date: _____

Contract Routing:	Date:
1. Prepared by: _____	_____
2. Attorney signoff: _____	_____
3. AS Finance reviewed: _____	_____
4. IT reviewed (if IT related): _____	_____
5. Contractor signed: _____	_____
6. Executive contract review: _____	_____
7. Council approved, if necessary: _____	_____
8. Executive signed: _____	_____
9. Original to Council: _____	_____

INTERLOCAL AGREEMENT
Between
WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT
And
CITY OF FERNDALE
For
FERNDAL LEVEE IMPROVEMENT PROJECT

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

WHEREAS, The City and FCZD each manage a section of a contiguous levee system within the City limits and unincorporated Whatcom County, respectively; and

WHEREAS, the levee system is active in the United States Army Corps of Engineers (USACE) Public Law 84-99 (PL84-99) program which provides for rehabilitation of non-federal flood risk management structures damaged or destroyed by floods; and

WHEREAS, the USACE has identified deficiencies in the levee system that require improvements to remain eligible in the PL 84-99 program; and

WHEREAS, during the November 2021 flood and other recent large floods, extensive sandbagging and flood fight activities were performed to prevent failure of the levee; and

WHEREAS, the FCZD has secured multiple Washington State Department of Ecology (Ecology) Floodplains by Design (FbD) grants to fund design and purchase right-of-way for the Ferndale Levee Improvement Project (Project) which will provide mutual benefit to the City and the FCZD by resolving the USACE unacceptable levee deficiencies, increasing the level of flood protection, enhancing riparian habitat, maintaining access to recreation, and improving water quality; and

WHEREAS, the Ecology FbD grant reimburses 80% of total eligible Project costs and requires a 20% local match; and

WHEREAS, the FCZD hired a consultant team and collaborated with the City in developing roadway and levee alignment alternatives and selection of a preferred Project alternative which was accepted by the Ferndale City Council at their August 1, 2022 meeting; and

WHEREAS, the FCZD has provided the 20% FbD grant funding match for the Project through the 60% level of design and desires the City to provide contribution towards the funding match for the remainder of the Project; 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 Interlocal Agreement (Agreement) is to define the obligations and responsibilities of the Parties involved in designing the Project to a 90% level, acquiring right of way, and preliminary permitting.

A future amendment to the Agreement will be required to define the obligations and responsibilities of the Parties for final design, implementation, construction, construction management, and obtaining additional funding for the Project.

DEFINITIONS

Project Costs: All costs required to complete the Project including but not limited to consultant costs, construction contracts, permit fees, materials, postage, advertisements, facilities rentals, and staff time.

Land Acquisition Costs: All costs required to complete property acquisitions essential for Project implementation including but not limited to title reports, property boundary surveys, easements, consultant costs, appraisals, recording fees, land purchases, and staff time.

OBLIGATIONS AND RESPONSIBILITIES OF THE PARTIES

A. WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT (FCZD) SHALL:

1. General
 - a. Administer the FbD grants included in Exhibit A.
 - b. Provide necessary FCZD Board of Supervisors approval for this Agreement and provide general administrative activities necessary to fulfill the FCZD's contractual obligations.
2. Design
 - a. Invoice the City for 10% of the Project Costs, or half of the required local cost share, whichever is greater, incurred to design the Project from the 60% to 90% design phase.
 - b. Manage the existing engineering consultant contract and all other contracts necessary to design the Project from the 60% to 90% level of design.
 - c. Develop a scope of work and budget to design the Project from the 60% to 90% design phase.
 - d. Provide engineering plans, specifications, and cost estimates for the Project up to the 90% design.
 - e. Provide all consultant scopes of work and cost estimates to the City for review and comment.

- f. Invite City staff assigned to the Project to attend regular design meetings and provide consultant deliverables to the City for review and comment.
 - g. Coordinate with affected utilities in unincorporated Whatcom County per the County's franchise agreements.
- 3. Permitting
 - a. Coordinate, and invite City staff to pre-application meetings with USACE, Ecology, Washington State Department of Fish and Wildlife (WDFW), and Whatcom County Planning and Development Services (PDS).
 - b. Prepare a mitigation plan for wetlands impacted by the Project.
 - c. Investigate requirements and design opportunities for compliance with the Federal Emergency Management Agency (FEMA) National Floodplain Insurance Program (NFIP).
- 4. Land Acquisition
 - a. Coordinate and Purchase all right-of-way, easements, or other property rights essential for the Project outside of the City limits and City urban growth areas.
 - b. Provide the 20% FbD local grant match for all land acquisitions essential for the Project outside of the City limits and City urban growth areas.
 - c. Upon receipt of the City's reimbursement request and required backup documentation described, reimburse the City for up to 80% of the Land Acquisition Costs incurred by the City to purchase land essential for the Project within City limits and urban growth areas.
 - d. The District will upload documents to EAGL as necessary. The City and the District will work cooperatively to submit documents to Ecology as necessary for project progression and reimbursement.

B. CITY OF FERNDALE (CITY) SHALL:

- 1. General
 - a. Present materials to City Council for consideration and potential approval for this Agreement and provide the necessary administrative activities to fulfill the requirements described herein.
- 2. Design
 - a. Provide qualified City staff person(s) to attend design meetings as requested by the FCZD.
 - b. Review and provide comment on consultant scopes of work, budgets, designs, right-of-way plans, and other deliverables to the FCZD no later than 2 weeks, from receipt of the document, or on an alternate timeframe as mutually agreed by the parties.

- c. Provide guidance and coordinate the design of the Project within the City limits to comply with City standards and other City guideline documents.
- d. Upon receipt of each invoice for design, reimburse the FCZD for 10% of the Project Costs, or half of the required local cost share, whichever is greater, incurred to design the Project from the 60% to 90% design phase.
- e. Coordinate with affected utilities companies within the City limits and City urban growth areas per the City's franchise agreements.
- f. Provide copies of Public Outreach documents such as mailer(s), factsheet(s), website(s), presentation(s), and/or meeting agenda(s) and attendance log(s), as applicable.

3. Permitting

- a. Coordinate, and invite FCZD staff and engineering consultant to a pre-application meeting with the City Planning department.
- b. Review and comment on application documents as requested by the FCZD.

4. Land Acquisition

- a. Coordinate and purchase all right-of-way, easements, or other property rights essential for the Project within City limits or urban growth areas following City, FbD grant, and other applicable State and Federal land acquisition requirements. This includes land required for wetland mitigation from Project impacts within the City limits and urban growth areas.
- b. Invite the FCZD to attend key meetings between the City and property owners.
- c. Provide to the FCZD, all required land acquisition reports, studies, appraisals, and other deliverables as identified in the FbD Grant Agreement SEAFBD-2123-WhCoPW-0014 Task No. 6. The City will provide the documents identified in the deliverables listed below to the District. The City and the District will work cooperatively to submit documents to Ecology as necessary for project progression and reimbursement.
 - Complete Acquisition Report for each property.
 - List and copies of required and acquired permits with effective dates for each demolition, as applicable.
 - Cultural Resources Review Documents for each demolition, required prior to any reimbursement.
 - Inadvertent Discovery Plan (IDP) for each demolition, as applicable.
 - Bid documents and signed contractor contract(s) for each demolition, as applicable.
 - Before and after annotated photos of each demolition, as applicable.
- d. Provide to the FCZD all signed easement package(s) and/or landowner agreement(s) with the City acquired for construction of the Project.

- e. Provide the 20% FbD local grant match for all land acquisitions essential for the Project within the City limits and urban growth areas.
- f. Submit a reimbursement request to the FCZD for 80% of the Land Acquisition Costs incurred by the City to purchase land essential for the Project within City limits and urban growth areas. The request should include documentation for the 20% local match being provided by the City.

PAYMENT

The FCZD will invoice the City quarterly for 10% of the Project Costs, or half of the required local cost share, whichever is greater, incurred to design the Project from the 60% to 90% design phase. All invoices shall be accompanied by a summary of expenditures and supporting documentation. The City shall reimburse the FCZD for all items invoiced by the FCZD within sixty (60) days of invoice receipt.

The current estimate for design is \$300,000 as reflected in the SEA-FBD-2123-WhCoPW-00014 grant agreement. The 10% City cost-share would be \$30,000 based on this estimate. The final contribution amount will be based on the real costs. If, during consultant contract scoping and negotiations, the estimate cost of the project increases the FCZD will notify the City and will provide an updated estimate. If the cost increase is greater than 10% of the grant amount, this agreement will be amended to reflect the increased costs.

The FCZD and City will each conduct their own appraisals and negotiations for land acquisition. The City shall provide the FCZD with appraisals prior to beginning negotiations. The FCZD will review the appraisals and determine if adequate FbD funds are available for the 80% cost share.

The City may submit reimbursement requests for available Land Acquisition funds to the FCZD after the property has been purchased and all required documentation has been submitted and approved by the Ecology FbD grant manager. Reimbursement requests shall be accompanied by a summary of expenditures and supporting documentation. The FCZD will provide payment to the City to reimburse up to a maximum of 80% of eligible costs. Total reimbursement shall be limited by availability of grant funds. Reimbursement will follow the typical FbD grant Payment Request schedules and County payment cycles.

Property acquisition for the project impacts and mitigation area is currently unknown and no appraisals have been performed at the time of this agreement. Land acquisition estimates range from \$75,000 to \$500,000. The City's local match of 20% would be approximately \$100,000, if the values of the acquired land within the City limits and UGA is \$500,000. If the land acquisition cost increase is greater than the \$100,000 match amount, this agreement will be amended to reflect the increased costs. All land must be approved by Whatcom County prior to purchase. Only land essential to the project will be considered for reimbursement. Properties will be appraised and acquisition estimates and local match requirements will be provided prior to purchasing.

IMPROVED FACILITIES

The City's improved facilities including but not limited to roadways, levees, mitigation areas, and utilities within the City limits, City right-of-way, and City-owned property, shall be the property of the City. Except as otherwise specified herein, the City shall pay for operation, maintenance and repairs of said facilities, including those improvements constructed pursuant to this Agreement.

TERM OF AGREEMENT

The period of performance for this Agreement shall be consistent with the performance period of the applicable FbD grants included in Exhibit A.

THIRD PARTY BENEFICIARY

Funding of this project is being provided through the Washington State Department of Ecology. All parties agree that the State of Washington shall be, and is hereby, named as an express third-party beneficiary of this contract, with full rights as such.

AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement 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 Agreement. 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 Agreement. 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.

The indemnification provided herein shall apply to and require each Party to defend, indemnify and hold harmless the other Party for claims brought by an employee of one Party against the other

party if said claims are alleged to have arisen from the alleged negligent actions or omissions of the employee's employer, and in such case, each party, with respect to each other only, waive and will not assert against each other, any immunity under Washington State Industrial Insurance Act (RCW Title 51). This waiver is limited to actions by and between the Parties only and does not extend to the employees of either Party. The Parties expressly do not waive their immunity against claims brought by their own employees.

ASSIGNMENT

The obligations to be performed by the Parties under this Agreement 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 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.

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 either Party.

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:

Kevin Renz

City of Ferndale Public Works
2095 Main St.
Ferndale, WA 98248
Phone: (360) 685-2376
Email: kevinrenz@cityofferndale.org

The Contract Administrator for the FCZD is:

Paula J. Harris, P.E.
Whatcom County Public Works
322 N. Commercial, Suite 210
Bellingham, WA 98225-4042
Phone: (360) 778-6285
Email: pharris@co.whatcom.wa.us

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.

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 pursuant to the requirements of RCW 39.34.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF FERNDALE

By: _____
[printed name], [Title]

Date: _____

Approved as to form:

Attorney

Date

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By: _____
Satpal Singh Sidhu,
Whatcom County Executive, acting as signatory for the Whatcom County Flood Control
Zone District Board of Supervisors

Date: _____

Approved as to form:

Christopher Quinn, Whatcom County
Chief Civil Deputy Prosecuting Attorney

Date

EXHIBIT A
FLOODPLAINS BY DESIGN GRANTS EXECUTED BY WASHINGTON STATE
DEPARTMENT OF ECOLOGY AND WHATCOM COUNTY FLOOD CONTROL
ZONE DISTRICT

Grant List:

1. Agreement No. SEAFBD-2123-WhCoPW-00014
2. Agreement No. SEAFBD-2325-WhCoPW-00054