

COST REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LYNDEN AND THE WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT RELATING TO FUNDING DEVELOPMENT OF 30% DESIGN PLANS FOR PHASE 1 OF THE BERTRAND BERTHUSEN TRIBUTARY (“MOUW DITCH”) PROJECT.

This Agreement is made and entered into by and between the City of Lynden, 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 is within Whatcom County and encompasses properties within the floodplain; and

WHEREAS, the District manages the Floodplain Integrated Planning (FLIP) process to update and broaden the scope of the Lower Nooksack River Comprehensive Flood Hazard Management Plan (CFHMP); and

WHEREAS, the FLIP process includes a government and stakeholder group (FLIP Team and FLIP Reach Teams) with representatives from the District, the Lummi Nation, the Nooksack Tribe, sub-zone advisory committees, diking districts, watershed improvement districts (WIDs), federal, state and local agency staff, local landowners, representatives of the agricultural community, and technical experts; and

WHEREAS, the City has entered into an Interlocal Agreement with the Bertrand Watershed Improvement District (WID); and

WHEREAS, the City has, in cooperation with the Bertrand WID, retained Reichhardt and Ebe (RE) who has completed a survey and basemap of the Bertrand Berthusen Tributary (“Mouw Ditch”) Project; and

WHEREAS, the City and the Bertrand WID had Reichhardt and Ebe (RE) and their subconsultant Watershed Science and Engineering completed a hydraulic assessment of the Mouw Ditch Project under a previous Cost Reimbursement Agreement between the City and the District that is now expired; and

WHEREAS, the District has been awarded ’21-’23 and ’23-’25 biennium Floodplains by Design (FbD) grants from the Department of Ecology (Ecology) for the Nooksack River: Floodplains that Work – Phases 2 and 3 projects; and

WHEREAS, the FbD grants include a task for early action projects and provide 80 percent reimbursement of eligible costs and requires a local cost-share of 20 percent of eligible costs; and

WHEREAS, with support of the FLIP Steering Committee, a portion of the FbD ’21-’23 grant early action task budget funded the Mouw Ditch hydraulic assessment under the previous Cost Reimbursement Agreement described above. ; and

WHEREAS, the FLIP Steering Committee supports using a portion of the '23-'25 FbD grant early action task budget to support the next phase of work which is 30% design of Phase 1 of the Mouw Ditch Project; and

WHEREAS, the District proposes to enter into a new cost reimbursement agreement with the City to fund the 30% Design of Phase 1.

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 will provide the City reimbursement of 80 percent of eligible costs for services provided by RE to develop 30% design plans for Phase 1 of the Mouw Ditch Project.

2. PARTY RESPONSIBILITIES

A. CITY RESPONSIBILITIES

1. The City shall contract with RE to develop 30% design plans for Phase 1 of the Mouw Ditch Project. The City shall request reimbursement from the District for 80 percent (80%) of the costs associated with this work.
2. Copies of RE invoices shall be provided to document the expenses incurred by the City for which reimbursement is requested.

B. FLOOD CONTROL ZONE DISTRICT RESPONSIBILITIES

1. Subject to the terms of this Agreement, The District shall reimburse 80 percent (80%) of the eligible costs incurred by the City of Lynden for RE to develop 30% design plans for Phase 1 of the Mouw Ditch Project per the payment provisions below in Section 3.

3. PAYMENT

The District will provide payment to the City to reimburse 80 percent (80%) of eligible costs of the City's contracted representative (RE) for performance of Mouw Ditch Phase 1 30% design plans. Total reimbursement shall be no more than eighty percent (80%) of one hundred forty-two thousand dollars (\$142,000), equal to one hundred thirteen thousand six hundred dollars (\$113,600), inclusive of indirect costs. Reimbursement shall be made within thirty (30) days of the District's receipt of the City's reimbursement request. All eligible costs shall be dated no earlier than July 1, 2023.

4. TERM OF AGREEMENT

The period of performance for this Agreement shall be consistent with the performance period of the 2023-2025 FbD grant (Grant No. SEAFBD-2325-WhCoPW-00054), which is currently July 1, 2023 through June 30, 2027.

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:

Mark Sandal
City of Lynden
300 4th Street
Lynden, WA 98248
(360) 354-3446
SandalM@lyndenwa.org

The Contract Administrator for the District is:

Julie Anderson, River and Flood Manager
Whatcom County Public Works Department
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 778-6285
jmanders@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 LYNDEN

**WHATCOM COUNTY FLOOD
CONTROL ZONE DISTRICT**

By: Scott Korthuis

By: See Attached

Title: Mayor

Title: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Approved as to form:

**WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT:
Recommended for Approval:**

Elizabeth Kosa, Public Works Director Date

Approved as to form:

Tom Seguire Date
Chief Civil Deputy Prosecuting Attorney

Approved:

Accepted for Whatcom County Flood Control Zone District:

By: _____
Satpal Singh Sidhu, Whatcom County Executive