

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No. _____

Originating Department:	Public Works
Division/Program: <i>(i.e. Dept. Division and Program)</i>	River and Flood/907545
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	US Army Corps of Engineers

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? Yes No If yes, RFP and Bid number(s): _____ Contract Cost Center: 719004

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.
- Contract work is for less than \$100,000.
- Contract work is for less than 120 days.
- Interlocal Agreement (between Governments).
- Contract for Commercial off the shelf items (COTS).
- Work related subcontract less than \$25,000.
- Public Works - Local Agency/Federally Funded FHWA.

Contract Amount:(sum of original contract amount and any prior amendments):
 \$85,000 up-front payment to USACE;
 Net payment of 16% of total project
 \$ cost not to exceed \$68,000
 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: Interlocal Agreement with Diking District #2 to provide cost-share funding for Sande-Williams Levee Rehabilitation by the US Army Corps of Engineers

Term of Contract:	Cost-share	Expiration Date:	N/A
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Contract Routing:	1. Prepared by: <u>Paula Harris</u>	Date: <u>4-5-19</u>
	2. Attorney signoff: <u>Christopher Quinn</u>	Date: <u>4/8/2019</u>
	3. AS Finance reviewed: <u>bbennett</u>	Date: <u>4/08/19</u>
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____	Date: _____
	6. Submitted to Exec.: _____	Date: _____
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

INTERLOCAL AGREEMENT
Between Diking District #2 and Whatcom County Flood Control Zone District
for
Sande-Williams Levee Rehabilitation

WHEREAS, Diking District #2 (DD#2) serves as the local sponsor for the Sande-Williams Levee under the US Army Corps of Engineers' (USACE) Public Law (PL) 84-99 Program which provides funding and staffing resources to implement levee rehabilitation projects after levees are damaged during flood events; and

WHEREAS, DD#2 submitted requests for rehabilitation assistance to the USACE after floods in November 2017 and 2018; and

WHEREAS, DD#2 has entered into a cooperative agreement with the USACE that includes an 80% federal – 20% local cost share arrangement to achieve necessary repairs to the Sande-Williams Levee; and

WHEREAS, at the July 19, 2018 meeting of the Whatcom County Flood Control Zone District (FCZDt) Advisory Committee, DD#2 requested the FCZD provide 80% of their local sponsor match, which at the time was estimated to be approximately \$100,000 based on a total cost estimate of \$500,000; and

WHEREAS, the FCZD Advisory Committee unanimously supported the cost-share arrangement proposed by DD #2 at their July 19, 2018 meeting; and

WHEREAS, the final construction cost estimate of the rehabilitation of the Sande-Williams Levee is \$425,000, with \$340,000 of that total amount to be borne by the USACE, and the remaining \$85,000 to be provided by the local sponsor; and

WHEREAS, the FCZD's Board of Supervisors has adopted a resolution providing that the FCZD will cost share at a ratio of 70% - 30% on approved repair and maintenance projects with local sponsoring agencies such as DD#2; and

WHEREAS, the resolution also provides for alternate cost-share ratios as long as they are approved by the Board of Supervisors; and

WHEREAS, based on the updated cost estimate and the proposed cost-share formula the FCZD contribution would be \$68,000, which is within the amount budgeted for this project in the 2019 FCZD budget, and the DD#2 contribution would be \$17,000; and

WHEREAS, DD#2 currently does not have a sufficient fund balance to provide its full share up-front and will need to utilize funds from its 2020 tax assessments to cover its full obligation;

NOW THEREFORE, DD #2 and the District agree as follows:

I. DIKING DISTRICT #2 RESPONSIBILITIES

DD #2 hereby agrees to:

- 1) Comply with the requirements of the USACE's PL 84-99 program as necessary to carry out the activities described in the Cooperative Agreement, attached hereto and incorporated herein as Exhibit "A", and the design drawings titled "Levee Rehabilitation Nooksack River Sande Williams Levee NSK-04-18, attached hereto and incorporated herein as Exhibit "B".
- 2) Provide six-thousand (\$6,000) of its cost-share to the FCZD upon full execution of this agreement.
- 3) Provide the remainder of its obligation (20% of the 20% local sponsor share of the total project cost), less the value of any in-kind credit DD #2 can negotiate with the USACE, within thirty (30) calendar days of the FCZD invoice submitted to DD #2 after the USACE submits its final accounting for project costs.

DD #2 further agrees that:

- 1) The work performed pursuant to this agreement on the levee and/or revetment will not raise the elevation of those structures or further encroach into the Nooksack River beyond their previously permitted height and extent;
- 2) It will accept full responsibility for obtaining required permits from the appropriate regulatory agencies, and will abide by the conditions of those permits;
- 3) It will perform, without any cost to the FCZD, any and all mitigation that may be required by regulatory agencies in connection with the work covered by this agreement and will hold harmless and indemnify the FCZD from and for such mitigation;
- 4) It will accept and perform all maintenance obligations imposed by the Army Corps of Engineers as a condition of its participation in the work described herein.

II. FLOOD CONTROL ZONE DISTRICT RESPONSIBILITIES

The FCZD hereby agrees to:

- 1) Upon execution of this interlocal agreement, provide up-front payment to the USACE for 20% share of the total cost of the project described in Exhibits "A" and "B" in an amount not to exceed Eighty Five Thousand and No/100 Dollars (\$85,000.00);
- 2) Once the USACE provides the final accounting of project costs, calculate the remaining obligation of DD #2 needed to fulfill the 20% of the 20% local sponsor share less the \$6,000 up-front payment and less the credit for any in-kind services provided by DD #2, and invoice DD #2 for that remaining amount. If DD#2 is able to negotiate credit for in-kind services that exceeds the balance due, the FCZD will reimburse DD#2 the difference between the in-kind credit and the balance due, but not more than the up-front payment of \$6,000.
- 3) To complete a Shoreline Statement of Exemption Application for the proposed project and provide it to DD #2 commissioners for their submission to Whatcom County Planning and Development Services.

III. PAYMENT

Upon execution of this agreement, the District will initiate the process to distribute payment and shall provide payment directly to the USACE no later than twenty (20) calendar days from the date of execution.

DD #2 shall authorize transfer of its \$6,000 up-front payment to the District within ten (10) calendar days of its receipt of the fully executed agreement.

DD #2 shall provide payment for the remainder of the obligation within thirty (30) calendar days of the date of the invoice from the District.

IV. TERM

This Agreement shall be effective once fully executed and shall remain in effect until the final cost summary and refund, if applicable, is provided by the USACE, and DD #2 has fulfilled its obligation to refund the portion due to the District. All non-monetary obligations between the parties shall remain in effect and shall survive termination of this agreement.

V. RESPONSIBLE PERSONS

The persons responsible for administration of this Agreement shall be the Chair of DD#2 and the River & Flood Division Manager, or their respective designees.

VI. INDEMNIFICATION

Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.

VII. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the Parties.

VIII. GOVERNANCE

This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington and Whatcom County. The provisions of this Agreement shall be construed to conform to those laws.

IX. SEVERABILITY

In the event 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.

X. 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.

XI. RECORDATION

Upon execution by both of the Parties hereto, the District shall record this Agreement in the office of the Whatcom County Auditor, or follow such other requirement as provided pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this 9 day of April 2019.

WHATCOM COUNTY DIKING DISTRICT #2

WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT

By Gene Aarstol
Gene Aarstol, Chair, Diking District #2

By _____
Jack Louws, County Executive, on behalf of FCZD Board of Supervisors

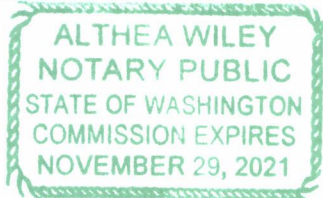
Approved as to form:

Approved as to form:

Cee 4/11/19
Whatcom County Chief Civil Deputy Prosecutor
Jon Hutchings 4/11/19
Jon Hutchings, Director of Public Works

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

On this 9th day of April, 2019, before me personally appeared Jack Louws, to me known to be the County Executive of Whatcom County and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



Althea Wiley
NOTARY PUBLIC in and for the State of Washington, residing at Whatcom.
My commission expires: 11/29/21

STATE OF WASHINGTON)
COUNTY OF WHATCOM) ss.

On this _____ day of _____, 2019, before me personally appeared Gene Aarstol, to me known to be the Chair of Whatcom County Diking District #2 and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

NOTARY PUBLIC in and for the State of Washington, residing at _____
My commission expires: _____