

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

201904011

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|---|------------------------|
| Originating Department: | Public Works |
| Division/Program: (i.e. Dept, Division and Program) | River and Flood/907545 |
| Contract or Grant Administrator: | Paula Harris |
| Contractor's / Agency Name: | Diking District #2 |

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: 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.

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| 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 \$ <u>cost not to exceed \$68,000</u> 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: <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. |
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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

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|------------------------------|----------------------|
| Term of Contract: Cost-share | Expiration Date: N/A |
|------------------------------|----------------------|

| | | |
|-------------------|---|-----------------------|
| 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>bennett</u> | Date: <u>4/08/19</u> |
| | 4. IT reviewed (if IT related): _____ | Date: _____ |
| | 5. Contractor signed: _____ | Date: _____ |
| | 6. Submitted to Exec.: _____ | Date: <u>4-12-19</u> |
| | 7. Council approved (if necessary): _____ | Date: <u>4.23.19</u> |
| | 8. Executive signed: _____ | Date: <u>4.24.19</u> |
| | 9. Original to Council: _____ | Date: <u>4-26-19</u> |

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

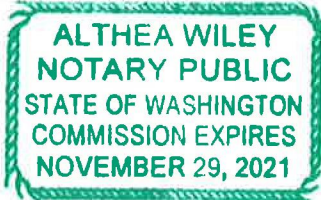
Approved as to form:

Approved as to form:

Cecilia 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.

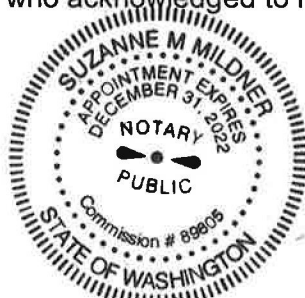
On this 9th day of April, 2019, before me personally appeared Gene Aarstol ^{Gene Jack Louws}, to me known to be the Chair of Whatcom County Diking District #2, and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.



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 24th day of April, 2019, before me personally appeared Gene Aarstol ^{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.



Suzanne M. Mildner
NOTARY PUBLIC in and for the State of Washington, residing at Bellingham.
My commission expires: 12-31-22

EXHIBIT A

COOPERATION AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

DEMING DIKING DISTRICT NO. 2, WASHINGTON

FOR

REHABILITATION OF A NON-FEDERAL FLOOD CONTROL WORK

SANDE-WILLIAMS LEVEE (NSK-04-18)

THIS AGREEMENT, entered into this ____ day of _____, 20____, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Engineer, Seattle District, U.S. Army Corps of Engineers, and Deming Diking District No. 2, Whatcom County, Washington (hereinafter referred to as the "Public Sponsor"), represented by the Commissioner, Deming Diking District No. 2.

WITNESSETH THAT:

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by flood;

WHEREAS, via written correspondence, the Public Sponsor has requested the Government to repair or restore a certain flood control work damaged by recent flooding or coastal storms, in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Public Sponsor agree as follows:

ARTICLE 1 - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean repairing three damaged sites of the Sande-Williams Levee, totaling approximately 1080 linear feet (lf) due to the floods of November, 2017 and November 2018. The approved Sande-Williams Project Information Report (PIR) called for repairing 235 lf in two non-continuous sites. A total of five hundred eighty (580) lf of damage was discovered at Site 1 during the Project Engineering and Design (PED) phase. The 580 Linear feet Site 1 damage includes loss of rock at the original downstream tie-in location. The repair tie-in length was extended to the undamaged slope section as a result. The repair length at Site 2 is 100 feet exhibiting similar flood damage. The repairs are generally described in a report entitled Project Information Report (PIR) Rehabilitation of Flood Control Works, Sande-Williams Non-Federal Levee, Whatcom County, Washington, prepared by the District Engineer, Seattle District, U.S. Army Corps of Engineers and approved by the Division Deputy Engineer on March 20, 2018.

An additional 400 linear foot damage site (Site 3) developed as a result of the November 2018 floods. Site 3 is located downstream of Site 2. The damage includes toe scour, loss of bank armor and embankment material. The levee's riverward slope became unstable and is now vulnerable to additional scour and erosion during high water events.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include, but is not necessarily limited to, actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor, in accordance with standards that exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using those funds and funds provided by the Public Sponsor, shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment on solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, and suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the Project.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 20 percent of total Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of total Rehabilitation Effort costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

**ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS,
AND PUBLIC LAW 91-646 COMPLIANCE**

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the solicitation of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights of way, and performing relocations for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged and excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Total construction costs for the Rehabilitation Effort are currently estimated to be \$425,000 and the Public Sponsor's share (cash and services in kind) of total Rehabilitation Effort costs is currently estimated to be \$85,000. In order to meet Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$85,000. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the total Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs

attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED Seattle" to the Contracting Officer representing the Government. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of Rehabilitation Effort costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V - CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$0.00 for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. Crediting and/or reimbursement is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change

the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c). Crediting and/or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI - OPERATION AND MAINTENANCE

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without

substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c).

ARTICLE VIII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government or the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article XI of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is

repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

Harry Williams, Commissioner
Deming Diking District No. 2
4437 Deming Road
Everson, WA 98247

If to the Government:

District Engineer
4735 E. Marginal Way S, Bldg 1202
Seattle, WA 98134

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

IN WITNESS HEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

DEMING DIKING DISTRICT NO. 2

BY: _____
MARK A. GERALDI
Colonel, Corps of Engineers
District Engineer

BY: Harry Williams
HARRY WILLIAMS
Commissioner


DATE: _____

DATE: 2/22/19

CERTIFICATE OF AUTHORITY

I, John R. Schultz, Sr. do hereby certify that I am the principal legal officer of Deming Diking District No. 2, Whatcom County, Washington, that Deming Diking District No. 2, is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and Deming Diking District No. 2,, Whatcom County, Washington in connection with the Rehabilitation of Non-Federal Flood Control Work, Sande-Williams Levee, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed this Agreement on behalf of Deming Diking District No. 2,, Whatcom County, Washington n have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
22d day of February 2019.


JOHN R. SHULTZ SR.
Attorney
Deming Diking District No. 2

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

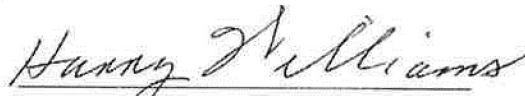
(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

DATED this 22 day of FEBRUARY, 2019.



HARRY WILLIAMS

Commissioner

Deming Diking District No. 2



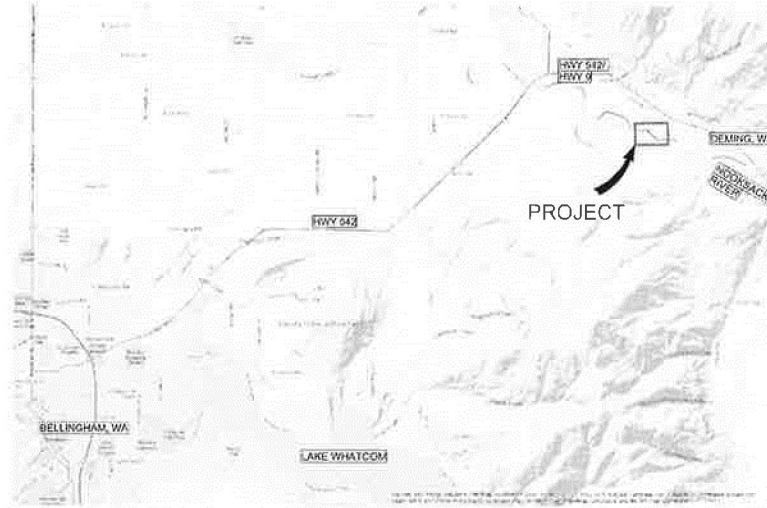
US Army Corps
of Engineers
Seattle District

EXHIBIT B

FY18 P2-471149 SAND LEVEE REHABILITATION NOOKSACK RIVER SANDE WILLIAMS LEVEE NSK-04-18 WHATCOM COUNTY, WASHINGTON



PROJECT VICINITY MAP
NTS



PROJECT LOCATION MAP
NTS



IF SHEET MEASURES LESS THAN 22" X 34" IT IS
A REDUCED PRINT. REDUCE SCALE ACCORDINGLY.



28 DEC 2018
E-6-7-42

Submitted by:
MICHAEL ENG
Project Director

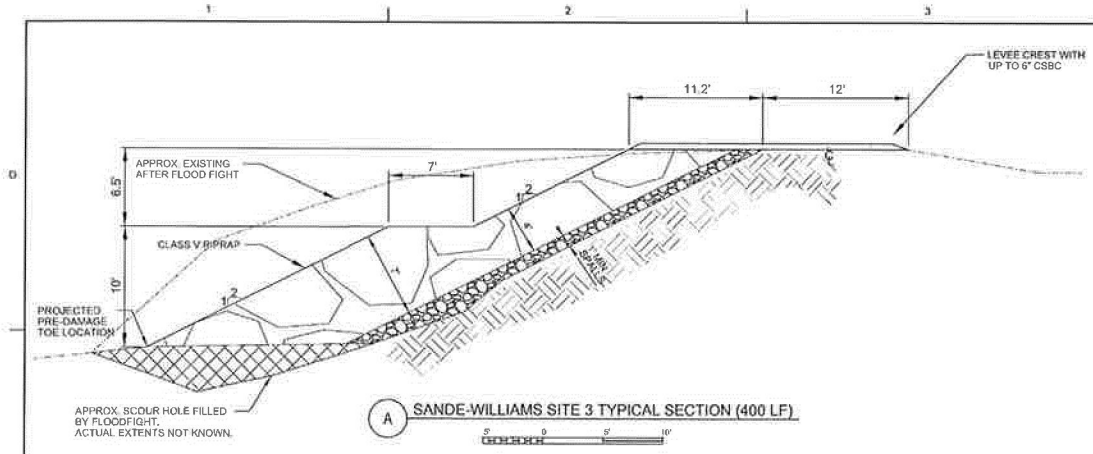
Revised/modified by:
DAVE L. GIBLIN, P.E.
Chief Design Engineer

Approved by:
JOHNNY T. WALES, P.E.
Chief, Engineering Div.

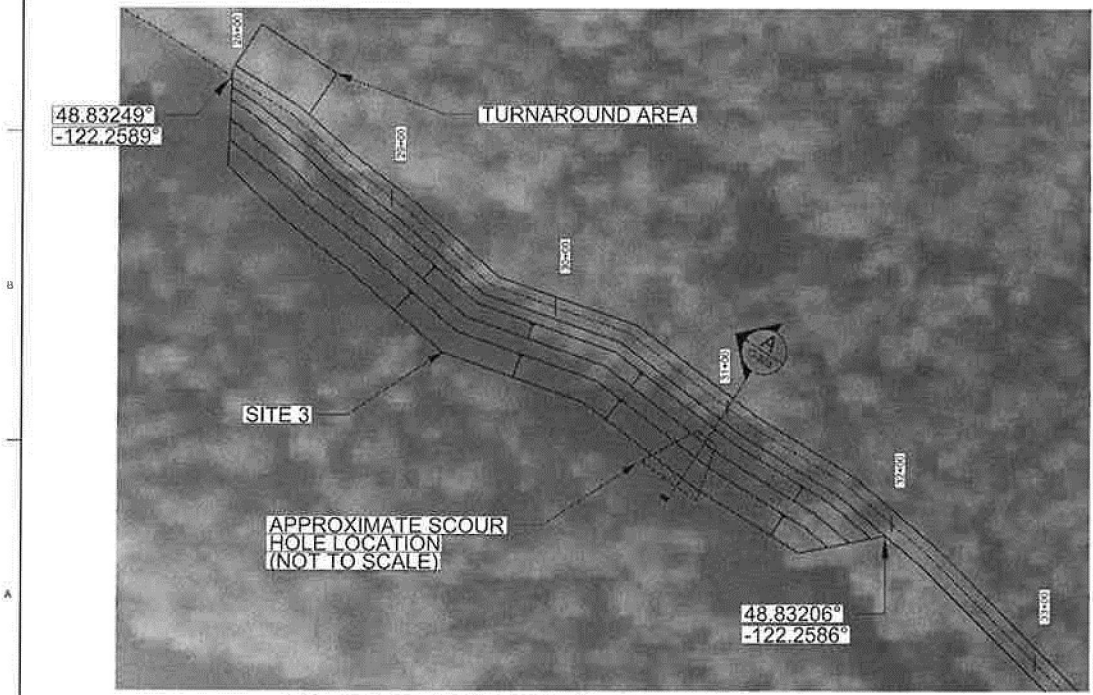
Prepared by:
KIMBALL L. OHSEK
Chief, State Section

FOR THE DISTRICT ENGINEER
SEATTLE DISTRICT
WASHINGTON
WHATCOM COUNTY, WASHINGTON
TITLE, LOCATION AND VICINITY MAPS

SHEET
IDENTIFICATION
G-001



A SAND- WILLIAMS SITE 3 TYPICAL SECTION (400 LF)
SCALE: 1" = 35'



B SAND- WILLIAMS SITE 3 PLAN VIEW (400 LF)
SCALE: 1" = 35'

- NOTES:
- CONSTRUCTION TEAM SHALL BE RESPONSIBLE FOR LOCATING UNDERGROUND AND OVERHEAD UTILITIES AS APPLICABLE BEFORE BEGINNING WORK.
 - QUARRY SPALLS SHALL CONFORM TO GRADATION IN TABLE 1 AND SHALL CONSIST OF CLEAN, ANGULAR, SCREENED, CRUSHED ROCK.
 - CLASS V RIPRAP ROCK SHALL CONFORM TO TABLE 2 AND BE HARD, SOUND, AND DURABLE MATERIAL FREE FROM SEAMS, CRACKS, AND OTHER DEFECTS TENDING TO LEAD TO PREMATURE WEATHERING. SPECIFIC GRAVITY IS ASSUMED TO BE 2.85.
 - CRUSHED SURFACING BASE COURSE (CSBC) WILL BE USED FOR REPAIRING DISTURBED PORTIONS OF THE CROWN AND ACCESS ROADS AND SHALL CONFORM TO TABLE 3. CSBC SHALL BE 100% ANGULAR WITH ALL SIDES FRACTURED.
 - CSBC QUANTITIES INCLUDE REPAIR SITE (215 CY) & ACCESS ROAD REPAIR (190 CY).
 - EXISTING RIPRAP MAY BE GALVANIZED FOR REUSE IN THIS REPAIR. SALVAGED ROCK SHALL BE COMPETENT AND FREE OF CRACKING AND WEATHERING PER THE CMP. QUANTITIES IN TABLE 4 DO NOT REFLECT REUSE OF RIPRAP.
 - LIMIT CONSTRUCTION ACTIVITIES TO WORK AREA SHOWN EXCEPT WHEN REPAIRING LEVEE CROWN AND ACCESS ROADS.
 - REFER TO THE CMP FOR BEST MANAGEMENT PRACTICES AND ENVIRONMENTAL CONSIDERATIONS TO USE BEFORE, DURING, AND AFTER CONSTRUCTION.
 - REPAIR OR RESTORE ACCESS ROADS AND STAGING AREAS WITH UP TO A 4" LAYER OF CSBC AS NEEDED. ACCESS ROADS ARE PREEXISTING AND ARE TYPICALLY 12' WIDE. HYDROSEED ALL DISTURBED AREAS ABOVE OHW.
 - REMOVE GRAVEL FROM TURNAROUND AREA AFTER CONSTRUCTION AND HYDROSEED.
 - FINAL GRADE SHALL BE AS SHOWN. ROCK PLACED DURING FLOODFIGHT THAT IS OUT OF REPAIR FOOTPRINT SHALL BE REMOVED TO THE EXTENT PRACTICABLE TO MAINTAIN A STABLE SLOPE WITH SMOOTH TRANSITIONS. DO NOT DISTURB NATIVE MATERIAL.
 - STATIONS ARE TAKEN FROM THE NATIONAL LEVEE DATABASE (NLD).
 - HORIZONTAL COORDINATES ARE LATITUDE AND LONGITUDE FROM WGS84.
 - SEE SHEET C-100 FOR A SITE ACCESS MAP.

TABLE 1. QUARRY SPALL GRADATION

| SIEVE SIZE | PERCENT PASSING |
|------------|-----------------|
| 1" | 100 |
| 4" | 0 |

TABLE 3. CSBC GRADATION

| SIEVE SIZE | % PASSING BY WEIGHT |
|------------|---------------------|
| 1.25" | 100 |
| 1" | 80-100 |
| 3/8" | 50-80 |
| NO. 4 | 25-45 |
| NO. 40 | 3-18 |
| NO. 200 | 7.5 MAX |

TABLE 2. CLASS V RIPRAP GRADATION

| | |
|-------------------|---------------|
| 100% SMALLER THAN | 36" |
| 85% SMALLER THAN | 23.5" - 27.5" |
| 50% SIZE | 12" - 20.5" |
| 15% SMALLER THAN | 11" - 15.0" |

TABLE 4. EARTHWORK QUANTITIES

| MATERIAL | VOLUME (CY) |
|----------------|-------------|
| CLASS V RIPRAP | 2969 |
| QUARRY SPALLS | 670 |
| CSBC | 405 |

— ACCESS & PROJECT LIMITS
 - - - LEVEE CENTERLINE
 - LEVEE STATIONS



| NO. | DATE | BY | DESCRIPTION |
|-----|------|----|-------------|
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DESIGNED BY: J. W. LEE
 CHECKED BY: J. W. LEE
 U.S. ARMY CORPS OF ENGINEERS
 4725 EAST MARIANNE WAY SUITE 300
 SEATTLE, WASHINGTON 98148
 DRAWN BY: J. W. LEE
 DATE: 11/09/19
 TIME: 8:13:11 AM

PROJECT: WACON CO. WA
 WACON CO. WA
 SITE 3 TYPICAL SECTION & PLAN VIEW

SHEET IDENTIFICATION
 C-303



MEMORANDUM

RECEIVED

APR 15 2019

JACK LOUWS
COUNTY EXECUTIVE

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

THROUGH: Jon Hutchings, Public Works Director *JH*

FROM: Paula J. Harris, River and Flood Manager *PJH*
Gary S. Stoyka, Natural Resources Manager *GSS*

RE: Interlocal Agreement with Diking District #2 for Sande-Williams Levee Rehabilitation

DATE: April 5, 2019

Enclosed are two (2) originals of an Interlocal Agreement between the Whatcom County Flood Control Zone District and Diking District #2 for your review and signature.

Requested Action

Public Works respectfully requests that the County Executive, and the County Council, acting as the Flood Control Zone District (FCZD) Board of Supervisors, enter into an Interlocal Agreement (ILA) with Diking District #2 (DD#2) to provide cost-share funding in the net amount of \$68,000 for the Sande-Williams Levee Rehabilitation.

Background and Purpose

The Sande-Williams Levee is currently eligible for rehabilitation under the US Army Corps of Engineers (USACE) PL 84-99 Program. For most of the Nooksack River levees, the FCZD is the local sponsor for the PL 84-99 Program; however, DD#2 became the PL 84-99 sponsor for the Sande-Williams Levee, at their request, in 2008.

The riprap face on the levee was damaged during floods in 2017 and 2018, and DD#2 requested assistance from the USACE. The USACE intends to implement a rehabilitation project on the damaged section of the levee this summer; the estimated construction cost of the project is \$425,000. The PL 84-99 Program requires a 20% cost share from the local sponsor, which is \$85,000 for this project. DD#2 requested the FCZD provide financial assistance through the Flood Control Construction Cost Share Program, which normally provides for a 70/30 cost-share between the FCZD and the local sponsor. For this project DD#2 has insufficient funds to provide the local match and has requested the cost-share be revised to 80% funding from the FCZD and 20% from DD#2; alternate cost-shares are allowed under the program as long as they are approved by the Board of Supervisors. The FCZD Advisory Committee unanimously supported this request at their July 19, 2018 meeting.

Funding Amount and Source

The proposed ILA includes a 80/20 cost share to be applied to the \$85,000 (20% of total cost) local sponsor share, for a net FCZD contribution of 14% of the total project cost up to \$68,000. DD#2 hopes to provide some of their share (6% of total project cost) by providing in-kind service. The USACE can only receive one payment for the local sponsor share, so the FCZD will provide the \$85,000 upfront payment to the USACE, and be reimbursed by DD#2 for their share. This is within the amount budgeted for this project in the 2019 FCZD budget.

Please contact Paula Harris at extension 6285, if you have any questions or concerns regarding the terms of this agreement.