

**WHATCOM COUNTY CONTRACT
INFORMATION SHEET**

Whatcom County Contract No.

202007002

Originating Department:	Public Works
Division/Program: (i.e. Dept. Division and Program)	River & Flood (9075)/Flood Hazard Reduction (907550)
Contract or Grant Administrator:	Paula Harris
Contractor's / Agency Name:	Bertrand Watershed Improvement District (BWID)

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): 202004008 (partially grant funded)

Is this contract the result of a RFP or Bid process? Contract _____
 Yes No If yes, RFP and Bid number(s): _____ Cost Center: _____

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):
 \$ 395,088 through FCZD; \$10,000 from DD#4 and CDID #1
 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:

The purpose of this Agreement is to define the obligations and responsibilities of the parties involved in implementing and providing funding for the Duffner Ditch Culvert and Flood Gate Replacement Project.

Term of Contract: _____ Expiration Date: June 30, 2023

Contract Routing:	1. Prepared by: P Harris	Date: 06/9/20
	2. Attorney signoff: Karen Frakes	Date: 6/9/2020
	3. AS Finance reviewed: Brad Bennett	Date: 6/10/2020
	4. IT reviewed (if IT related): _____	Date: _____
	5. Contractor signed: _____ ✓	Date: 6-8-2020
	6. Submitted to Exec.: _____ ✓	Date: 7-2-2020
	7. Council approved (if necessary): _____ ✓	Date: 7-7-2020
	8. Executive signed: _____ ✓	Date: 7-8-2020
	9. Original to Council: _____ ✓	Date: 7-13-2020

**AGREEMENT FOR FUNDING SUPPORT AND IMPLEMENTATION OF THE
DUFFNER DITCH CULVERT AND FLOOD GATE REPLACEMENT PROJECT**

This Agreement is made and entered into by and between the Bertrand Watershed Improvement District of Whatcom County, a Washington special-purpose district (hereinafter referred to as the "BWID"), Whatcom County Flood Control Zone District, a Washington quasi-municipal corporation (hereinafter referred to as the "District"), Diking District #4 of Whatcom County, a Washington special-purpose district (hereinafter referred to as "DD #4"), the Consolidated Drainage Improvement District #1 of Whatcom County, a Washington special-purpose district (hereinafter referred to as "CDID #1"), and Mr. Scott Bedlington, the landowner (hereinafter referred to as "Mr. Scott Bedlington").

WHEREAS, the BWID has retained an engineering consultant to design the Duffner Ditch Culvert and Flood Gate Replacement Project (Project) to replace two existing 5-foot corrugated metal culverts with one 8x6 foot concrete box culvert at the confluence of Duffner Ditch with Bertrand Creek; and

WHEREAS, Bertrand Creek is a tributary of the Nooksack River and the confluence of Duffner Ditch with Bertrand Creek is located in the floodplain approximately 2,500 feet upstream of the Nooksack River; and

WHEREAS, the new concrete box culvert will have a fish friendly flood gate that will remain open for fish passage except during flood events when the gate will close to prevent Bertrand Creek flow from backing up into Duffner Ditch and flooding the adjacent farm fields; and

WHEREAS, the BWID has committed to providing \$20,000 towards the Project which has been funding the engineering design; and

WHEREAS, both DD #4 and CDID #1 have allocated \$10,000 each towards the Project in their 2020 budget allocations; and

WHEREAS, Mr. Scott Bedlington has entered into a cost-share agreement with the Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP) for the Project; and

WHEREAS, the NRCS will provide a payment of \$295,088 upon Project completion and final inspection; and

WHEREAS, the total project cost including design, construction, and inspection is currently estimated at \$435,000 which exceeds the Project funding available through the NRCS, BWID, DD #4, and CDID #1 funding; and

WHEREAS, the District has received a Floodplains by Design (FbD) grant through the Department of Ecology (DOE) that includes funding for early action projects consistent with the Floodplain Integrated Planning (FLIP) process currently underway; and

WHEREAS, the BWID has requested that \$100,000 of the FbD early action funding be allocated to the Duffner Ditch culvert and flood gate replacement project; and

WHEREAS, the FLIP Steering Committee supports the allocation of \$100,000 towards the project as it is consistent with the FLIP mission and goals; and

WHEREAS, the NRCS cost-share funding will not be dispensed until after Project completion; and

WHEREAS, the DOE grant funding is dispensed on a reimbursement basis after documentation of actual expenditures are provided to DOE; and

WHEREAS, BWID does not have adequate financial reserves to pay the Contractor during Project construction and prior to NRCS and DOE grant funding being dispersed.

NOW, THEREFORE, it is agreed by the parties hereto as follows:

1. **PURPOSE.** The purpose of this Agreement is to define the obligations and responsibilities of the parties involved in implementing and providing funding for the Duffner Ditch Culvert and Flood Gate Replacement Project.

2. PARTY RESPONSIBILITIES

A. BERTRAND WATERSHED IMPROVEMENT DISTRICT

1. Shall manage the engineering design contract and contribute \$20,000 towards the Project to fund the design.
2. Subject to receiving the up-front funds from the District, shall expeditiously complete Project construction, pursuant to all applicable laws, regulations, permits and policies.
3. Shall put the Project out for public competitive bidding in accordance with the entity's purchasing policy and select the lowest responsible bidder as the Contractor to construct the Project, consistent with Washington State public works bidding and contracting laws and requirements.
4. Shall retain the design engineer throughout project construction and final closeout to provide construction inspection and management, ensure the project is constructed in accordance with the plans and specifications, and document the construction consistent with public works contracting laws, EQIP requirements and the FbD grant that is providing a portion of the funding.
5. Shall utilize the \$295,088 up-front payment from the District to pay the Contractor invoices promptly, typically within 30 days of receipt.
6. Shall request reimbursement from the District for 80% of eligible costs (consistent with DOE's Administrative Requirements for Recipients of Ecology Grants and Loans) up to \$100,000 in FbD grant funds.
7. Shall provide documentation to the District for the local 20% cost-share of eligible costs required by the FbD grant funds (up to \$25,000).

8. Shall construct the Project consistent with the easements and covenants recorded on the titles of the properties necessary for Project execution of the Project.
9. Shall afford the other parties to this agreement the opportunity to review and comment on the engineering design plans and specifications for the Project. BWID will, in good faith, consider the comments of all the parties and will make modifications in the design and performance of all work on the Project to ensure compliance with applicable laws and grant requirements.
10. If after Project completion and final review by the NRCS of the practices actually constructed, the final EQIP payment is decreased, the BWID will refund to the District the difference between the amount of \$295,088 and the actual payment made by NRCS.

B. WHATCOM COUNTY FLOOD CONTROL ZONE DISTRICT RESPONSIBILITIES

1. Shall provide payment to BWID of \$295,088 within thirty (30) days of receiving an Assignment of Payment of \$295,088 from Mr. Scott Bedlington that has been approved by NRCS.
2. Shall reimburse up to \$100,000 of eligible Project construction costs incurred by BWID within thirty (30) days of receiving the BWID reimbursement request including adequate documentation of the 20% local match required by the FbD grant.
3. Shall provide technical assistance related to design, construction, and public works contracting.

C. WHATCOM COUNTY DIKING DISTRICT #4 RESPONSIBILITIES

1. Upon execution of this agreement, shall contribute in cash, a contribution toward Project implementation in an amount equal to \$10,000.
2. In collaboration with CDID #1, perform ongoing operations and maintenance of the completed project in accordance with the operations and maintenance plan.

D. WHATCOM COUNTY CONSOLIDATED DRAINAGE IMPROVEMENT DISTRICT #1 RESPONSIBILITIES

1. Upon execution of this agreement, shall contribute in cash, a contribution toward the construction of the Project in an amount equal to \$10,000.
2. In collaboration with DD#4, perform ongoing operations and maintenance of the completed project in accordance with the operations and maintenance plan.

E. MR. SCOTT BEDLINGTON

1. Upon execution of this agreement, shall request an Assignment of Payment of \$295,088 to the District. The assignment of payment must be approved by NRCS.
2. If after Project completion and final review by NRCS of the practices actually constructed, the final EQIP payment is increased, any additional funds provided through the NRCS's EQIP payment associated with the Project beyond the amount of \$295,088, shall be included in the assignment of payment to the District

3. PAYMENT

The District shall provide \$295,088 up-front cash to the BWID within thirty (30) days of receiving an approved NRCS Assignment of Payment for the same amount.

DD #4 will provide \$10,000 payment to the BWID for project implementation upon execution of this agreement.

CDID #1 will provide \$10,000 payment to the BWID for project implementation upon execution of this agreement.

The District shall provide payment to the BWID to reimburse up to \$100,000 of eligible costs for construction, within thirty (30) days of receiving the BWID's reimbursement request and documentation of the 20% match (up to \$25,000) required by the FbD grant.

If after Project completion, the NRCS EQIP payment amount is reduced based on adjustments in the quantities of the actual practices constructed, the BWID will refund the District the difference between the amount of up-front payment of \$295,088 and the actual payment made by NRCS.

4. TERM OF AGREEMENT

The period of performance for this Agreement shall be consistent with the performance period of the 2019-2021 FbD grant (Grant No. SEAFBD-2019-WhCoPW-00054), which is currently July 1, 2019 through June 30, 2023.

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. INDEMNIFICATION

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 the that party, its agents or employees in the performance of this agreement

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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 BWID is:

Henry Bierlink, Executive Director
Ag Water Board of Whatcom County
204 Hawley Street
Lynden, WA 98264
(360) 354-1337
henry@agwaterboard.com

The Contract Administrator for the District is:

Paula Harris, River and Flood Manager
Whatcom County Public Works Department
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 778-6285
pharris@co.whatcom.wa.us

The Contract Administrator for DD #4 and CDID #1 is:
Lonni Cummings, Administrative Secretary
Whatcom County Public Works Department
River and Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225
(360) 778-6289
lcumming@co.whatcom.wa.us

The Contract Administrator for Mr. Scott Bedlington is:
Mr. Scott Bedlington
8040 Saddlebrook Drive
Lynden, WA 98264
scott@bedlingtonfarms.com

14. 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.

15. 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.

**BERTRAND WATERSHED
IMPROVEMENT DISTRICT**

By: Vern Vankle Gash

Title: RD President

Date: 6-8-2020

**WHATCOM COUNTY FLOOD
CONTROL ZONE DISTRICT**

By: Satpal Singh Sidhu

Title: Satpal Singh Sidhu
County Executive

Date: 7-8-2020

Approved as to form:

Approved by email-KF/PH 6-4-2020
Karen Frakes, Chief Civil Deputy Prosecutor

**WHATCOM COUNTY DIKING
DISTRICT #4**

By: Altubdi Torcu
Title: Commissioner
Date: June 22, 2020

**WHATCOM COUNTY
CONSOLIDATED DRAINAGE
IMPROVEMENT DISTRICT #1**

By: Fred Vander Veer
Title: Supervisor
Date: June 18, 2020

MR. SCOTT BEDLINGTON

By: SB
Title: Owner
Date: 6-11-2020



JUL 2 - 2020

MEMORANDUM

WHATCOM COUNTY
EXECUTIVE'S OFFICE

TO: The Honorable Satpal Sidhu, Whatcom County Executive for the Whatcom County Flood Control Zone District Board of Supervisors

THROUGH: Jon Hutchings, Public Works Director

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

RE: Agreement for Funding Support and Implementation of the Duffner Ditch Culvert and Flood Gate Replacement Project

DATE: June 22, 2020

Enclosed are two (2) originals of an agreement for funding support and implementation of the Duffner Ditch Culvert and Flood Gate Replacement project for your review and signature.

▪ Background and Purpose

The Bertrand Watershed Improvement District (BWID) is completing final design of a culvert and flood gate replacement project on Duffner Ditch at the confluence with Bertrand Creek, a tributary of the Nooksack River. Duffner Ditch is located in the floodplain approximately 2,500 feet upstream of the Nooksack River. The BWID will retain a contractor to install a new concrete box culvert to replace two existing culverts to connect Duffner Ditch to Bertrand Creek. The new culvert will have a fish friendly flood gate that will remain open for fish passage except during flood events when the gate will close to prevent Bertrand Creek flow from backing up into Duffner Ditch and flooding adjacent farm fields. The BWID has requested \$100,000 of the early action funding included in the 2019-21 Floodplains by Design grant (Contract Number: 202004008) recently awarded to the Flood Control Zone District (FCZD) by the Department of Ecology (DOE). This request is supported by the Floodplain Integrated Planning (FLIP) Steering Committee and the DOE.

The purpose of this agreement is to define the obligations and responsibilities of the parties involved in implementing and providing funding for the Duffner Ditch Culvert and Flood Gate Replacement Project. This includes ensuring compliance with public works contracting laws and ensuring the BWID has adequate resources to implement the project.

▪ Funding Amount and Source

The Agreement will provide funding from multiple sources to ensure the BWID has the resources needed to construct the project. The funding sources include an Environmental Quality Incentives Program (EQIP) payment from NRCS passed through the FCZD, Diking District #4 funds, Consolidated Improvement District #1 funds, and the DOE grant funding passed through the FCZD (Contract Number: 202004008). The Agreement includes the details of how and when the funding will be provided and the requirements needed to ensure compliance with public works contracting and the DOE grant. There will be no net impact to the District's fund balance as a result of this agreement.

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